



WEB COPY



C.M.A.No.2648 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2648 of 2024

and

C.M.P.No.21139 of 2024

Reliance General Insurance Company Limited,
Reliance House, No.6, Haddows Road, 4th Floor,
Nungambakkam,
Chennai - 600 006

..Appellant

Vs.

1. K.B.Raju,
S/o Babu Rao

2. N.Narendiran

..Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 22.02.2024 passed in M.C.O.P.No.1425 of 2021 on the file of Motor accident Claims Tribunal, IV Court of Small Causes, Chennai.



WEB COPY



C.M.A.No.2648 of 2024

For Appellant : Mr.P.Suresh Srinivasan

For Respondents : Mr.N.Kamaraj
for R1

J U D G M E N T

(The judgment of the Court was delivered by Mrs.J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the judgment dated 22.02.2024 passed in M.C.O.P.No.1425 of 2021 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai, in which, an award was passed for a sum of Rs.40,00,000/- as compensation to the 1st respondent herein and the Insurance Company was directed to deposit the said compensation amount.

2. The appellant is the Insurance Company. The claimant/ injured has filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the accident that took place on 09.12.2020.

3. The claim petition has been filed stating that on 09.12.2020 at about 2.30 hours when the claimant was riding a motorcycle bearing registration No.TN-05-BI-1963 from east to west direction proceeding towards Padi to Ambattur C.T.H. Road, in front of Mannurpettai A.B.I.



C.M.A.No.2648 of 2024

car shop, the rider of van bearing registration No.TN-22-AH-6544 came from back in a rash manner and hit the back of the motor cycle, as a result, the claimant was thrown out from the motorcycle and fell on the road and sustained grievous injuries. The accident was purely due to the rash and negligent driving of the Van driver. Hence, the owner of the Van and the 2nd respondent, being the insurer of the Van, are jointly and severally liable to pay compensation due to the claimant.

5. The appellant Insurance Company/2nd respondent therein filed counter statement, denying the averments made in the claim petition and stated that the injured is responsible for the accident. The van driver did not possess a valid and effective driving license and the policy terms and conditions were violated and that the Insurance Company is not liable to pay any compensation. The nature of injuries, period of treatment, medical expenditure, alleged disability, quantum of compensation claimed under various heads and interest contended in the claim petition are all denied as highly excessive. Hence, prayed to dismiss the claim petition.

4. The 2nd respondent herein/ owner of the van remained absent and therefore, set exparte before the Tribunal.



C.M.A.No.2648 of 2024

WEB COPY

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the driver of the van was negligent and caused the accident and that the Insurance company, the insurer of the vehicle is liable to pay compensation to the injured claimant and awarded a compensation of Rs.70,18,814/- and the same was restricted to Rs.40,00,000/- with interest at the rate of 7.5% per annum, as the injured has claimed Rs.40,00,000/- only and also did not file any amendment application for higher compensation.

7. Learned counsel appearing for the appellant/Insurance Company would state that since there was no eye witness to establish and fix the negligence on the part of the driver of insured, the Tribunal ought to have applied the principle of contributory negligence. Learned counsel would further state the doctor has assessed the disability as 80% but the lower Court has taken the loss of earning as 100%. The Tribunal failed to differentiate between the physical disablement and loss of earning capacity. Learned counsel would further state that the claimant will not be entitled to interest on the addition of prospective income but the



C.M.A.No.2648 of 2024

WEB COPY

Tribunal had considered the interest on the future prospective income and no reasoning was also given while deciding the figure of compensation granted under the heads, pain & suffering, extra nourishment, transportation, amenities, attendant costs etc. Hence, the amount awarded by the Tribunal is very excessive.

8. Heard the learned counsel appearing for the appellant/Insurance Company, the learned counsel appearing for the 1st respondent/injured claimant and perused the entire materials available on record.

9. Insofar as the negligence part is concerned, the Tribunal, after carefully considering the evidence of P.W.1 and Ex.P1-FIR had come to the conclusion that only the driver of the van was responsible for the accident. The appellant/Insurance Company did not examine the driver of the van before the Tribunal, to give rebuttal evidence regarding oral evidence of P.W1 and documentary evidence, Exs.P1. Hence, the Tribunal fixed the negligence on the part of the driver of the van. Therefore, we are of the view that the Tribunal has rightly fixed the negligence on the part of the driver of the van.



C.M.A.No.2648 of 2024

WEB COPY

10. Insofar as the assessment of disability is concerned, the contention of the appellant is that though the doctor had assessed the disability as 80%, the lower Court has taken the loss of earning as 100% and the Tribunal failed to differentiate between the physical disablement and loss of earning capacity. As per the Discharge summary-Ex P2, the injured was diagnosed with D4, D5, D6, D7 spinal epidural/hematoma on left 3rd, 4th, 5th rib fracture/ right 1st rib fracture, B.K.bod and scapula fracture, D4, D5, D6 decompressing lumpectomey. As per the Discharge summary-Ex P3, the injured was diagnosed with traumatic paraplegia and aspiration hemothorax. The entire part of the body below the hip is not functioning. Therefore, the Tribunal has determined the loss of earning capacity as 100%, with which, we find that it is just and proper and we do not find any infirmity.

Further, the date of birth of the injured is 12.10.1981 i.e., 40 years at the time of accident. The injured was working as a Manager, Pollu Care Company, Marketing Pollution Control, Chennai and was earning Rs.25,000/- per month at the time of accident. To prove the same, the



C.M.A.No.2648 of 2024

employer P.W.2 was examined. The Tribunal, considering the appointment letter-Ex.P23, salary slip-Ex.P25, bank statement-Ex.P29 and taking into consideration the decisions of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi and others* (AIR 2017 SC 5157), 40% has been added towards future prospects and applying multiplier 15 as per the decision of the Hon'ble Supreme Court in *Sarala Verma and others vs. Delhi Transport Corporation and another* (2009) 6 SCC 121, had arrived at Rs.63,00,000/- (4,20,000x 15x100%) for loss of income due to functional disability. Further, we are of the view that the amount of Rs.63,00,000/- awarded by the Tribunal towards for loss of income due to functional disability is just and proper and therefore, the same need not be interfered with.

11. We are also of the view that the amount awarded by the Tribunal towards medical expenses, pain and suffering, transportation expenses, nutrition expenses, damages to clothes, attender charges and loss of amenities are just and reasonable. Therefore, we find no infirmity or illegality in the award passed by the Tribunal and thus, we are not inclined to interfere with the same.



C.M.A.No.2648 of 2024

WEB COPY

12. In the result, the Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
vsi

(J.N.B,J.) (R.K.M., J.)
25.09.2024

To

The Motor Accident Claims Tribunal,
IV Court of Small Causes,
Chennai.

J. NISHA BANU, J.
and



WEB COPY



C.M.A.No.2648 of 2024

R.KALAIMATHI,J.

vsi

C.M.A.No.2648 of 2024

25.09.2024