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IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.1140 of 2020
and C.M.P. No.7214 of 2020

Judgment reserved on	**Judgment pronounced on**
04.01.2024	**08.02.2024**

The Branch Manager
Reliance General Ins. Co. Ltd.
Vivyan Plaza, Ground Floor
Door N o.89, 100 Feet Road,
Mudaliarpet, Pondicherry – 605 004. .. Appellant

Vs.

1.Mr.Sankar
2.Mr.Raghunath .. Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30-07-2018 made in MCOP.No.214 of 2014 on the file of the Motor Accidents Claims Tribunal (MACT), Mannargudi.

For Appellant : Mrs.C.Bhuvanasundari

For Respondents : Mr.MA.P.Thangavel
for Mr.M.Lokesh for R1
No appearance for R2

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J U D G M E N T

The Insurance company is the appellant herein challenging the award passed by the Tribunal dated 30.07.2018 in M.C.O.P.No.214 of 2014 on the file of the Motor Accident Claims Tribunal (MACT), Mannargudi, on the ground of quantum only.

2. The factum of accident, manner of accident, rash and negligent on the part of the driver of the offending vehicle and vehicle being insured with the appellant/Insurance company are not in dispute. Accordingly, the finding rendered by the Trial Court with regard to negligence are hereby confirmed.

3. On the point of quantum of compensation, heard the learned counsel for the appellant/insurance company as well as learned counsel for the 1st respondent. Though notice has been served on the second respondent and his name has been printed in the cause list, there is no representation for him today.

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4. The first respondent who sustained injuries in the road transport accident on 19.10.2012 filed the above MCOP claiming compensation for the injuries sustained by him. On the date of accident, as per Ex.P12-driving licence, the date of birth of the 1st respondent is mentioned as 29.05.1979 and accordingly, the age of the 1st respondent is fixed as 33 – 34 years. The first respondent, both in his claim petition as well as in the evidence as PW1 has categorically stated that in the accident, he lost his knee and therefore, after the knee transplantation, he could not drive the vehicle as he was doing before the accident. As per Ex.P10 – disability certificate issued by PW2-Dr.Thiruselvi, the permanent disability is assessed as 44%. On a combined reading of Exs.P4, P5, P6 & P7, discharge summaries, the first respondent had taken treatment in the private hospital on three spells, after undergoing surgery. The first spell of treatment is from 19.10.2012 to 29.10.2012 (11 days, second spell is from 28.01.2013 to 30.01.2013 (3 days), third spell is from 25.11.2013 to 04.12.2013 (10 days), fourth spell is from 19.11.2016 to 28.11.2016 (10 days) and thus, he took treatment as inpatient for 34 days. In the cross examination, the 1st respondent had admitted that between the hip and the thigh, there is no proper bone.

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5. After considering the evidence of PW2 – Doctor and Ex.P10 – disability certificate, this Court is of the considered view that the injured/first respondent being a driver by profession, could not be in a position to drive the vehicle and hence there is loss of earning capacity. In other words, due to the injuries sustained in the road transport accident, the 1st respondent had suffered functional disability. Taking into consideration the permanent disability assessed by PW2-Doctor at 44% under Ex.P10 – disability certificate and converting the same into the whole body disability, I find, in the interest of justice, it can be assessed at 20%.

6. The date of accident being 19.10.2012, the notional income is fixed at Rs.9,000/- per month. Due to the accident, the 1st respondent could have lost his income temporarily for three months. Therefore, the compensation awarded by the Tribunal towards loss of income is reduced from Rs.45,000/- to Rs.18,000/- (Rs.9000 x 3). Similarly, the compensation awarded by the Tribunal towards loss of earning capacity is modified and reduced to Rs.4,83,840/- [Rs.9000 + 3600 (40% of 9000) x 12 x 16 x 20%]. The compensation awarded by the Trial Court at Rs.1,25,000/- towards pain and

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sufferings is hereby reduced to Rs.1,00,000/-. The Trial Court has not awarded any compensation towards loss of amenities. Considering the fact that the first respondent has lost his knee in the road transport accident, I am inclined to award a sum of Rs.15,000/- towards loss of amenities. The amounts awarded by the Tribunal under other heads are hereby confirmed. Thus, the break-up details of the compensation is as under :

Sl. No	**Heads under which the amount is awarded**	**Amount awarded by the Tribunal – Rs.**	**Amount awarded by this Court – Rs.**
1.	Loss of earning capacity	9,67,680/-	4,83,840/-
2.	Pain and Sufferings	1,25,000/-	1,00,000/-
3.	Loss of income during treatment period	45,000/-	18,000/-
4.	Extra nourishment	20,000/-	20,000/-
5.	Attender charges	15,000/-	15,000/-
6.	Medical Expenses	2,31,380/-	2,31,380/-
7.	Transport Expenses	30,000/-	30,000/-
8.	Loss of amenities	-	15,000/-
	Total	**14,34,060/-**	**9,13,220/-**

In total, the first respondent is entitled to a sum of **Rs.9,13,220/- (Rupees Nine Lakhs Thirteen Thousand Two hundred and twenty only)**

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as compensation alongwith interest @ 7.5% per annum from the date of petition till the date of deposit.

17. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the award amount from **Rs.14,34,060/- to Rs.9,13,220/-** to the extent indicated above, along with 7.5% interest per annum.

(ii) the appellant/Reliance General Insurance Company Limited is directed to deposit the modified award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the first respondent/claim petitioner is permitted to withdraw the modified award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Appellant/Reliance General Insurance Company Limited is permitted to withdraw the excess amount lying in the deposit before the Tribunal, if the entire award amount has already been deposited by them.

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(v) No costs. Consequently, connected Miscellaneous Petition is closed.

08.02.2024

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Index : Yes/No
Internet : Yes/No
Neutral Citation:Yes/No
Speaking Order: Yes/no

To

1. The Subordinate Judge,
   Motor Accident Claims Tribunal,
   Mannargudi.

2. The Section Officer,
   V.R.Section, High Court,
   Madras.

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RMT.TEEKAA RAMAN.J,

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Pre-Delivery Judgment made in C.M.A.No.1140 of 2020

08.02.2024

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