IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.12.2024
CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.3317 of 2024
and
C.M.P.No.27994 of 2024

Reliance General Insurance Company Ltd.,
Reliance Hosur, 6th Floor,
Haddows Road, Nungambakkam,
Chennai-600 006. ... Appellant

Vs.

1. P.Lalitha,
   W/o Pandurangan

2. S.Jayakumar,
   S/o Selvarasu ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the motor Vehicles Act, 1988 against the order dated 20.03.2024 passed in M.C.O.P.No.2433 of 2017 on the file of Motor Accident Claims Tribunal, Special District Judge-I at Cuddalore.

For Appellant : Mr.P.Suresh Srinivasan

JUDGMENT

(Judgment of the Court was delivered by ***J. Nisha Banu, J)***

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the award dated 20.03.2024 passed in M.C.O.P.No.2433 of 2017 on the file of Motor Accident Claims Tribunal, Special District Judge-I at Cuddalore.

2. The appellant is the 2nd respondent/Insurance Company in M.C.O.P.No.2433 of 2017 on the file of Motor Accident Claims Tribunal, Special District Judge-I at Cuddalore. The 1st respondent/ injured claimant filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation, who sustained injuries in the accident that took place on 19.02.2017.

3. According to the 1st respondent, on the date of accident i.e., on 19.02.2017 at about 21.45 hours, the injured claimant was proceeding as a pillion rider with her two minor children in the Hero Xtreme motor cycle bearing Reg.No.TH-31-AP-6701 from north to south direction. The vehicle was driven by her husband at moderate speed keeping extreme

left of Panruti-Kumbakonam Road, opposite to lifestyle furniture, at that time, the 2nd respondent Yamaha FZS motor cycle bearing Reg.No.TN-31-BS-7092 insured with the appellant Insurance Company herein came in the opposite direction in high speed, in a rash and negligent manner and dashed against the 1st respondent motorcycle. Due to the impact, the 1st respondent sustained multiple fractures and grievous injuries all over the body. Immediately, she was taken to Punruti Government Hospital and given treatment. Thereafter, she was taken to Pondicherry PIMS Hospital and was given further treatment. Thereafter, she was taken to Prashanth Super Speciality Hospital, Velacherry, Chennai, for further treatment. Since the vehicle of the 2nd respondent was insured with the appellant/insurance company, both of them are jointly and severally liable to pay compensation to the injured claimant. Therefore, the 1st respondent/claimant filed the claim petition claiming a compensation of a sum of Rs.25,00,000/- from the appellant Insurance Company herein.

4. The 2nd respondent, owner of Yamaha FZS motor cycle bearing Reg.No.TN-31-BS-7092, remained exparte before the Tribunal. Since the appeal is being disposed of at the admission stage and that no adverse

order is being passed in this Appeal as against the 1st respondent, notice to 1st respondent is being dispensed with.

5. The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident had happened due to rash and negligent riding of motor cycle by the 1st respondent's husband since he ought to have been in a position to balance the vehicle in which 4 persons traveled in the motor cycle as against the policy and permit conditions. The injured husband had no valid driving license to drive the motor cycle at the relevant point of time. Hence, this respondent is not liable to pay any amount by way of compensation. It is further stated in the counter statement that the compensation claimed by the claimant is highly exorbitant and without any basis.

6. Before the Tribunal, the 1st respondent, injured claimant, examined herself as P.W.1 and marked ten documents as Exs.P1 to P10. On the side of the appellant/Insurance Company, one Natarajan (doctor), was examined as RW.1 and no document was marked. Ex.C1-disability

certificate, one court document was marked.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the Yamaha FZS motorcycle bearing Reg.No.TN-31-BS-7092 and directed the appellant /Insurance Company being insurer of the said vehicle, to pay a sum of Rs.23,77,000/- as compensation to the 1st respondent/injured claimant.

8. Against the said award dated 20.03.2024 made in M.C.O.P.No.2433 of 2017, granting compensation to the 1st respondent/claimant, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal was wrong in holding that the alleged accident was caused due to the rash and negligent driving of the driver of the motorcycle bearing Reg.No.TN-31-BS-7092 insured with the appellant and that the appellant is liable to pay a huge compensation of Rs.23,77,000/-. He would further contend that there was no eye witness to establish and fix the negligence on the part of the driver of the insured and the Tribunal ought to have applied the principle of contributory negligence. Learned counsel would further contend that the disability certificate given by the Medical Board is 61% and the Tribunal has also taken the loss of earning as 61% and thus, the Tribunal failed to differentiate between the physical disability and loss of earning capacity. He would further contend that the Tribunal erred in assessing the earning of the injured as Rs.12,000/- per month and also erred in adding 40% towards future prospects. Learned counsel would further contend that no reasoning was given by the Tribunal for the amount awarded on the other heads viz., pain and suffering, transportation, extra nourishment, loss towards amenities and attender charges, which are excessive and the huge amount awarded towards medical expenses is without any basis. He would further state that in any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10. Heard the learned counsel appearing for the appellant/

Insurance Company and perused the entire materials available on record.

11. It is stated in the claim petition that the accident has occurred due to rash and negligent driving by the driver of the motorcycle bearing Reg.No.TN-31-BS-7092 insured with the appellant. Ex.P1-First Information Report would prove that the case has been registered against the driver of the motorcycle bearing Reg.No.TN-31-BS-7092. P.W.1 had clearly stated the manner of the accident and stated that the accident had occurred due to the rash driving of the driver of the motorcycle bearing Reg.No.TN-31-BS-7092 and no other evidence was examined to disprove the same. The appellant/Insurance Company has examined only R.W.1, the doctor and they have not examined the driver of the motorcycle bearing Reg.No.TN-31-BS-7092 to prove that the accident has occurred due to rash and negligent riding by the injured husband. The Tribunal, considering the evidence of PW1 and Ex.P1/F.I.R., held that the accident has occurred only due to rash and negligent driving by the driver of the motorcycle bearing Reg.No.TN-31-BS-7092. We find no error in the said finding of the Tribunal.

12. As far as quantum of compensation is concerned, the injured claimant has claimed that she was aged 24 years at the time of accident and that she was a milk vendor and was earning Rs.12,000/- per month. The disability certificate shows 61% disability and R.W.1 doctor was also examined to that effect. The Tribunal, mainly based on the evidence of the doctor R.W.1 who had stated that the disability of the injured is not a partial disability and it is a permanent one and that the assessment of 61% disability was correct, came to the conclusion that the injured had lost her earning capacity and fixed the notional income of the injured as Rs.10,000/-. Though the injured had claimed Rs.12,000/- as loss of income per month, as she did not produce any documentary evidence to prove the same and that the respondent Insurance company also did not rebut the same through oral or documentary evidence, the Tribunal fixed the notional income as Rs.10,000/- per month and added 40% towards future prospects, which in our opinion is just and proper.

13. The injured was aged 24 years at the time of accident and the same was also not denied by the Insurance company. The Tribunal applied the multiplier 18 as per the decision reported in *2009(2) TNMAC*

1 (SC) (Sarala Verma and others vs. Delhi Transport Corporation and another) and awarded a sum of Rs.18,44,640/- (Rs.14,000/- X 12 X 18 X 61/100) towards loss of earning.

14. The injured had suffered multiple fracture injuries all over the body and also underwent three surgeries and considering the same, the Tribunal has awarded, Rs.1,50,000/- towards pain an sufferings, Rs.10,000/- for transportation charge, Rs.30,000/- towards extra nourishment, Rs.50,000/- towards loss of amenities, Rs.20,000/- towards attender charges and we find that the same is not excessive. Insofar as the medical expenses is concerned, the Tribunal has awarded a sum of Rs.2,57,026/- only based on Ex.P7 medical receipts produced on the side of the injured and the same is also not excessive. Therefore, we find that the award passed by the Tribunal does not warrant any interference by this Court.

15. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.23,77,000/- awarded by the Tribunal as compensation to the injured claimant along with interest and costs is confirmed. The

appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B, J.) (R.S.V., J.)
06.12.2024

vsi

To

The Motor Accident Claims Tribunal,
Special District Judge-I,
Cuddalore.

J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

vsi

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