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C.M.A.No.2813 of 2023s

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 24.01.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2813 of 2023

The Manager,
Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Reliance House,
Haddows Road, Nungambakkam,
Chennai – 600 006.

... Appellant

Vs.

1. K.Vadivelan
2. Mr.Janakiraman

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 28.04.2023 made in M.C.O.P.No.8945 of 2015, on the file of the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai.

For Appellant : Mr. G.Vasudevan

Respondents 1 : Mr.Amar D Pandiya

Respondent-2 : Notice not Ready



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JUDGEMENT

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Questioning the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present Appeal.

2. On 20.09.2015 at about 14.16 hours, when the claimant was riding a Motor Cycle, bearing Regn.No.TN -09-CA-7643, along with a Pillion Rider along side the GNT Road from South to North direction and entered Kavankarai Signal Point, waiting for signal, at that point of time, a Container Lorry, bearing Regn.No.TN 28 AH 0690 driven by its driver came from the same direction in a very rash and negligent manner and dashed against the Motorcycle, due to which, the claimant sustained grievous injuries. Hence, the claimant filed a Claim Petition seeking a sum of Rs.45,00,000/- as compensation.

3. The Tribunal, on evaluation of both oral and documentary evidence, held that the accident occurred due to rash and negligence on the part of the driver of the first respondent's vehicle, viz., Container Lorry and hence, directed the second respondent/Insurance Company to pay a sum of



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Rs.14,63,100/-as compensation. The breakup details of the award passed by the Tribunal under various heads are as follows:-

<i>Sl.No</i> ..	<i>Heads</i>	<i>Amount</i>
1	Disability	Rs.8,85,360/-
2	Pain and Sufferings	Rs.50,000/-
3	Loss of Earning during Treatment	Rs.30,000/-
4	Medical Expenses	Rs.3,87,728/-
5	Loss of Amenities	Rs.50,000/-
6	Attender Charges	Rs.20,000/-
7	Transportation Charges	Rs.20,000/-
8	Extra Nourishment	Rs.20,000/-
	Total	Rs.14,63,088/-

4. Aggrieved against the quantum of compensation awarded by the Tribunal, the present Appeal is filed by the Insurance Company, as stated supra.

5. Mr. G.Vasudevan, the learned counsel appearing for the appellant would submit that the Tribunal, while determining compensation towards Disability, has taken the entire disability as per Ex.C.1, Disability Certificate issued by the Medical Board viz., at 31% and applied the



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multiplier method by fixing the notional monthly income of the injured at Rs.10,000/- and future prospects at 40%, which has resulted in awarding such an exorbitant sum of Rs.8,85,360/- under the said head. The learned counsel submitted that due to the accident that the whole body functional disability sustained by the injured/first respondent would be only at a minimum of 20%, and hence, the Tribunal ought not to have taken the entire disability as assessed by the Medical Board in Ex.C.1.

5.1 Further, the learned counsel contended that the award of compensation passed by the Tribunal under other heads is also on the higher side and the same requires appropriate reduction.

6. Per contra, Mr.Amar D Pandiya, the learned counsel appearing for the first respondent/claimant would submit that due to the accident, the first respondent/claimant sustained injuries over both legs, comminuted fracture, shaft of femur left, segmental fracture shaft of tibia right, injury over right elbow, injury over abdomen and multiple injuries all over the body, and the Medical Board, on examination of the injured claimant



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assessed the disability at 31% and issued Disability Certificate in that regard, which is marked as Ex.C.1, wherein, it is stated that the injured sustained Restricted Movement Right and Left Knee due to Renal Tubular Acidosis (RTA) and based on Ex.C.1, the Tribunal has taken the entire disability at 31% and determined the compensation at Rs.8,85,360/-.

6.1 Further, it is the grievance expressed by the learned counsel that at the time of the accident, the injured was working as Collection Agent and though initially, owing to the accident, his disability has been assessed at 31%, however, the learned counsel submitted that due to the disability sustained at the time of the accident, the injured cannot move his legs freely, as due to Renal Tubular Acidosis (RTA), the movement of his both knees has been restricted, whereby, his disability has now become permanent in nature and hence, the disability sustained by the first respondent/claimant should be treated as functional disability at 60%.

6.2 The learned counsel furthermore submitted that the award of compensation passed by the Tribunal under heads are just and reasonable



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and hence, the same may be confirmed.

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7. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the first respondent, the claimant and perused the materials available on record.

8. According to the learned counsel appearing for the appellant/Insurance Company, the disability sustained by the first respondent is a whole body functional disability, which would be only at a minimum of 20% and therefore, the Tribunal ought not to have the entire disability as per Ex.C.1, i.e at 31%. Whereas, it is the contention of the learned counsel for the first respondent that, as an aftermath of the disability sustained by the first respondent at the time of the accident, the disability has now become permanent in nature, as the first respondent cannot move his legs as freely as he did before, since due to RTA, his both knees movement have been restricted, and hence, the Disability sustained by him



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is a functional disability at 60% and further, at the time of the accident, the first respondent worked as a Collection Agent, in charge in Thiripura Chit Funds Pv. Ltd. and earned monthly income of Rs.25,000/-, now, owing to the restriction of movement on his both knees, it is doubtful whether he could carry on the said avocation any more.

9. Thus, taking into consideration of the fact that due to the disability sustained by the first respondent at the time of the accident, which has been assessed at 31% as per Ex.C.1, the impact of disability still continues, as the first respondent could not move his legs as freely as he did before and that whether he would be able to continue his job is also under doubt and further considering the aspect that the Tribunal, only upon considering the nature of disability sustained by the injured claimant in a proper perspective has passed an award of compensation of Rs.3,87,728/- under the head, 'Medical Expenses', irrespective of the fact that the claim made by the first respondent/claimant under the said head (viz., Medical Expenses was only at Rs.3,50,000/-), this Court does not find any error in the decision making process of the Tribunal in determining the



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compensation towards disability at Rs.8,85,360/- by taking the entire disability as per Ex.C.1 and the same stands confirmed. Similarly, this Court does not find any error in the award of compensation passed by the Tribunal under other heads and the same stands confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest at 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. On such deposit being made by the appellant/Insurance Company, the Tribunal shall transfer the amount directly to the first respondent's/claimant's bank account through RTGS within a period of three weeks thereon and the/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

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24.01.2024

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To

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



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Krishnan Ramasamy,J.,
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