IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.03.2024	Pronounced on 27.03.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2527 of 2019
and
C.M.P.No.11988 of 2019

Reliance General Ins. Co. Ltd.,
11, Cross Street, Kanagu Towers 1st Floor
Thillai Nagar, Tiruchirapalli ... Appellant

Vs.

1.Ramasamy
S/o.Periasamy
Periakadu, Semmipalayam, Sukkampalayam (PO)
Palladam

2.Dhandapani
S/o.Seeniappa Gounder
7/263, Dhasavanaickenpettai, Vellaikoil
Kangayem Tk.

3.Raja
S/o.Murugesan
327/5, Indra Nagar, Thottipalayam
Tiruppur 638 458 ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 14th December 2017 passed in MCOP.No.1371 of 2013 by the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant : Ms.C.Bhuvanasundari

For Respondents : Mr.Ma.Pa.Thangavel (for R1)

J U D G M E N T

The Appeal has been filed against the Decree and Judgment dated 14.12.2017 passed in MCOP.No.1371 of 2013 by the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur.

2.The Insurance Company is the Appellant herein. Challenging the award passed in MCOP.No.1371 of 2013 by the Motor Accident Claims Tribunal, II Additional District Court, Tiruppur, the Insurance Company preferred this Appeal on the point of quantum of compensation only. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.Heard the learned counsel for the Insurance Company and the learned counsel for the claim Petitioner.

4.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 2nd Respondent's vehicle, insured with the 3rd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the Tribunal that the accident taken place due to the rash and negligent driving of the driver of the 2nd Respondent's vehicle, insured with the 3rd Respondent are hereby confirmed.

5.During trial, on the side of the claim Petitioners, PW1 to PW2 were examined & Ex.P.1 to Ex.P.4 were marked and on the side of the Respondents none was examined and no document was marked.

6.The claim Petitioner filed this MCOP.No.1371 of 2013, for the injuries sustained by him in the accident occurred on 28.09.2013. At paragraph No.9 of the Tribunal's award dated 14.12.2017, it was referred as based on the disability certificate issued by the Medical Board in ROC.No.683/2017 dated 27.06.2017, the disability of the claim Petitioner was assessed at 80%, but the said document was not indicated as document in the annexure of the Tribunal's award. It is a case of amputation of leg, above knee. The photograph of the injured person also filed before the Court. The Tribunal has calculated the whole body disability at 100%. The same is under challenge by the Insurance Company.

7.As per the version of PW1, she was said to have been carried on poultry work and was aged about 65 years and therefore, the Tribunal has rightly fixed the notional income at Rs.10,000/- and adopted '7' as multiplier. However, taken the disability at 100%, even though the Medical Board observed as follows:

> *"He had undergone following procedures: Resuscitation, debridement and external, fixator for left leg, left side ICD insertion, debridement with open reduction and internal fixation with AO-LCP 3.5 mm distal humerus plate for left supracondylar fracture humerus, VAC application left leg, Bipedicled myofasciocutaneous flap cover to critical ra area over anterior left lge, SSG cover to raw areas on dorsum of left hand. He had undergone left leg amputation above knee. At present he has difficulty in doing daily living activities like running, walking, squatting with arthritis change left elbow etc.,*
>
> *His physical disability is permanent and assessed as 80% (Eighty) "*

Hence this Court is of the considered view that with regard to the whole body disability, it can be fixed as 85% only. Accordingly the pecuniary loss reassessed as follows:

[Rs.10,000/- + x 12 x 7] 85 % = Rs.7,14,000/-

8.As per Ex.P.3/Medical Bills, the Tribunal has awarded a sum of Rs.7,17,000/- towards Medical expenses, a sum of Rs.60,000/- towards pain and sufferings, a sum of Rs.40,000/- towards nutrition expenses, a sum of Rs.50,000/- towards attender charges and a sum of Rs.25,000/- towards transportation charges. The same are just and property and are hereby confirmed.

S.No	*Head*	*Amount (Rs.)*
1	Pecuniary loss	714000
2	Pain and sufferings	60000
3	Nutrition expenses	40000
4	Medical expenses	717000
5	Transportation charges	25000
6	Attender charges	50000
	Total	1606000

In total, the claim Petitioner is entitled to a sum of Rs.16,06,000/- (Rupees sixteen lakh and six thousand only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

9.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the compensation from Rs.17,00,000/- to Rs.16,06,000/- to the extent indicated above. Consequently, connected Miscellaneous Petition is closed. No costs.

(ii) the Insurance Company is directed to deposit the reduced award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

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

(iv) the Insurance Company is permitted to withdraw the excess amount already deposited before the Tribunal, less the reduced award amount, if any, with accrued interest.

27.03.2024

Index : Yes/No

Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

sai

To

The II Additional District Judge
II Additional District Court
Motor Accident Claims Tribunal
Tiruppur

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.2527 of 2019
and
C.M.P.No.11988 of 2019

Dated: 27.03.2024