



C.M.A(MD)No.1205 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :20.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

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Reliance General Insurance Company Ltd,
Through its Branch Manager,
Door No.,184/9B/7, VVD Main Road,
Near State Bank of India,
Thoothukudi 628 008.

...Appellant

Vs.

1.Krishnaganesh

2.Martin Rajendra Mohan

...Respondents

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree in M.C.O.P.No.1392 of 2021 dated 20.07.2023, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Tirunelveli.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.T.Leninkumar



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JUDGMENT

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(The Judgment of the Court was delivered by P.Velmurugan, J)

The Insurance company has filed this appeal challenging the quantum of the award passed in M.C.O.P.No.1392 of 2021, dated 20.07.2023, by the Motor Accident Claims Tribunal/learned Special Subordinate Judge, Tirunelveli. The second respondent herein is the owner of the Mini container lorry bearing registration No.TN69Q3765. The said vehicle was insured by the appellant/Insurance company.

2.Facts of the case:

On 17.03.2021 at about 12.10 hours, the first respondent was riding a motor cycle bearing registration No.TN 72 BM 3663 on the extreme north side of KTC Nagar-Seenivasa Nagar Service road, from North to South. At that time, the insured lorry with the appellant/Insurance company, driven by its driver in a rash and negligent manner, dashed behind the two wheeler and in the result, he was thrown - off and sustained injuries over his right leg knee, left leg knee, right leg thigh, left side hip and right forehead and multiple injuries all over the body. Immediately, soon after the occurrence, he was taken to



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Government Hospital Tirunelveli, and thereafter, he was admitted in Vadamalayan Private Hospital and took treatment. Then, he was shifted to Rhock Hospital, Tirunelveli and again shifted to Vadamalayan Hospital, Madurai and took treatment on various dates. At the time of accident, he was working as sales officer in HDFC Bank, Tirunelveli and earned Rs.50,000/-. Due to the injuries sustained in the accident, he is not able to walk, sit and stand and also not able to lift any heavy objects. He is not able to do any work without the assistance of the other persons. He also discontinued his job. Therefore, he has filed the claim petition before the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli, claiming compensation of Rs.50,00,000/- with interest.

3.In the petition, it is alleged that FIR was registered against the driver of the vehicle insured with the appellant/Insurance company. The appellant/Insurance company disputed the accident and also they claimed that due to the negligence of the injured claimant, the accident had occurred.



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4. The claimant, to prove his case, examined P.W.1 to P.W.6 and marked Exs. P-1 to Ex.P-20 and also marked witness documents Ex.X-1 to Ex.X-19 and the disability certificate issued by the Medical Board was also marked as Ex.C-1.

5.The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the learned counsel for the appellant/Insurance Company and the injured claimant, held that the accident occurred only due to the rash and negligent driving by the driver of the vehicle, insured with the appellant/Insurance Company and directed the appellant/Insurance company to pay a sum of Rs.49,18,160/- as compensation and the details are as follows:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of future earning power	24,19,200/-
2	Medical Expenses	23,13,960/-
3	Loss of Convenience	75,000/-
4	Pain and Suffering	75,000/-
5	Transport Expenses	5,000/-
6	Attendant Charges	20,000/-
7	Extra Nourishment	10,000/-
Total Award		49,18,160/-



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Aggrieved by the above compensation awarded by the Tribunal, the appellant/Insurance company has filed this appeal before this Court.

6.The learned counsel for the appellant/Insurance Company submitted that, even though the driver of the lorry was not examined, from the facts, it is clear that the injured was not wearing helmet and considering the other circumstances, the accident has occurred only due to the contributory negligence on the part of the injured and hence, the Tribunal ought to have applied the contributory negligence on the part of the injured. He further submitted that without any evidence, the Tribunal has fixed the monthly salary of the injured at Rs.15,000/- and calculated the loss of earning capacity as Rs.24,19,200/-. Hence, he seeks to reject the compensation awarded by the Tribunal.

7.Per contra, the learned counsel for the first respondent/claimant submitted that the injured sustained injuries over his right leg knee, left leg knee, right leg thigh, left side hip and right forehead and multiple injuries all over the body. Therefore, the medical board assessed his



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disability at 60%. He has undergone multiple treatment. To prove his income, an officer from the HDFC Bank was also examined and he produced the salary certificate, which shows the monthly salary of the injured is at Rs.50,000/-. But, the Tribunal has only taken a sum of Rs. 15,000/- as monthly income, which is very meagre. Therefore, there was no need to interfere with the amount awarded by the Tribunal. Further, he submitted that on the side of the insurance company, no evidence was adduced to discard the evidence of the injured witness. The final report has also been filed against the driver of the lorry. Therefore, the negligence was correctly fixed upon the driver of the lorry insured with the appellant/Insurance company. Hence, he seeks dismissal of this appeal and also seeks confirmation of the finding of the Tribunal.

8.This Court considered the rival submissions made by the learned counsel appearing for the appellant/Insurance company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record.

9.The following points arise for consideration in this appeal:



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9.1. Whether the negligence has been correctly fixed on the appellant insurance company?

9.2. Whether the compensation awarded by the Tribunal is in accordance with law?

10.P.W.1/injured witness clearly deposed that the lorry, which was insured with the appellant/ Insurance Company, came in a rash and negligent manner and dashed behind the motor cycle, which was ridden by him. Hence, he sustained injuries all over the body. Therefore, the FIR was registered against the driver of the lorry. Apart from that, the final report was also filed after completing the investigation. There is no contra evidence adduced on the side of the appellant/Insurance company. In the said circumstances, the Tribunal correctly fixed the negligence upon the driver of the lorry. The said finding is on the basis of the evidence and upon consideration of the medical records produced by the claimant. Therefore, the said finding is in accordance with law. This Court finds no material to differ with the finding of the learned trial Judge that the accident has occurred only due to the negligence on the



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part of the driver of the vehicle insured with the appellant/Insurance company.

11.The first respondent/injured claimant was working as Sales officer in HDFC Bank, Tirunelveli Branch. P.W.6 was examined to prove his employment and he clearly deposed that the claimant was working as a Sales Manager and his salary particulars were produced under Ex.P3 and Ex.P4. Ex.X15 to 19. From the above documents, it is proved that the claimant was working as a sales-man and earned monthly salary of more than Rs.50,000/-. But, the Tribunal, has taken into account that after the accident, he submitted the resignation letter and the same was accepted and hence, the Tribunal has taken the salary of the injured claimant as Rs. 15,000/-. Therefore, the contention of the learned counsel for the appellant/Insurance company that the claimant has not proved his employment and monthly salary, cannot be accepted.

11.1.The Tribunal considered the injuries and percentage of the disability and the consequential loss of earning capacity, and correctly adopted the multiplier method and granted Rs.24,19,200/- under the



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heads -- loss of Future earnings. Considering the multiple surgeries, the Tribunal has awarded Rs.75,000/- under the heads -- pain and suffering and loss of convenience each at Rs.75,000/- and Rs.20,000/- as attendant charges and Rs.10,000/- for Extra nourishment and Rs.5,000/- as Transportation charges.

11.2.The claimant was 31 years at the time of accident and sustained injuries and lost his job and is living with disability and has to live with perpetual suffering throughout his life. Therefore, the impugned Award passed by the Tribunal deserves no interference.

13.Accordingly, the points are answered against the appellant/Insurance Company and this Civil Miscellaneous Appeal is dismissed, by confirming the impugned Award passed by the Tribunal. The compensation awarded in M.C.O.P.No.1392 of 2021 dated 20.07.2023, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tirunelveli is hereby confirmed. The appellant/Insurance Company is directed to deposit the impugned award amount, with accrued interest up to date and costs, less any amount if



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already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. There shall be no order as to costs in this appeal.

[P.V.J.,] [K.K.R.K.J.,]
20.09.2024

NCC : Yes/No
Index : Yes/No
sbn

To

- 1.The Motor Accident Claims Tribunal,
The Chief Judicial Magistrate, Sivagangai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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and
K.K.RAMAKRISHNAN.J.,

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