IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :05.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.312 of 2025

Reliance General Insurance Company Limited
Swarnapuri, Fairlands,
Salem District ... Appellant

Vs.

1. Murugan
2.Anush Deekonda ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, pleased to set aside the judgment and decree dated 01.09.2023 passed in MCOP.No.811 of 2022 on the file of Motor Accidents Claims Tribunal), Special District Judge at Salem.

For appellant : Mr.P.Suresh Srinivasan
For Respondents : M/s.B.Logendiran for R2

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal awarding compensation of Rs.19,70,000/- to the injured claimant, the Insurance company has come before this court by way of this appeal.

2. According to the first respondent/claimant, on 08.10.2019 at about 1.30 P.M, when he was riding his two wheeler bearing registration No.TN 54-D-0857 in Attur By-pass road near junction of Pudupalayam service road on the left side of the road, a car bearing registration No.KA 53-ME-7450 belonging to the second respondent was driven by its driver in a rash and negligent manner and hit against the victim. As a result of the accident, the victim suffered grievous injuries all over the body and his right leg was fully amputated. It is claimed by the claimant that at the time of accident, he was aged about 39 years and he was employed as a load man, earning a sum of Rs.20,000/- per month. The claim was laid seeking a compensation of Rs.55,00,000/-.

3. The appellant/ Insurance company resisted the claim petition by filing a counter affidavit stating that the driver of the insured vehicle had no driving license and hence, the insurance company was not liable to pay the compensation amount. The Insurance company denied the avocation and income of the injured person.

4. Before the Tribunal, the injured was examined as PW1 and nine documents were marked on the side of the claimant as Exhibits P1 to P9. On behalf of the appellant/Insurance company, no witness was examined and no document was marked.

5.The Tribunal, based on the evidence available on record, came to the conclusion that the driver of the second respondent's car drove the vehicle in a rash and negligent manner and hence, the accident had taken place. Though the disability certificate issued by the Medical Board mentions the disability at 85%, the Tribunal having regard to the avocation of the injured fixed the disability at 100% and awarded a sum of Rs.19,70,000/- as compensation. Aggrieved by the same, the Insurance company has come before this court by way of this appeal.

6. The learned counsel for the Appellant/ Insurance Company submitted that the Tribunal erred in fixing negligence on the part of the driver of the insured vehicle when no independent eyewitness was examined on the side of the claimant. The learned counsel further submitted that the medical board opined that the injured suffered only

85% disability. The Tribunal fixed disability at 100% without any basis. Therefore, he sought for setting aside the award passed by the Tribunal.

7. The learned counsel for the first respondent/claimant, by taking this Court to the order passed by the Tribunal, contended that based on proper appreciation of evidence available on record, the Tribunal has awarded just compensation and the same need not be interfered with.

8. In order to prove the manner of accident, the claimant was examined as PW1. He clearly deposed about the rash and negligent driving of the driver of the car owned by the second respondent. The evidence of PW1 is very well corroborated by the contents of FIR, which is marked as Exhibit P1. In order to prove that the accident had taken place due to rash and negligent driving of the injured, the respondents had not chosen to examine the driver of the offending car. Therefore, based on the evidence of PW1 and contents of the FIR, the Tribunal rightly came to the conclusion that negligence is on the part of

the driver of the car owned by the second respondent.

9. Though in the counter affidavit the appellant/Insurance company raised a point that driver of the car did not possess a valid driving license, the appellant has not taken any steps to prove the same by issuing notice to the concerned RTO office. As far as the percentage of the disability is concerned, the Medical Board has given an opinion that injured claimant suffered disability of 85% under Exhibit P3. It is not in dispute that the right leg of the claimant was fully amputated. He is a load man by profession. In that case, he may not be in a position to perform his duty as load man. The amputation suffered by the claimant will certainly interfere with the avocation of the injured. Therefore, the Tribunal is justified in fixing disability at 100%.

10**.** The accident had taken place in the year 2019. The Tribunal fixed only Rs.10,000/- as notional monthly income, in view of the fact that the claimant failed to produce any evidence to prove the income or avocation. This Court, taking into consideration the date of accident and cost of living, feels the notional income of Rs.10,000/- fixed by the Tribunal is very conservative estimate. However, the claimant is satisfied with the same and not challenged the quantum. Hence, the said finding is confirmed. Therefore, I do not find any reason to interfere with the award passed by the Tribunal and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

05.02.2025

Index:Yes/No
Internet:Yes/No
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To

1. The Motor Accident Claims Tribunal,
   Special District Judge, Salem

2. The Section Officer,
   VR Section,
   High Court, Madras.

S.SOUNTHAR, J.

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