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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.A. No.465 of 2017
and C.M.P. No.3146 of 2017

M/s.Oriental Insurance Co.Ltd.,
U.I.L. Building,
No.8, Esplanade, Chennai - 600 108.

... Appellant/2nd Respondent

Versus

1. A.Gunasekaran
2. K.Manoharan

...1st Respondent/Petitioner
...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.06.2005 made in M.C.O.P. No.2484 of 2001 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr. S.Janarthanan
For Respondent - 1 : Mr. C.S.K.Sathish
2 : Notice dispensed with

JUDGMENT

This appeal is preferred by the insurance company challenging the award of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai passed in M.C.O.P. No.2484 of 2001.

2. The first respondent while riding his vehicle was hit by a vehicle Tata Sumo owned by the second respondent and insured with the appellant. It is admitted that the first respondent has suffered multiple injuries and fracture in Tibula M/K 3 in his left leg. As against a sum of Rs.70,000/- awarded by the Tribunal, the above appeal has been preferred by the insurance company challenging the quantum.

3. The Tribunal awarded a sum of Rs.70,000/- on various heads. The Tribunal has arrived at the income of the first respondent as Rs.3,000/- per month and age of the first



respondent as 45 years. A sum of Rs.12,000/- was added as loss of income for a period of four months on account of accident. A sum of Rs.2,000/- was awarded for nutrition and a further sum of Rs.1,000/- was awarded towards transportation. The Tribunal has awarded a sum of Rs.8,000/- towards pain and suffering and a further sum of Rs.13,000/- towards permanent disability. The Tribunal found that the disability of the first respondent is 30% and a sum of Rs.15,000/- was also awarded towards the loss of capacity to earn.

4. Learned counsel appearing on behalf of the appellant raised several grounds challenging the quantum on various grounds. It is not in dispute that the accident occurred in the year 2000. Relying upon the document of Ex.P.1, learned counsel for the appellant submitted that the manner of accident has been wrongly understood by the Tribunal. Since the first respondent has taken treatment till 18.06.2000, the quantum awarded by the Tribunal was also challenged on the ground that the first respondent has not proved that he was suffering from permanent disability.

5. This Court carefully considered the pleadings, facts admitted and the findings of the Tribunal. It is to be seen that the Tribunal has accepted case of first respondent partly and awarded a sum of Rs.70,000/-. The challenge is mainly on the ground that the Tribunal has awarded a sum of Rs.15,000/- towards earning capacity (loss of earning power) and a sum of Rs.30,000/- was awarded towards permanent disability. 30% disability was accepted by the Tribunal. Having regard to the nature of injury suffered by the first respondent and the facts and the circumstances of the case, this Court is inclined that permanent disability can be only 25% .

6. This Court also accepted the contentions of the learned counsel for the appellant that the Tribunal has wrongly awarded a sum of Rs.15,000/- towards loss of earning capacity after accepting the claim towards permanent disability. Hence, a sum of Rs.20,000/- has to be deducted from the amount of Rs.70,000/- as per the award of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, passed in M.C.O.P. No.2484 of 2001.. Accordingly, this Court is inclined to allow the appeal partly and the claimant / first respondent is entitled to get a sum of Rs.50,000/- as compensation on account of the loss and suffering of the first respondent arising out of the accident. The first respondent claimant is entitled to interest at 7.5% from the date of accident.



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7. This Civil Miscellaneous Appeal is allowed partly to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
IV Small Causes Court,
Chennai.

Copy to

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

C.M.A. No.465 of 2017

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srg 24/08/2021