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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4685 of 2019
and CMP.No.26572 of 2019

(Through Video Conferencing)

The Branch Manager,
IFFCO TOKIO General Insurance Company Limited,
GSN Arcade, Beside Vemala Kalyana Mandapam,
Bye-pass Road, Hosur,
Tamil Nadu - 635 109.
C/o.The Branch Manager,
IFFCO TOKIO General Insurance Company Limited,
No.128, IFFCO Bhavan, 4th Floor,
Habibullah road, T.Nagar,
Chennai - 600 017.

... Appellant/2nd Respondent

Vs.

1.Perumalappa

... Respondent/Petitioner

2.Chinnathambi

.. Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 07.06.2019 made in M.C.O.P.No.406 of 2018, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.M.Sivakumar

For R2 : No Appearance



JUDGMENT

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 07.06.2019 passed by the Motor Accident Claims Tribunal, Additional District Judge, Hosur, in MCOP.No.406 of 2018.

2. By the impugned judgment and decree, the Tribunal has awarded a sum of Rs.5,94,563/- as compensation to the 1st respondent / claimant.

3. The impugned judgment and decree has been challenged by the appellant / insurance company on the ground that the Tribunal erred in awarding an exorbitant sum of Rs.3,88,800/- towards loss of earning capacity at 45%. It is submitted that the Tribunal ought to have restricted the same to 1/3rd of the total amount to arrive at a lesser compensaion. It is further submitted that the appellant suffered only fracture on his left leg both bones and the head injury.

4. The learned counsel for the respondent submitted that the Tribunal has awarded the lesser compensaion after considering the exhibits on record. He further submits that the Tribunal has considered the discharge certificate - Ex.P.6 and disability certificate - Ex.P.11 to arrive at the compensaion and the same could not be disturbed.

5. In my view, the Tribunal has committed an error in awarding the compensation without considering the functional disability. Considering the same, the amount awarded towards loss of earning capacity at Rs.3,88,800 is re-computed to Rs.1,72,800/- (Rs.8,000 x 12 x 20 / 100 x 9).

6. In the result, the total amount of Rs.5,94,563/- is reduced to Rs.3,78,563/- (Rs.5,94,563 - Rs.3,88,800/- + Rs.1,72,800/-).

7. Accordingly, the appellant/Insurance Company is directed to deposit the aforesaid re-computed amount of Rs.3,78,563/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by it, within a period of six weeks from the date of receipt of a copy of this Judgment.

8. On such deposit being made by the appellant/Insurance Company, the 1st respondent/claimant is permitted to withdraw the same together with interest accrued thereon, less the amount already withdrawn if any, by filing suitable application before the Tribunal.



9. This Civil Miscellaneous Appeal stands partly allowed.
No costs. Consequently, connected Miscellaneous Petition is
closed.

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Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

drl

To:

1.The Motor Accidents Claims Tribunal,
Additional District Judge, Hosur.

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.25720

+1cc to Mr.*C.Prabakaran, Advocate SR.No.25506

C.M.A.No.4685 of 2019
and
CMP.No.26572 of 2019

RLD(CO)
GMY(24/09/2021)