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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1641 of 2017

and

C.M.P.No.8683 of 2017

Oriental Insurance Company Ltd.,
represented by its Manager,
G.K.Complex, 1st Floor,
Dharmapuri Main Road, Pochampalli,
Krishnagiri District.

...Appellant

Vs

1.Sekar
2.R.Chakkaravarthy

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 08.02.2017 made in M.C.O.P.No.110 of 2016 on the file of Motor Accident Claims Tribunal, (Special District Court for Motor Accident Claims Cases), Krishnagiri.

For Appellant : Mrs.Elveera Ravindran

For Respondents : Mr.T.Arockia Doss for
Doss and Viswa Associates

JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This Civil Miscellaneous Appeal is filed by the Insurance Company being aggrieved by the quantum of compensation awarded by the Tribunal to the claimant.

3. The short facts of the case is that on 14.12.2015 at about 4.20 p.m., when the claimant Sekar was standing along with his Bajaj Pulsar bike bearing registration No.TN 24 AA 9263 on the extreme of the road side near Ramamoorthy maligai shop at Mettukollai, a car bearing registration No.TN 39 AE 1917 owned



by the 1st respondent and insured under the 2nd respondent coming on the opposite direction rash and negligently dashed against the claimant and his bike. Due to the impact, the claimant sustained multiple injuries. He was taken to the Government hospital, Krishnagiri for treatment and admitted initially as in-patient on 15.12.2015 to 21.12.2015 and thereafter got admitted at Ganga Medical Centre and Hospital (P) Ltd., Coimbatore. For the injury and for the loss of income, claim petition for a sum of Rs.20,00,000/- was filed against the owner of the car and its insurer.

4. The Insurance Company filed a detailed counter refuting the allegations and averments made in the claim petition. According to the claim petition the accident occurred when the claimant riding his motorcycle and tried to cross the road without observing the road rules. There was no rash or negligence on the part of the car driver. Further, it is contended that the claimant had no valid driving licence and therefore, for violation of Motor Vehicles Act, he has to be dis-entitled for claiming compensation and the quantum of compensation claimed was also questioned as excessive and exorbitant.

5. Before the Tribunal, the claimant examined as PW.1 and marked 7 exhibits. On the side of the respondent, one Gururagavendhiran was examined as RW.1 and 2 exhibits marked.

6. The Tribunal relying upon the First Information Report and the other evidence held the driver of the car bearing registration No.TN 39 AE 1917 was responsible for the accident. Being the insurer of the offending vehicle, 2nd respondent was held liable to indemnify the insurer and pay the 3rd party claim. The Medical Board, which has examined the injury of the claimant, had assessed the disability at 40% partial permanent. The Tribunal taking note of the disability certificate given by the Medical Board which was marked as Ex.P7 had applied multiplier method to compute the loss of earning and awarded a total sum of Rs.5,35,690/- towards the compensation.

7. In the appeal, the learned counsel for the appellant primarily assailed the award on the ground that when there is no evidence to show that the claimant was employed in TNSTC as a conductor and the disability found by the Medical Board will impair his earning capacity and cause functional disability, the Tribunal ought not to have applied multiplier method referring the judgment of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and another reported in [(2011) 1 SCC 343]. The learned counsel for the appellant would further submit that in the absence of evidence that the injury has



caused disability to earn, the application of multiplier is erroneous.

8. Per contra, the learned counsel for the respondent would submit that the nature of injury has found in the disability certificate given by the Medical Board would clearly show that the injured victim is unable to walk, stand, sit, squat and ride any vehicle, climb steps and not able to do any work as before. The Medical Board has recorded the pain in the right thigh and difficulty in standing for a long time. As a conductor the said disability had caused substantial functional impairment.

9. On hearing the rival submissions made by the learned counsels and on perusing the records, this Court is of the view the fracture of closed shaft right neck of right femur, though not a schedule injury or total permanent injury, there would be substantially difficult in discharging the day to day functioning therefore, considering the site of fracture it is assessed 20% functional disability. Accordingly, the award passed by the Tribunal is scaled down as below:

Permanent disability (Rs.9,000X12X15X20%)	Rs.3,24,000/-
Pain and Sufferings	Rs.10,000/-
Mental agony and shock	Rs.5,000/-
Transport to hospital	Rs.5,000/-
Extra nourishment	Rs.9,000/-
Attender charges	Rs.5,000/-
Medical Expenses	Rs.40,887/-
Total	Rs.3,98,887/-

Rounded off Rs.4,00,000/-

10. The learned counsel for the appellant would submit that as per the conditional order passed by this Court at the time of admission of the appeal, he has already deposited a sum of Rs.4,00,000/- in the MCOP account. In such case the accrued interest shall be deposited within a period of twelve weeks from today. The claimant herein is permitted to withdraw the award amount on appropriate petition.



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11. In the result, this Civil Miscellaneous Appeal is disposed of. Consequently, connected civil miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpl
To

The Motor Accident Claims Tribunal,
(Special District Court for Motor Accident Claims Cases),
Krishnagiri.

+lcc to Mr.Elveera Ravindran, Advocate Sr.12039

C.M.A.No.1641 of 2017
and C.M.P.No.8683of 2017

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srg 01/10/2021