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C.M.A.No.919 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2023

Pronounced on : 30.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.919 of 2022
and CMP.No.6843 of 2022

The Manager
Royal Sundaram Alliance Insurance Co. Ltd
Branch 4-A, 4th Floor, Thirumalai Towers
723, Avanashi Road
Coimbatore - 641 018.

... Appellant / 2nd Respondent

Vs

1.B.Anjappa @ Anji
2.V.Sekar

... Respondents / Petitioner ,
1st

Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the judgment and decree passed by the Tribunal in the above MCOP.No.248 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Judge, MACT) at Krishnagiri, dated 22.3.2019.

For Appellant	: Mr.M.Krishnamoorthy
For Respondents	: Mr.S.Murugan for R1



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R2 - Exparte

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JUDGMENT

This appeal is preferred by the Appellant/Insurance Company challenging an Award passed in MCOP.No.248 of 2014 by Motor Accident Claims Tribunal (Special Sub Judge, MACT), Krishnagiri.

2. According to the first respondent/claimant, on 06.05.2009, while he was driving his goods carrier bearing Reg.No.KA 17 A 1979 with all requisite caution behind a lorry bearing Reg.No.KA 01 AG 5488 belonging to the first respondent and insured with the second respondent, the driver of the second mentioned lorry suddenly applied breaks without any indication, and despite the claimant applying breaks to his vehicle, he could not prevent the collision of his lorry on the other lorry that stopped suddenly without a hint. A case came to be registered against the claimant in Cr. No.355/2009 under Section 279 and 337 of IPC by Kaveripattinam Police.

3. Claiming damages for the injury suffered, the claimant approached the Tribunal with MCOP.No.248 of 2014. The first respondent before the Tribunal (owner of the lorry) remained ex-parte and the insurance company



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alone contested the matter. According to the insurance company, the claimant had ramped his vehicle on a stationary lorry that was parked on the side of the highway. The Tribunal however, has fixed the liability on the offending lorry essentially on the ground that there was no evidence that the driver of the lorry had switched on the parking lamps, and that to explain the accident, the driver of the offending lorry was also not examined. Ultimately, the Tribunal proceeded to fix the entire responsibility on the driver of the offending lorry.

4.Turning to the compensation part of the Award, the claimant had suffered fracture to his left leg patella. As per Ext.P4 - discharge summary, he was hospitalized for 10 days from 06.05.2009 to 15.05.2009, discharge summary The medical board had assessed his disability at 40%. Since the claimant was a driver by avocation, the Tribunal treated the disability suffered by the claimant as functional disability. By fixing Rs.6,500/- per month as his notional income, the Tribunal had added another 40% towards future prospects and had applied a multiplier of 18 and arrived at a net sum of Rs,7,87,000/- as compensation under the head of loss of earning power. After adding the compensation payable on other conventional heads, the



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Tribunal passed an award for Rs.8,88,000/-. This is now under challenge.

5. The learned counsel for the appellant challenges the Award on three grounds;

- a) that the Tribunal was wrong in fixing the entire blame of the accident on the driver of the lorry and ;
- b) that the Tribunal ought not to have assessed the disability of the driver as functional disability;
- c) that the interest was awarded at 9% when the market interest was far below then 9%.

6. The learned counsel for the appellant submitted that the claimant came out with a candid case that the lorry was moving and that it was driven recklessly. Ext.R.2 sketch shows that the accident had taken place on a express highway with four lanes, and that the scene of occurrence was the far extreme on the left hand side of the road. The Tribunal while considering the point as to whether the offending lorry should be treated as a stationary vehicle, or must be considered as a moving vehicle, had come to the conclusion that the parking lamps were not lit, implying thereby that the Tribunal has accepted the case of the insurance company. If the lorry is a



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stationary vehicle, then negligence must necessarily be entirely attributed to the claimant/first respondent. Turning to quantum, the learned counsel for the appellant submitted that the injury should not be treated as a functional disability.

7.1 Per contra, the learned counsel for the claimant/first respondent submitted that even if the case of the appellant is accepted, then it is mandatory for the driver of the lorry to switch on the parking lamps, since the time of accident is around 04.15 a.m, and unless there are parking lamps, it would be impossible for any other road user to spot a parked lorry. Therefore, the Tribunal's approach in fixing the entire negligence on the driver of the lorry cannot be faulted.

7.2 Turning to the quantum awarded, the learned counsel for the first respondent submitted that it is not in dispute that the claimant is a driver by avocation and inasmuch as the injury was to his legs which includes petella, he no more can drive the vehicle effectively. Therefore, the Tribunal was yet again correct in its approach in treating the disability of the claimant as functional disability. He proceeded to add that the monthly income which



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the Tribunal has notionally fixed for the victim itself is on the lower side. He also relied on the ratio in *Archit Saini and another Vs. Oriental Insurance Co.Ltd., and others* [2018(1) TN MAC 544 (SC)]

8. Admittedly, the accident had taken place at the wee hours of 06.05.2009, to be precise at about 4.30 a.m. And going by the case of the insurance company, the offending vehicle was parked and was stationary at the time of accident. Even if this version of the accident is considered as accepted, then the issue is whether the parking lamps were at least switched on. Under Sec.122 of the M.V.Act, parking a motor vehicle in a public road, no matter which part of the day, is considered as an obstruction as would cause inconvenience to the other road users and prohibits it. Sec.126 of the Act prohibits parking a motor vehicle unless a licensed driver is there in the seat. Here is a situation, a lorry is parked in darkness without any evidence that the parking lamps were switched on. And, the driver of the offending lorry was not examined to prove the contra. Therefore, the negligence on the part of the driver of the offending lorry is evident.

9. The next point is whether any contributory negligence can be attributed to



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the claimant? In determining if the victim of the accident himself/herself has contributed to its occurrence with his/her negligence, many factors need to be considered, but the foremost is whether the stationary vehicle is visible to the driver of the oncoming vehicle. Here is a situation where the offending lorry was parked when it was still dark and unless it is established it is easily visible to another user of a motor vehicle, contributory negligence cannot be presumed. Different consideration would have prevailed if the accident had taken place in day light. In conclusion, this Court affirms the finding of the Tribunal and holds that the driver of the offending lorry was totally negligent.

10. The next aspect is about rate of interest. Ordinarily this court awards 7.5% p.a whereas in this case the Tribunal has awarded 9% p.a. on the compensation amount. The Tribunal has fixed the notional income of the victim at a paltry Rs.6,500/- p.m., and if only the claimant had filed any cross objection, it would have merited serious consideration. This court now treats the additional 1.5% interest over and above 7.5% as part of the compensation without any interest running on the same.



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11. In the result, the civil miscellaneous appeal is dismissed and the judgment and decree passed by the Motor Accident Claims Tribunal (Special Sub Judge, MACT) at Krishnagiri, dated 22.3.2019 in MCOP.No.248 of 2014 is confirmed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

30.11.2023

Tsg/ds

Index : Yes/No

To

The Motor Accident Claims Tribunal
(Special Sub Judge, MACT) at Krishnagiri,



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N.SESHASAYEE.J.,

tsg/ds

Pre-delivery Judgment in
C.M.A.No.919 of 2022 &
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