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C.M.A(MD)No.327 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.10.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.M.A(MD)No.327 of 2020
and
C.M.P(MD)No.4262 of 2020**

SBI General Insurance Company Ltd.,
Rep. by its Regional Claims Manager,
Having its Regional Office at 3rd Floor,
Good Shepard Square,
No.82, Kodambakkam High Road,
Nungambakam, Chennai-600 034
and having its Branch Office at 2nd Floor,
Ward No.A1, Block No.15,
TSO 949-10, Door No.104,
Excellence Building, Race Course Road,
Coimbatore-641 018. ...Appellant/2nd Respondent

.VS.

1.Muthukumar ...1st Respondent/Petitioner
2.Manindar Kaur Multani ...2nd Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.3 of 2018 on the file of the Motor Accident Claims Tribunal (Sub-Court), Thuraiyur, dated 18.09.2019.

For Appellant :Mr.S.Gokulraj
For Respondents :No appearance



C.M.A(MD)No.327 of 2020

JUDGMENT

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[Judgment of the Court was made by **RMT.TEEKAA RAMAN.,J.**]

This Civil Miscellaneous Appeal is directed against the judgement and award made in M.C.O.P.No.3 of 2018, dated 18.09.2019, on the file of the Motor Accident Claims Tribunal (Sub-Court), Thuraiyur.

2. Challenging the award passed in M.C.O.P.No.3 of 2018 by the Motor Accident Claims Tribunal (Sub-Court), Thuraiyur, this appeal has been filed by the SBI General Insurance Company Ltd. The first respondent is the owner of the lorry. The second respondent is the insurer of the lorry.

3. The injured, who is the claimant, has filed the above M.C.O.P.No.3 of 2018 before the Motor Accident Claims Tribunal (Sub-Court), Thuraiyur claiming compensation of Rs.25,00,000/- for the functional disability happened to him due to the road transport accident on 03.06.2015.

4. The factum of accident as narrated in the claim petition was not disputed by the appellant/Insurance Company before the



C.M.A(MD)No.327 of 2020

Tribunal. However, they have disputed the manner of the accident as spoken by P.W.1.

5. To substantiate the claim petition, the injured examined himself as P.W.1 and the cleaner, who travelled along with the injured in the lorry, was examined as P.W.2. Ex.P1 to Ex.P14 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1-policy of the lorry was marked.

6. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the lorry insured with appellant/Insurance Company was parked in the middle of the road has not displayed any signal and resultantly, the lorry driven by the injured came and dashed from the behind and sustained injury and accordingly, held that the driver of the appellant lorry is at negligence and both owner of the vehicle and Insurance Company are jointly and severally liable to pay the compensation. Further, taking into consideration the nature of the injury sustained by the claim petitioner, the tribunal ascertained the injury at 80% and applied the formula and arrived at a compensation of Rs.22,36,112/-.



C.M.A(MD)No.327 of 2020

7. The appellant/Insurance Company would contend that there is a contributory negligence on the part of the claim petitioner. Further, the Tribunal has awarded a sum of Rs.18,00,000/- for partial permanent disability and Rs.30,000/- was awarded for loss of earning capacity. The amount awarded for loss of earning capacity is excessive and it is double headed and hence, on the point of quantum of compensation, the insurance company has filed the present appeal.

8. We have given our anxious consideration to the contention raised by the appellant/Insurance Company and the respondent claim petitioner and also perused the evidence of P.W.1. However, P.W.2, the cleaner, who has accompanied with P.W.1, also corroborated the evidence of P.W.1 with regard to the manner of accident. Admittedly, the offending standing in the second portion of the road without any indication and therefore, the lorry driven by P.W.1 dashed behind the parked vehicle on the left hand side of the road and hence, we find that the finding of the tribunal that the accident had taken place due to improper parking of the vehicle on the part of the driver of the offending vehicle, is found to be just and proper and does not require any interference at this appellate stage.



C.M.A(MD)No.327 of 2020

9. Accordingly, the plea of contributory negligence raised by the appellant/Insurance Company stands negatived. On the point of quantum of compensation, we have given our anxious consideration and also various heads of compensation awarded by the tribunal were considered. As per Ex.P9 driving licence, the injured is aged about 40 years on the date of accident and hence, the Tribunal applied multiplier of '15' and the Tribunal has rightly fixed the notional income of the injured at Rs.10,000/-.Further more, based upon the medical evidence, Ex.P11 and Ex.P5 the Tribunal has rightly come to the conclusion that the injured being a driver has sustained 80% disability below knee on the right leg. Accordingly, the Tribunal held that the disability is functional disability and the same was affecting the earning capacity of the petitioner, therefore, the Tribunal has awarded a sum of Rs.18,00,000/- for partial permanent disability. We find that the finding of the tribunal is just and proper and there is no interference required in the said findings.

10. Hence, we find that the tribunal has awarded a sum of Rs.30,000/- for loss of earning capacity and awarded a sum of Rs.18,00,000/- for partial permanent disability. The amount of Rs.30,000/- awarded by the Tribunal for loss of earning capacity is



C.M.A(MD)No.327 of 2020

excessive and the same is set aside. The compensation awarded in all other heads are just and reasonable and the same were confirmed. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

11.The award of the Tribunal is modified as follows:

S. No .	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or modified or enhanced or granted
1.	Loss of partial permanent disability	Rs.18,00,000	Rs.18,00,000	confirmed
2.	Medical Bills	Rs.2,23,544	Rs.2,23,544	confirmed
3.	Loss of pain and sufferings	Rs.80,000	Rs.80,000	confirmed
4.	Loss of earning capacity	Rs.30,000		Set aside
5.	For Nutrition	Rs.20,000	Rs.20,000	confirmed
6.	For Transportation	Rs.42,568	Rs.42,568	confirmed
7.	For attendant charges	Rs.20,000	Rs.20,000	Confirmed
8.	For future medical expenses	Rs.20,000	Rs.20,000	Confirmed
	Total	Rs.22,36,112	Rs.22,06,112	reduced by Rs.30,000

12.The Civil Miscellaneous Appeal is partly allowed reducing



C.M.A(MD)No.327 of 2020

the compensation from Rs.22,36,112/-to Rs.22,06,112/- with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization. The learned counsel appearing for the appellant insurance company would submit that the appellant has already deposited the entire award amount. The claimant is entitled to withdraw the reduced award amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any, by filing necessary application before the tribunal. The Tribunal is directed to refund the excess amount to the appellant / Insurance company along with proportionate interest. No costs. Consequently, connected miscellaneous petition is closed.

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
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[T.K.R.,J.] [P.B.B.,J.]
19.10.2023

To

The Motor Accident Claims Tribunal (Sub-Court),
Thuraiyur.



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RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI,J.

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JUDGMENT MADE IN
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