IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on 12.03.2024 | Pronounced on 28.03.2024 |
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CORAM

**THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.3217 of 2021
and
C.M.P.No.18374 of 2021

The Manager
HDFC ERGO General Insurance Co. Ltd.,
New No528, Old No.559, 2nd Floor
Anna Salai, Thenampet
Chennai 600 018 ... Appellant

Vs.

1.Ragu
S/o.Sivasamy
Residing at No.3/86
Chinnakarasapalayam
Palappatti PO, Paramathi Velur TK
Namakkal District

2.Venkatachalam
S/o.Chinnagounder
Residing at No.2/52, Pallakkuli Agraharam
Chenbagadevi, Tiruchengode Tk
Namakkal District 637 211 ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 10.03.2021 made in MCOP.No.1135 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

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| For Appellant | : Mr.S.Arunkumar |
| For Respondents | : Mr.M.Muthukannan (for R1)<br>(Legal aid counsel) |

## JUDGMENT

The Appeal has been filed against the award and decree dated 10.03.2021 made in MCOP.No.1135 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

2.The Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.1135 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The Insurance Company filed the above Appeal on the point of negligence and quantum.

4.During the trial, on the side of the claim Petitioner, PW1 & PW2 were examined, Ex.P1 to Ex.P.16 were marked and on the side of the Respondents, none was examined and no documents were marked.

5.Heard the learned counsel for the Insurance Company and learned legal aid counsel appointed by this Court for the claim Petitioner.

6.The claim Petitioner filed claim Petition seeking compensation for the injuries sustained by him in the road transport accident occurred on 12.08.2014. The Insurance Company filed counter statement denying the manner of the accident and also stated that the claim Petitioner also contributed for the accident.

7.Learned counsel for the Insurance company would contend that the vehicle driven by the claim Petitioner dashed against a lorry which was parked on the left hand side of the road and hence contributory negligence needs to be fixed upon the claim Petitioner.

8.On perusal of the Tribunal's order, I find that on behalf of the Insurance Company the driver of the lorry was not examined to demonstrate the manner of the accident. In the cross examination of PW1/injured, it is elicited that the vehicle was driven by the driver of the insured vehicle, by observing the rules of law the claim Petitioner closely followed the lorry without keeping minimum distance and hence on application of brake by the lorry driver to avoid an accident, the two wheeler which was coming behind dashed against the lorry from back side, which resulted in the accident.

9.Learned legal aid counsel appearing on behalf of the claim Petitioner made his submission in support of the judgment of the trial Court.

10.On perusal of the counter statement filed by the Insurance Company, I find that at paragraph 11, the manner of the accident was clearly disputed against the narration made by the claim Petitioner in the claim Petition. During the cross examination of PW1 also it is stated that the accident was taken place due to the action of not keeping minimum distance between the two wheeler and the eight wheeler (lorry), which is moving in front of the two wheeler.

Taking note of these facts and circumstances and the evidence of PW1 and also the suggestion put forth to PW1 during the cross examination and the answer elicited in the cross examination of PW1, I find that the injured has also contributed to the accident. Had he been maintaining the minimum distance that is required between the two moving vehicle, the accident could have been avoided and hence I am of the considered view that the claim Petitioner is also contributed to the accident and fixed the contributory negligence in the ration of 80:20 between the driver of the lorry and the rider of the two wheeler.

11.Another point that was raised by the learned counsel for the Insurance Company is that the claim Petitioner failed to wear helmet at the time of the accident and due to which he was suffered by head injury. But there is no pleadings in this regard in the counter statement filed by the Insurance company before the Tribunal and there is no such suggestion put forth to PW1 during the course of cross examination. If PW1 confronted with such questions, the real position could have been disclosed from the mouth of PW1. Moreover, if the Insurance Company examined the driver of the lorry on their side for the above reasoning, the said plea raised by the Insurance Company could be taken into account. Since no such plea has been taken either in the pleading or during the cross examination of PW1, I find no hesitation to reject the said contention of the Insurance Company.

12.Accordingly, finding of the trial Court with regard to contributory negligence is hereby modified in the ratio of 80:20 between the driver of the lorry and the rider of the two wheeler/claim Petitioner.

13.On the point of quantum of compensation, after perusing the order passed by the Tribunal, I find that claim Petitioner/PW1 suffering by following injuries:

*“1) Head injury with fracture left maxilla orbit ethmoid and fron tal skull bone and cortical contusion brain.*
*2) Lacerated injury parietal scalp.*
*3) Lacerated injury right cheek.*
*4) Contusion with abrasion chin*
*5) Lacerated injury lower lips.*
*6) Contusion with swelling deformity left thigh with multi-fragmented fracture shaft of femur middle shaft with displacement with concealed fracture neck of femur left.”*

Ex.P6 is the copy of the wound certificate issued by the said hospital.

Ex.P8 is the Discharge Summary issued by the C.M. Hospital, Namakkal. Ex.P9 is the Discharge Summary issued by the Ganga Hospital, Coimbatore. Immediately after the accident, the Petitioner was admitted in the C.M. Hospital, Namakkal for treatment and that later on, the Petitioner continued to take treatment at the Ganga Hospital, Coimbatore is not seriously disputed by the Insurance Company. PW2/ Doctor, who is running the C.M. Hospital, Namakkal gave evidence with regard to the treatment undergone by the Petitioner at the C.M. Hospital and Ganga Hospital, Coimbatore. The genuineness of Ex.P2, Ex.P6, Ex.P8 and Ex.P9 document is not under challenge. The claim Petitioner was taking treatment as inpatient from 14.08.2014 to 25.08.2014. A close perusal of Ex.P.9/discharge summary discloses that a surgery was conducted on 16.08.2014 to remove the nailing done on the left femur as the same was found to be unsatisfactory and renailing was done with AO AFN nailing and the neck of left femur was fixed with 3 mm steinmann pin. Further reaming was done and for entry site AO AFN nail of size 10 x 420mm inserted and screwed with two cephalo medullary screw proximally and three distal locking screw.

14.To prove the alleged disability caused, the claim Petitioner placed reliance upon the ocular evidence of PW2 and documents Ex.P14 to Ex.P16. PW2, stated that he gave treatment to the Petitioner at the C.M. Hospital, Namakkal and deposed that on 27.01.2021 he clinically examined the Petitioner and based on Ex.P14/X-ray and Ex.P15/Scan assessed the nature and percentage of disability caused to the Petitioner. He further stated that due to fracture caused in the left femur permanent disability has been caused to the Petitioner as he cannot under take hard labour and that the percentage of disability caused to the claim Petitioner is 50%. The permanent disability certificate issued by PW2 was marked as ExP16. Strong femur ensures that the weight of the upper body is handled by the individual without any difficulty more so when enduring hard work. In the instant case since two surgeries were conducted to treat the fractured left femur of the claim Petitioner, it is apparent that the shaft of the left femur of the claim Petitioner is weakened to a larger proportion curtailing not only the natural movement of the claim Petitioner but also restricting the capacity of the claim Petitioner to undertake hard labour. Further whenever stress is given to the left femur, the same will certainly cause excruciating pain to the claim Petitioner. Hence considering the part of the body in which disability has been caused and the nature of disability caused, this Tribunal reassessed the whole body permanent disability at 25%. The same is hereby confirmed.

15.The trial Court has rightly come to the conclusion that the claim Petitioner suffered by loss of earning capacity. Since the Petitioner was a diploma holder in Computer Engineering, the Tribunal has fixed the monthly income at Rs.9,000/-. The Tribunal has added 40% towards future prospects and fixed 25% disability. Further the Tribunal has adopted '18' as multiplier, which are just and proper. By applying the above, the Tribunal assessed the loss of earning as 6,80,400/- [(9000 + (3600) x 12 x 18 x 25%]. The same are hereby confirmed.

16.Apart from loss of earning, the Tribunal has awarded a sum of Rs.30,000/- towards pain and sufferings, a sum of Rs.10,000/- towards transportation, a sum of Rs.10,000/- towards extra nourishment and a sum of Rs.2,00,000/- towards medical expenses. The same are hereby confirmed. Hence, the compensation awarded by the Tribunal is just and fair, which does not warrant any interference of this Court.

| S.No | Head | Amount (Rs.) |
|---|---|---|
| 1 | Loss of earning | 680400 |
| 2 | Pain and sufferings | 30000 |
| 3 | Medical expenses | 200000 |
| 4 | Transportation charges | 10000 |
| 5 | Extra nourishment | 10000 |
| | Total | 930400 |
| | 80% of compensation | 744320 |

In total, the claim Petitioner is entitled to a sum of Rs.7,44,320/- (Rupees seven lakh forty four thousand three hundred and twenty only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

17.This Court appreciates the efforts taken by Mr.M.Muthukannan, learned legal aid counsel appearing for the first Respondent.

18.In fine,

(i)this Civil Miscellaneous Appeal stands partly allowed, reducing the compensation from Rs.9,30,400/- to Rs.7,44,320/- to the extent indicated above. Consequently, connected Miscellaneous Petition is closed. No costs

(ii)the Insurance Company is directed to deposit the reduced award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii)on such deposit being made, the claim Petitioner is permitted to withdraw the reduced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv)the Insurance Company is permitted to withdraw the excess amount already deposited before the Tribunal, less the reduced award amount, if any, with accrued interest.

28.03.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

*sai*

To
The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.

**RMT.TEEKAA RAMAN.J,**

*sai*

Pre-delivery Judgment made in

C.M.A.No.3217 of 2021
and
C.M.P.No.18374 of 2021

Dated: 28.03.2024