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C.M.A.No.347 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.347 of 2021

And

C.M.P.No.2352 of 2021

Shriram General Insurance Company Limited
Represented by its Branch Manager,
E-8 RIICO Industrial Area, Sitapura,
Jaipur, Rajasthan State – 302 022.

... Appellant

Vs.

1.Prakash
2.D.Selvam

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 07.03.2019 made in M.C.O.P.No.164 of 2018, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri and be pleased to dismiss the claim for compensation.

For Appellant : Mr.S.Dhakshnamoorthy
For Respondents : Mr.K.V.Muthu Visakan for R1
Mr.E.Kannadasan for R2



C.M.A.No.347 of 2021

WEB COPY

J U D G M E N T

The second respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 07.03.2019 passed by the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri, in M.C.O.P.No.164 of 2018.

2.The learned counsel appearing for the appellant submitted that the first respondent claimant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs alleging that on 04.05.2011 at about 11.30 a.m., the first respondent was riding the motorcycle bearing Registration No.TN-24-F-7025 in Dharmapuri to Krishnagiri NH Road near Nilal Kodam along with one pillion rider. At that time, the driver of the tipper lorry bearing Registration No.KA-01-B-5320 belonging to the second respondent and insured with the appellant came in a rash and negligent manner in the same direction and hit on the first respondent, pillion rider and motorcycle, due to which, the first respondent sustained injuries. After adjudication, the Tribunal awarded a sum of Rs.5,57,400/- as compensation to the claimant along with interest at 9% p.a. from the



C.M.A.No.347 of 2021

date of filing of the petition till the date of deposit with proportionate costs and directed the appellant to deposit the compensation amount initially and thereafter to recover the same from the second respondent.

3.The learned counsel appearing for the appellant further submitted that aggrieved by the quantum of compensation awarded by the Tribunal, this appeal has been filed. The learned counsel further submitted that the Medical Board assessed the disability of the claimant as 25% partial permanent disability, however, the Tribunal arrived at a conclusion that claimant suffered 25% partial functional disability and awarded compensation by adopting multiplier method, which is not sustainable one and further submitted that the amount awarded under the other heads are also on the higher side and further submitted that the Tribunal has awarded 9% interest instead of 7.5%, which is also onerous.

4.The learned counsel appearing for the first respondent submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence,



C.M.A.No.347 of 2021

the impugned judgment warrants no interference.

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5.The learned counsel appearing for the second respondent submitted that though F.I.R. has been registered as against the driver of the vehicle belonging to the second respondent, mere filing of F.I.R. is not conclusive proof to hold that the negligence is on the part of the driver of the vehicle belonging to the second respondent.

6.Heard the learned counsel appearing on either side and perused the materials available on record.

7.The accident and the manner in which the accident happened are not disputed. The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.4,91,400/- for loss of earning power, Rs.15,000/- for transport, nutrition and attender charges, Rs.25,000/- for pain and sufferings, Rs.25,000/- for loss of amenities and enjoyment of life, Rs.1,000/- for damages to clothing and articles and arrived at a total compensation of Rs.5,57,400/- with interest at the rate of 9%p.a. from the date of filing of the petition till the date of deposit.



C.M.A.No.347 of 2021

8. In order to prove the negligence aspect, the claimant examined himself as P.W.1 and marked Exhibits Ex.P1 to Ex.P6. Though R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 have been marked on the side of the appellant, they are not eye witnesses and neither the owner of the lorry nor the Insurance Company examined any eye witness. Anyway, this appeal has been filed only questioning the quantum of compensation. Hence, there is no need for any discussion with regard to the negligence aspect.

9. The Medical Board has assessed the disability of the claimant as 25% partial permanent disability. Hence, the Tribunal ought to have followed the decision of the Hon'ble Apex Court reported in *(2011) 1 SCC 343 [Raj Kumar Vs. Ajay Kumar and Ors.]*, however, without following the guidelines issued in the said decision, the Tribunal mechanically passed the award by applying multiplier method, which is not sustainable one. At the relevant point of time Rs.3,000/- per percentage of disability was awarded. Hence, amount awarded for loss of earning power works out to Rs.75,000/- [25% X Rs.3,000/- = Rs.75,000/-].



C.M.A.No.347 of 2021

10.The amount awarded under the heads transport, nutrition and attender charges, pain and sufferings, in the opinion of this Court are low and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded for transport, nutrition and attender charges is enhanced to Rs.40,000/- [Rs.10,000/- for transport charges; Rs.20,000/- for nutrition; Rs.10,000/- for attender charges] from Rs.15,000/-, the amount awarded for pain and sufferings is enhanced to Rs.40,000/- from Rs.25,000/-. The amount awarded under the head damages to clothing and articles in the opinion of this Court is just and reasonable and the same is confirmed. The amount awarded under the head loss of amenities and enjoyment of life in the opinion of this Court is not necessary and hence, the amount awarded under the said head is deleted. This Court is of the opinion that some amount has to be awarded for loss of income during the treatment period. Accordingly, this Court awards a sum of Rs.30,000/- for loss of income during the treatment period. The interest of 9% awarded by the Tribunal, in the opinion of this Court is high and hence, this Court is inclined to reduce the interest and accordingly the same is reduced to 7.5% p.a. from 9%p.a.

11.Accordingly, the compensation amount is re-assessed as



C.M.A.No.347 of 2021

follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of earning power	Rs.4,91,400/-	Rs. 75,000/-
2.	Transport, nutrition and attender charges	Rs. 15,000/-	Rs. 40,000/-
3.	Pain and sufferings	Rs. 25,000/-	Rs. 40,000/-
4.	Loss of amenities and enjoyment of life	Rs. 25,000/-	---
5.	Damages to clothing and articles	Rs. 1,000/-	Rs. 1,000/-
6.	Loss of income during treatment period	---	Rs. 30,000/-
	Total	Rs.5,57,400/-	Rs.1,86,000/-

12.The first respondent claimant is entitled to total compensation of Rs.1,86,000/-. The appellant Insurance Company shall deposit the modified award amount along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit. The pay and recovery ordered by the Tribunal is confirmed.

13.The civil miscellaneous appeal is partly allowed. The judgment and decree dated 07.03.2019 passed by the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri, in M.C.O.P.No.164 of 2018, is modified to the above extent.

14.The appellant Insurance Company is directed to deposit the



C.M.A.No.347 of 2021

modified award amount before the Tribunal less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant is permitted to withdraw the excess amount, if any, already deposited by them.

15.On such deposit, the first respondent/ claimant is permitted to withdraw the modified award amount with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

16.The civil miscellaneous appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

26.11.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Special Sub Court, Krishnagiri.

M.DHANDAPANI,J.

8/9



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C.M.A.No.347 of 2021

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