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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.10.2020 Pronounced on: 22.10.2020

Coram::

The HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.116 of 2015

T.Antony,
No.15, 4th Street,
Vellanur, Chennai - 600 062.

...Appellant/Claimant

/versus/

1. R.Elumalai,
No.72, Arcot Road,
Virugambakkam,
Chennai ? 26.

2. National Insurance Company Ltd.,
Plot No.C-20, Anna Nagar,
Chennai ? 600 040.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.40 of 2009 dated 03.02.2014 on the file of III Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.A.Ravindran,
for Mr.A.Shanmugaraj.

For R2 : Mrs.N.B.Surekha
For R1 : exparte

JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the appellant and the Learned Counsel for the Respondent No.2

2. A claim petition filed under Section 163-A of Motor Vehicle Act, 1988, by the injured against the victim was considered by the Tribunal and a sum of Rs.30,000/- was awarded as compensation. Aggrieved by that, the present appeal is filed for enhancement.



3. The appellant/claimant, is the auto driver-cum-owner of the vehicle bearing registration No.TN-20-X-9541. On 05.04.2007, while he was driving his auto, a lorry bearing registration No.TN-10-J-8269, rash and negligently came in high speed and dashed the auto. The claimant sustained injury and hence, petition under Section 163-A of Motor Vehicle Act filed claiming compensation of Rs.2,50,000/- against the insurer of his Auto.

4. The Insurance Company filed counter denying the liability to pay compensation on the ground that the claimant is not third party but owner of the vehicle, who is the tort-feasor. He had no Driving License. For driving rash and negligently, a case has been registered against him by the Police.

5. Taking note of the rival contentions and the evidence available, Rs.30,000/~ awarded as compensation.

6. The Learned Counsel appearing for the appellant would submit that, though claim petition was filed under Section 163-A of Motor Vehicle Act, due to fracture in the 2nd finger, the movement of the claimant right hand is restricted. He has lost his earning capacity. The Doctor has assessed the disability as 35%. The Tribunal had failed to take note of the disability certificate given by Doctor and has not properly assessed the loss.

7. Before the Tribunal, the claimant has marked 7 Exhibits. To prove his disability, he has examined Dr.Saichandran as P.W.2. The OP receipt issued by K.M.C Hospital and Government Hospital at Anna Nagar, goes to show that the claimant had suffers swelling over right hand, tenderness and fracture of IInd metecarpal bone. Later, he was taken treatment at Puthur. He was holding a Driving Licence and same is marked as Ex.P.5. The doctor, who has assessed the disability is not the Doctor who treated the injured/claimant. The disability percentage of disability given by the Doctor is unrelated to the nature of injury sustained by the claimant. For a simple injury and fracture of the right hand 2nd finger, the Doctor has assessed 35% disability. Since, the assessment is not scientific and prudent, the Tribunal has rejected the disability certificate (Ex.P.6) and awarded a sum of Rs.30,000/- as consolidated compensation.



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8. Hence, this Court does not find any reason to enhance the award for the injury sustained by a Tort-feasor. Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

bsm

To:

1.The III Judge, Small Causes Court,
Motor Accident Claims Tribunal, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.116 of 2015

LN(CO)
GMY(12/05/2021)