



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.2489 OF 2010

The New India Assurance Co. Ltd.
46, Moore Street, Chennai.

... Appellant/
Respondent

..Vs..

1. R.Sethumadavan,
S/o Rangarajulu,
No.28, 12th Cross Street,
New Colony, Chromepet,
Chennai-600044.

... 1st Respondent/Petitioner

2. R.Babu,
No.75, Nagappan Nagar, Chromepet,
Chennai-600044.

... 2nd Respondent/
Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.07.2008 in M.C.O.P.No.4371 of 2000, on the file of the Motor Accident Claims Tribunal, (Fast Track Court-I), Chennai.

For Appellant : Mr.G.Udayasankar

For Respondent No.1 : No Appearance
R2 Exparte

J U D G M E N T

Challenging the award passed by the Tribunal in M.C.O.P.No.4371 of 2000, dated 30.7.2008, the Insurance Company has preferred the present appeal.

2. The learned counsel appearing for the appellant submits that the second respondent/driver was set exparte and hence, the appeal against the second respondent is given up. Such view of the matter, the appeal is dismissed against the second respondent/driver.



3. The case of the claimant/first respondent is as follows:

On 23.11.1999 at about 2.40 p.m., when the claimant was riding a motorcycle bearing registration No.TN-X 3033 at G.S.T. Road, Chrompet, a lorry bearing registration No.T.A.L.6594 driven by its driver coming behind the motorcycle in a rash and negligent manner and hit the aforesaid motorcycle causing accident and thereby the claimant sustained fracture in right hand and right thigh and also sustained injuries at left shoulder. The petitioner had taken treatment in a private hospital for the injuries sustained by him. The claimant/first respondent filed a claim petition before the Tribunal for a compensation of Rs.5,00,000/- for the fractures and injuries sustained by him.

4. The Tribunal, based on the oral and documentary evidence Exs.P1 to P.12 and Ex.R1 and R2, has awarded a sum of Rs.1,62,904/- as total compensation payable by the appellant Insurance Company to the claimants under the following heads:

Heads	Amount in Rs.
Disability	40,000. 00
Medical Treatment	62,904. 00
Pain and sufferings	40,000. 00
Transportation	10,000. 00
Nourishment	10,000. 00
Total	1,62,904.0 0

5. Heard the learned counsel appearing for the appellant and perused the materials available on record.

6. The Tribunal has awarded a sum of Rs.1,62,904/- as total compensation to the first respondent for the injuries sustained by him in a road accident on 23.11.1999. It is pertinent to note that the appellant was studying B.E. third year at the time of accident and he claimed a sum of Rs.5,00,000/- as total compensation.

7. The learned counsel appearing for the appellant/Insurance company challenged the findings of the



Tribunal that the negligence on the part of the appellant company to make investigation at the occurrence place to come to the conclusion as to how the accident occurred. The appellant is not challenging the quantum of the award passed by the Tribunal. Therefore, the award in so far as the quantum is confirmed. The appellant company specifically denied the averment that the accident occurred due to rash and negligent driving of the lorry driver and contended that the claimant lost control over the motorcycle and dashed against the tanker lorry and therefore, fixing liability on the appellant company by the Tribunal is unsustainable in law.

8. On a perusal of the award, both claimant and the appellant Insurance company contested the case by producing oral and documentary evidence before the Tribunal. In para 7 of the award, the Tribunal discussed about the negligence on the part of the Insurance company and considered the evidence adduced by the claimant as well as Insurance company and came to the conclusion that the accident occurred due to lapse on the part of the driver of the insured vehicle. Contra to the said findings, there is no material has been placed before this Court to prove that there is no negligence on the part of the lorry driver of the insured vehicle. Therefore, there is no warrant to interfere with the award passed by the tribunal.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Judge, Fast Track Court No.1,
Chennai.

+1cc to M/S Mr.G.Udayasankar, Advocate, SR.No.806

CMA.No.2489 of 2010

CNR(CO)
PM(31/08/2021)