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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.NO.3536 OF 2011

AND

M.P.NO.1 OF 2011

M/s.The New India Assurance
Company Limited,
Rep. by its Divisional Manager,
Motor Third Party Cell,
No.69/70, Sheikpet Nadu Street,
Kancheepuram.

... Appellant/2nd Respondent

-vs-

1.Kuppan
2.S.Ravi

... Respondents/Claimant,
1st Respondent

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award dated 9th of June, 2011, passed in M.C.O.P.No.8 of 2006, by the Hon'ble Additional Subordinate Judge at Chengalpattu.

For Appellant : M/s.J.Michael Visuvasam

For Respondents: Mr.S.S.Swaminathan for R1
R2 - Notice Unserved

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 9th of June, 2011, passed in M.C.O.P.No.8 of 2006, by the Hon'ble Additional Subordinate Judge at Chengalpattu.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.



3. The case of the claimant is that on 01.03.2005 when the petitioner was walking along with GST Road, Opposite to Guduvanchery Hospital with his brother on the left side of the road, a Motor Cycle was driven by its rider in a rash and negligent manner and dashed behind the claimant and caused accident. Due to the accident, the claimant sustained fracture of right leg, right hand, cheek, head injuries and other all over his body. Immediately, he was taken to Chengalpattu Medical College Hospital and he was treated as in-patient for two months and further he also continued his treatment as out patient. The petitioner was a mason at the time of accident and he was earning Rs.200/- per day. Due to the disability, he could not continue his avocation. Hence, the claim petition.

4. Resisting the same, the second respondent filed counter and stated that only because of the rash and negligent manner of the claimant the accident was took place. Though the complaint was lodged as against the rider of the vehicle, the vehicle was owned by the first respondent and that the accident did not happen due to rash and negligent driving of the rider of the vehicle.

5. On the side of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P6 were marked. On the side of the respondents no one was examined and Ex.R1 was marked. On a perusal of the evidence available on record and also considering the submissions made by the learned counsel appearing on either side, the Tribunal fastened the negligence and liability on the first respondent and awarded a sum of Rs.3,26,200/- (Rupees Three Lakhs Twenty Six Thousand Two Hundred only) as compensation. Aggrieved by the same, the second respondent filed the present Civil Miscellaneous Appeal challenging on the question of liability as well as the quantum.

6. The learned counsel appearing for the appellant would submit that the rider of the Motor Cycle had no license and the rider of the Motor Cycle also was not initially impleaded in the petition. Therefore, who had driven the Motor Cycle is not proved by the claimant and as such, the Tribunal concluded that the first respondent caused the accident and the Tribunal ordered compensation payable by the first respondent and as such, the second respondent was directed to pay compensation with liberty to recover the same from the first respondent. Whereas the decree does not find the said liberty and also the conclusion portion of the Judgment the said liberty is missing.

7. In respect of the quantum is concerned, the claimant was earning a sum of Rs.200/- as a mason and he sustained fracture on his right leg. P.W.2 / Doctor was examined, who assessed disability at 45%. Therefore, the Tribunal ought not to have



adopted the multiplier method to award compensation.

8. Per contra, the learned counsel for the claimant would submit that though the Tribunal awarded Rs.3,26,200/- as compensation, the Tribunal failed to award any compensation under the heads of Loss of Amenities and Attenders Charges. The claimant, being a mason, he has to stand all along day. The P.W.2 categorically deposed that he cannot stand along and he had 30% Rigid Muscles and as such, he could not continue his avocation. Therefore, the Tribunal adopted the multiplier method and awarded compensation.

9. Heard M/s.J.Michael Visuvasam, learned counsel appearing for the appellant and Mr.S.S.Swaminathan, learned counsel appearing for the first respondent.

10. Admittedly, the claimant did not maintain the name and address of the driver incharge of the vehicle at the time of accident. The Motor Cycle which was involved in the accident was owned by the first respondent. Further, the driving license of the rider of the Motor Cycle was also not marked before the Tribunal. The Tribunal rightly concluded that the second respondent is directed to pay the compensation with liberty to recover the same with the first respondent. However, it does not find place in the decree.

11. Insofar as the quantum of the compensation is concerned, the Tribunal adopted the multiplier method at 45% for permanent disability. The injured was a mason at the time of accident and he was earning a sum of Rs.200/- per day. Even then, the Tribunal taken a sum of Rs.3000/- as monthly income and adopted the multiplier method for the permanent disablement at 45%. Though the Tribunal adopted the multiplier at 16 instead of 15, the Tribunal failed to award any compensation under the heads of Loss of Amenities and Attenders Charges. Therefore, the quantum of compensation does not find any interference. Insofar as the direction is concerned, the award is modified to the effect that the second respondent is directed to pay the compensation with liberty to recover the same from the first respondent.

12. In the result the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar



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To

1. The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Chengalpattu.

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

+1cc to M/s.J.Michael Visuvasam, Advocate, S.R.No.26259

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.26120

C.M.A.No.3536 of 2011
and M.P.No.1 of 2011

NMI (CO)
CS/16/11/2021