



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

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

C.M.A.No.347 of 2014
and M.P.No.1 of 2014

M/s.New India Assurance Co. Ltd.,
No.21, Pattullas Road,
Chennai - 2.

...Appellant/2nd Respondent

-vs-

1. R.Chandra Mohan (Set Exparte)

...Respondent/Petitioner

2. Danish College of Engineering,
No.17, Officers Colony,
Ayanavaram, Chennai 600 023.

...Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree passed in M.C.O.P.No.4734 of 2007 on 08.03.2011 on the file of the Learned Motor Accident Claims Tribunal (Small Causes Court V Judge) at Chennai.

For Appellant : Mr.J.Chandran

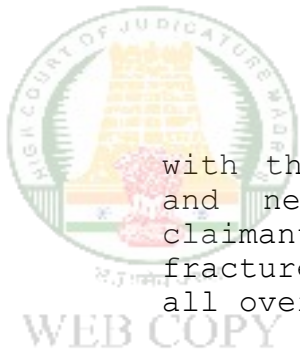
For Respondents: Mr.M.I.Mohammed Abusuguawa
for R1
R2 Not Ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree passed in M.C.O.P.No.4734 of 2007 on 08.03.2011 on the file of the Learned Motor Accident Claims Tribunal (Small Causes Court V Judge) at Chennai.

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 20.09.2007 when the claimant was riding his motor cycle near Trident Hotel, GST Road, Chennai, the vehicle owned by the first respondent insured



with the second respondent was driven by its driver in a rash and negligent manner came behind and dashed against the claimant. Due to which the claimant sustained injuries with fracture on his left hand, external fix and multiple abrasions all over the body. Hence the claim petition.

4. Resisting the same, the second respondent filed the counter stating that only due to rash and negligent driving of the claimant, the accident was took place and as such, the second respondent is not liable to pay any compensation.

5. On the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P5 were marked. On the side of the respondent, no one was examined and no exhibits were marked. On perusal of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal found that a sum of Rs.1,67,700/- (Rupees One Lakh Sixty Seven Thousand Seven Hundred only) as compensation payable by the respondents jointly and severally. Aggrieved by the same, the appellant filed the present Civil Miscellaneous Appeal questioning the liability and also the quantum.

6. The learned counsel appearing for the appellant would submit that the accident was took place only due reckless driving of the offending vehicle and as such, the Tribunal ought not to have fixed the entire liability on the first respondent's vehicle. In respect of quantum is concerned, the claimant sustained fracture on his left hand and it is only a partial disability, the Tribunal assessed partial disability at 35%. The Tribunal ought not to have apply the multiplier method.

7. Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.M.I.Mohammed Abusuguawa, learned counsel appearing for the first respondent.

8. The claimant when he was riding his Motor Cycle on 20.09.2007, the first respondent's vehicle was driven by its driver in a rash and negligent manner from behind the vehicle and dashed against the claimant. Due to which, he sustained fracture in his left hand. Immediately he had undergone surgery. P.W.2 was examined who assessed the disability of the claimant at 35% and opined the Grade I Compound Communicated fracture of distal 3rd radius left which makes it manifest that the disability is in respect of particular limb. Therefore, the Tribunal had taken into consideration the disability at 35% and rightly applied multiplier method and awarded compensation.

9. Though no FIR was registered as against the offending vehicle, the second respondent failed to rebut the same.



Therefore, this Court finds no infirmity or irregularity in the order passed by the Court below.

10. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rna

To

The Small Causes Court V Judge,
Motor Accidents Claims Tribunal,
Chennai.

Copy To

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

+lcc to Mr.J.Chandran, Advocate, S.R.No.25094

C.M.A.No.347 of 2014
and M.P.No.1 of 2014

PP(CO)
RGA(09/09/2021)