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C.M.A.Nos.2346 of 2013 and 1259 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **17.10.2022**

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

**C.M.A.Nos.2346 of 2013 and 1259 of 2020
and C.M.P.No.8372 of 2020**

K.Arumugam

... Appellant in C.M.A.No.2346 of 2013

United India Insurance Company Lt.,
No.64, Armenian Street,
Chennai 600 001

Now at:

United India Insurance Company Limited,
Motor Thirty Party Claims Hub,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai 600 006.

...Appellant in C.M.A.No.1259 of 2020

Vs.

1. M. Siva

2. United India Insurance Company Lt.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai -13

...Respondents in C.M.A.No.2346 of 2013

1. K.Arumugam

2. M.Siva
2020

... Respondents in C.M.A.No.1259 of

PRAYER in both C.M.As: Civil Miscellaneous Appeal filed under Section



173 of Motor Vehicles Act, 1988 against the fair and decretal order dated 22.03.2013 in M.C.O.P.No.4092 of 2010 on the file of the Motor Accident Claims Tribunal / V Judge, Court of Small Causes at Chennai.

C.M.A.No.2346 of 2013

For Appellant : Ms.Ramya V.Rao
For Respondent-1 : Not ready in notice
For Respondent-2: Mr.P.Sankaranarayanan

C.M.A.No.1259 of 2020

For Appellant : Mr.P.Sankaranarayanan
For Respondent-1 : Ms.Ramya V.Rao

COMMON JUDGMENT

The claimant as well as the Insurance Company have filed these appeals, challenging the Award passed by the Motor Accident Claims Tribunal, (V Court of Small Causes), Chennai in M.C.O.P.No.4092 of 2010. The claimant has filed C.M.A.No.2346 of 2013 seeking enhancement and the Insurance Company has filed C.M.A.No.1259 of 2020 questioning the liability and consequently, the quantum.

2. The facts in brief are as follows: The parties are referred to in the same ranking as before the Tribunal below.



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The petitioner had sustained injuries in a road accident on 14.01.2010 at about 18.30 hrs, while riding his motor-cycle bearing Registration No.TN 04 AC 8159 on the Flag Staff Road. He was hit by an Auto, bearing Registration No.TN 07 AJ 7897 belonging to the first respondent and insured with the second respondent. The petitioner had claimed a compensation of a sum of Rs.10,00,000/-. The petitioner had sustained a fracture on the right hand clavicle bone apart from laceration and abrasions. He would submit that he was working as a mason drawing a monthly income of Rs.3,300/-.

3. The first respondent remained *ex-parte*. The Insurance Company had filed a counter *inter-alia* denying the averments contained in the claim petition and also denying that the auto was insured with them under a valid policy. They had also contended that the petitioner was negligent and it was on account of his negligence that the accident had taken place. Therefore, being the tort-feasor himself, he cannot seek compensation from the Insurance Company. They had further questioned the quantum of compensation on the ground that the injuries sustained by him were superficial.



4. The Tribunal below on considering the evidence concluded that the accident had taken place on account of the negligence of the driver of the first respondent's auto. The Tribunal below had clearly concluded that the Insurance Company has not made out a case that the petitioner was a tort-feasor. The Tribunal had awarded a total compensation of Rs.98,240/-. The Tribunal had taken the disability at 13%. The Tribunal had not accepted the disability certificate given by P.W2, who had assessed the disability at 50%, since he had not given the original treatment and he had examined the petitioner after a lapse of over 2 years from the date of the accident. The petitioner is aggrieved by the compensation granted and the Insurance Company is aggrieved by the fact that the liability has been fastened only on the first respondent's vehicle as also the quantum of compensation.

5. Heard both counsels and perused the materials available on record.

6. The learned counsel for the Insurance Company would submit that the petitioner is a tort-feasor himself and therefore, he has to first prove



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C.M.A.Nos.2346 of 2013 and 1259 of 2014

that he has suffered a permanent disability, which in the instant case has not been done so. To this, learned counsel for the petitioner would submit that the petitioner has suffered fracture to the clavicle bone and had undergone a surgery. However, a perusal of the discharge summary would show that the petitioner had been asked to come back for clavicle fixation and he had not returned for the same. The Disability Certificate issued by P.W2 also does show that the petitioner had undergone a second surgery. Therefore, it is clear that the petitioner has not sustained a permanent disability. Though the petition has been filed under Section 163 A of the Motor Vehicles Act, the contents of the claim petition particularly are in the lines of a claim petition under Section 166 of the Act. The Insurance Company has not been able to prove that the accident had occurred only on account of the negligence of the petitioner himself and the Tribunal has rightly rejected his contention of the second respondent-Insurance Company. Though the second respondent had countered that that the accident had occurred only on account of the negligence of the petitioner, they have failed to examine the eye witness or even the investigating Officer to arrive at the conclusion that the accident had occurred only account of the negligence of the petitioner.



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7. Therefore, considering the fact that the petitioner has not been able to prove the permanent disability and future treatment, the quantum of compensation granted by the Tribunal appears to be reasonable. Likewise, the second respondent-Insurance Company has not been able to prove that the accident had occurred only on account of the negligence on the part of the petitioner. In the result, both Civil Miscellaneous Appeals are dismissed and the Award passed by the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2022

Index : Yes/No
Speaking Order : Yes / No
srn

To

1.The Motor Accident Claims Tribunal / V Judge,
Court of Small Causes at Chennai.

2.The Section Officer,
VR Section, Madras High Court,
Chennai.



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P.T. ASHA, J,

srn

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