

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.333 of 2014

Senthilkumar
S/o Subramani

...Appellant/Petitioner

-vs-

1. Rajendran
S/o Rangasamy
2. The Managing Director
Tamil Nadu State Corporation
Coimbatore Division
37, Mettupalayam Salai
Coimbatore-43
(1st Respondent set ex parte before Tribunal,
hence notice may be dispensed with)
...Respondents/Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 15.09.2009 made in M.C.O.P.No.426 of 2008 on the file of the Motor Accident Claims Tribunal, III Additional Subordinate Judge, Coimbatore.

For Appellant :: Mr.Ma.P.Thangavel

For Respondents :: Mrs.R.T.Sundari for R2
R1-Ex parte before Tribuna

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JUDGMENT

The injured claimant has brought this appeal seeking enhancement, as against the impugned award passed by the Motor Accident Claims Tribunal, III Additional Subordinate Judge, Coimbatore in M.C.O.P.No.426 of 2008 granting a sum of Rs.67,000/- as the compensation to the injured, on the ground that when the injured claimant was just walking on the left side

of Saravananpatti Thudiyalur road junction on 22.2.2007 at about 9.30 P.M., the offending vehicle bearing Registration No.TN 38 N 1858 belonging to the second respondent Transport Corporation hit against him, as a result he sustained fracture on the tibia and fibula in his right leg and there was mal-union. In support of his claim, the learned counsel for the appellant has also produced a copy of the photograph marked as Ex.P7. Adding further, the learned counsel submitted that when the grievous injuries sustained by the claimant are almost permanent in nature, the Tribunal has not adverted to the said nature of grievous injuries, as a result a paltry sum of Rs.30,000/- alone has been awarded under the head of disability, without giving any reason whatsoever whether the case is fit for application of the multiplier method or the percentage of disability method. When the Tribunal has seen the multiple grievous injuries sustained by the walker, it has to either apply the percentage of disability method or the multiplier method to arrive at the compensation. But in the present case, it has not resorted to either of them, resultantly a just and reasonable compensation has not been awarded to the injured claimant.

2. Heard the learned counsel for the second respondent Insurance company.

3. A perusal of the award also clearly shows that not only the Tribunal, but even the injured claimant also had miserably failed to establish his case by producing the relevant documents and one such document according to this Court being disability certificate has not been marked. When the vital document, namely, disability certificate obtained from any one of the doctors serving in the Government Hospitals has not been produced by the claimant, in my considered view, the Tribunal ought to have directed the injured to produce such disability certificate, which has not been done in this case. Therefore, to arrive at the just and reasonable compensation, without finding out what is the percentage of disability sustained by the claimant, the Tribunal ought not to have disposed of the claim petition. Although this Court is hesitant to remand the matter, keeping in mind that the accident took place on 22.2.2007, having no other go, is constrained to remand the matter to the Tribunal. Accordingly, the impugned award is set aside and the matter is remanded to the Tribunal only for the limited purpose to enable the injured to produce the disability certificate obtained from any one of the doctors serving in the Government Hospitals to satisfy his claim. It is also stated that there is a mal-union of the fracture. Therefore, it is for the injured claimant to produce all the relevant documents including X-ray

for the affected area for the satisfaction of the Tribunal. On such production of the relevant documents, the Tribunal shall consider the matter afresh and pass a reasoned award on merits after hearing the parties. With this observation, the civil miscellaneous appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ss
To

The III Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.67741
+1cc to Mr.R.Margabandhu, Advocate Sr.68197

C.M.A.No.333 of 2014

msm[col]
srg 02/01/2017

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