IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.03.2021

Pronounced on 23.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1303 of 2017

S.Anand Kumar ...Appellant

Vs

1.M/s.Raymix Concrete,
No.49, Shakthi Garden,
Sennerkuppam, Chennai 600 049.
(Remained exparte before the trial court)

2.United India Insurance Co. Ltd.,
C-1, (Old No.C-52), 1st Main Road,
I Floor, Anna Nagar (East),
Chennai 600 102. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2013 made in M.A.C.T.O.P.No.4853 of 2009 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge-II, Chennai.

For Appellant : Mr.R.Kalai Arasan

For Respondents :R1 -Exparte
Mr.M.Vijayaraghavan for R2

J U D G M E N T

This appeal is filed by the claimant seeking enhancement of compensation.

2.The brief facts of the case is that on 07.08.2009, at about 03.30 p.m., when the appellant Anand Kumar riding his motor cycle bearing Registration No.TN-07-AW-0140 from Adyar to Kannagapatti along with one Arun on the pillion, a tipper lorry bearing Registration No.TN-20-AD- 0123, rash and negligently dashed behind the motor cycle near Chenganmaal Coot Road, the appellant Anand Kumar and the pillion rider, Arun fell down and sustained severe injury. Claiming compensation of Rs.10,00,000/- against the owner of the Tipper Lorry and its insurer, Anandkumar filed MACTOP No.4853 of 2009. Arun, a pillion rider filed claim petition for Rs.20,00,000/- against the owner of the Tipper Lorry and its insurer in MACTOP No.4854 of 2009.

3.The Insurance Company resisted the claim on the ground that the negligence of the Tipper Lorry has to be proved by the claimant. The nature of injury and a claim of compensation has to be proved by the claimant. The claimant who is the rider of the two wheeler had no valid driving license at the time of alleged accident and the claim of compensation is excessive without any basis.

4.The Tribunal tried both the cases together and passed a common order awarding a sum of Rs.3,00,000/- to Anandkumar, the claimant in MACTOP No.4853/2009, who is the appellant herein.

5.In this appeal filed by Anandkumar for the enhancement of compensation, the learned counsel for the appellant submitted that the appellant sustained compound fracture of left femur and other injuries. Initially, he was treated as outpatient at Chettinadu hospital and admitted at Malar hospital as inpatient from 07.08.2009 to 13.08.2009. During the course of treatment, IM nailing was done. To remove the nailing, the appellant subsequently underwent another surgery. He incurred medical expenses to the tune of Rs.1,45,000/- and an estimated expense of Rs.75,000/- for future medical expenses was placed before the Tribunal along with the discharge summary issued by Malar Hospital. The disability of 40% was assessed by the Doctor and the Disability Certificate was also placed before the Tribunal. However, the Tribunal has not taken note of loss of earning during the treatment period, future medical expenses and the extent of disability caused due to the accident. It has fixed only 25% disability as against 40% certified by doctor under Ex.P37. The pay slip Ex.P11, which indicate the monthly income of the appellant as Rs.17,000/- was not taken note by the Tribunal. The future expenses estimated as per Ex.P7 was ignored by the Tribunal. Hence, sought for additional compensation.

6.Learned counsel appearing for the Insurance Company per contra submitted that the disability certificate issued by the regular doctor, who has not treated the appellant, rightly been scrutinised by the Tribunal and for the left femur fracture, the Tribunal taking note of the fact that the whole body disability will be only 25% has rightly fixed the disability at 25% and awarded Rs.50,000/-. Ex.P7 which is estimation for the future medical expenses not been proved that the claimant actually incurred the said expenses. The Tribunal, after proper appreciation of the medical records, had fixed fair and adequate compensation for the loss sustained. Therefore, it has to be confirmed.

7.Heard the learned counsel for the appellant and the respondent.

8.As per the discharge summary issued by Malar Hospital, which is marked as Ex.P5, the injury sustained by the appellant is fracture left femur. There is no other injury diagnosed. For the said fractured injury, the appellant had undergone surgery for closed reduction and interlock nailing. The Tribunal had considered the medical records and had concluded that as per Ex.P5, there is no evidence to show that the fractured bone after surgery is mal united. Ex.P37, the disability certificate issued by Dr.K.J.Mathialagan along with the scan report considered by the Tribunal and has found that the old fracture mid/distal femur-united with surrounding cortical thickening. Having found that there is no evidence of mal united fracture, the disability has been assessed at 25% and compensation of Rs.50,00,000/- has been awarded. In view of this Court is reasoning and the award is just and fair.

9. The learned counsel for the appellant insisted upon payment of future medical expenses as per Ex.P7. Ex.P7 is only an estimation and there is no evidence to show that the claimant has actually incurred the said expenses subsequently. On cumulative assessment of the evidence, for the united fracture of femur bone, the claimant has undergone treatment for 7 days as inpatient. For the loss of income, pain and suffering and other non conventional heads inclusive of medical expenses, the Tribunal has awarded Rs.3,00,000/-. This Court finds no scope to enhance the compensation. Hence, the Civil Miscellaneous Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vri

To

The Special Sub Judge-II,
Motor Accidents Claims Tribunal
Chennai.

Copy To

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

CMA NO.1303 OF 2017

SVI(CO)
GMY(03/09/2021)