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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.1304 of 2017

D.Arun

...Appellant/Petitioner

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/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.4854 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., the appellant herein while travelling with one Anand Kumar riding the motor cycle bearing Registration No.TN-07-AW-0140 from Adyar to Kannagapatti, a tipper lorry bearing Registration No.TN-20-AD- 0123, rash and negligently dashed behind the motor cycle. In the said accident, both the rider of



the motor cycle as well as pillion rider sustained injury. Arun, who is the pillion rider had filed claim petition in MACTOP No.4854 of 2009 seeking compensation of Rs.20,00,000/- against the owner of the Tipper Lorry and its insurer.

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3. Claiming that, in the said accident, the appellant sustained compound fracture at left femur with Grade III open fracture both bones of left leg. The doctor, who has examined him has assessed 50% partial and permanent disability. He was treated as inpatient for 28 days in three spells. He had incurred medical expenses to the tune of Rs.5,27,000/- and lost his earning during the treatment period to the tune of Rs.2,40,000/-. Hence, made a claim petition for Rs.20,00,000/-.

4.The claim petition was resisted by the Insurance Company on the ground that the claim is excessive and the negligence of the tipper lorry has to be proved by the claimant. It was also specifically pleaded that the rider of the motor cycle has no valid driving license and therefore, the insurer of the tipper lorry not liable to pay any compensation.

5.The Tribunal after considering the rival submission awarded Rs.7,50,000/- as compensation. Not being satisfied with the said award amount, the present appeal is filed.

6. Learned counsel appearing for the appellant submitted that the appellant has sustained compound fracture at left femur with Grade III Open fracture both bone of left leg. The award for the said injury is on the lower side. Despite certificate for 50% disability been produced, the Tribunal has reassessed the disability to 45% and awarded only Rs.90,000/-. The appellant was working as Senior Executive in M/s.Divya Sree Infrastructure Developers Pvt Ltd., earning Rs.20,000/- per month. The Pay Slip Ex.P35 was produced to prove the income. However, the Tribunal has fixed only notional monthly income of the claimant at Rs.4,500/- and has awarded a sum of Rs.30,000/- for the loss of earning during the treatment period. Therefore, the learned counsel for the appellant submitted that the compensation awarded should be enhanced.

7.Per contra, the learned counsel for the respondent submitted that the Tribunal has rightly appreciated the evidence and has awarded a fair compensation. In the absence of proper proof for income, the Tribunal has awarded Rs.30,000/- towards loss of income during the treatment period. Even as per the appellant, he was treated as inpatient only for 28 days and there is no evidence to show that he had lost his income beyond 28 days. As far as the medical bills is concerned, the bills which was not properly authenticated alone were rejected and rest of the bills which were duly authenticated was considered and a sum of Rs.4,70,000/- was awarded towards Medical Expenses.



Besides, another sum of Rs.60,000/- for loss of future prospects was awarded. Therefore, the learned counsel for the respondent submitted that there is no material to interfere the well considered award of the Tribunal.

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

9. The claimant after the accident was treated as outpatient at Chettinadu Hospital and admitted at Malar Hospital as inpatient from 07.08.2009 to 22.08.2009. Thereafter, he had been treated as inpatient at Helios Hospital from 27.10.2009 to 31.10.2009, 23.12.2009 to 26.12.2009 and 02.06.2010 to 04.06.2010. During the course of treatment, IN nailing was done. The Doctor who has examined clinically after few years had assessed 50% disability for the femur bone fracture. From the medical record, this Court finds that the claimant was initially admitted in Malar Hospital as inpatient and was treated for nearly 16 days. Later for the infected Grade III B open fracture, he was admitted in Helios Hospital for wound debridement with external fixation. The discharge summaries issued by Malar Hospital and Helios Hospital indicates that the claimant has sustained comminuted sub-Trochantric fracture left femur with Grade III B open fracture left tibia and Fibula. In Ex.P40, the Disability Certificate, the Doctor has assessed 50% disability. The Tribunal has rightly pointed out the error in the disability certificate issued by P.W.3. While in numerical, the disability is mentioned as 50% in words, but it is mentioned as 40% in words. The said contradiction was taken as typographical error by the Tribunal and considering the nature of injury and nature of the treatment undergone by the claimant, it has fixed 45% partial and permanent disability and awarded Rs.90,000/- for the said loss.

10. This Court on considering the evidence including the income certificate not signed by the Author and not supported by any other evidence, the disability certificate which has inherent error regarding the percentage of disability, the medical bills as well as discharge summaries, find that the Tribunal had appreciated all the material evidence properly and had arrived at just compensation of Rs.7,50,000/- which includes Rs.60,000/- towards loss of future prospects. This Court finds no error in the award of the Tribunal, so it needs no interference. Hence, the award of the Tribunal is confirmed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar



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To

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

Copy To

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

CMA NO.1304 OF 2017

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