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C.M.A.No.1373 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1373 of 2020

Mani ... Appellant/Petitioner

vs.

1.Selvakumar
2.The New India Assurance Co. Ltd.,
Sakthivel Complex, Mangalam Road,
Samalapuram-641 663.
Branch at Amman Complex, 2nd Floor,
1360, E.V.N.Road, Erode-638 011. ...
Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.534 of 2017 dated 09.01.2020 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran

For 1st Respondent : Mr.P.Muthukumarasamy

For 2nd Respondent : Mr.P.Kandasamy

JUDGMENT

Not being satisfied by the award passed by the Motor Accident Claims Tribunal / Special Subordinate Court, Erode, in



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M.C.O.P.No.534 of 2017 dated 09.01.2020, the claimant herein has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, 1988, claiming compensation for a sum of Rs.10,00,000/- for the injuries sustained by the claimant in a motor accident that took place on 03.06.2017.

3. The Tribunal, after hearing both sides argument and upon consideration of oral and documentary evidence, has granted a sum of Rs.3,41,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit.

4. The learned counsel appearing for the appellant/claimant would vehemently argue that the appellant who was aged about 48 years, suffered fracture lower 1/3rd left tibia and fibula and fracture base of proximal phanx left great toe, for which, he was treated as inpatient for about 13 days. It is his further argument that the amounts granted under various heads for Transport Expenses, Extra



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Nourishment, Attender Charges are not sufficient and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the Insurance Company would strenuously contend that for the income claimed, no document is marked to prove the same. He would also further contend that based on the available evidence, the Tribunal has granted compensation of Rs.3,41,000/- is a well considered order and need not be interfered with.

6. Heard the arguments of both sides learned counsels and perused the materials available on record.

7. At trial, the claimant has been examined as PW1, Sub-Inspector of Police of Kodumudi Police Station was examined as PW2, Administrative Officer of Erode Bewell Hospital has been examined as PW3. Exs.P1 to P13 were marked. Discharge Summary issued by Bewell Hospital, Erode, Medial Bills, Accident Register issued by Kodumudi Government General Hospital have



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been marked as Exs.P2, P3 and P8 respectively. On the side of the Insurance Company, the Staff of Erode South Road Transport Office has been marked as RW1. Exs.R1 to R5 were marked.

8. The appellant claims that he was doing agricultural coolie work and was earning not less than a sum of Rs.9,000/- p.m. It is the evidence of PW1 that on 03.06.2017, at about 4.30 p.m., while the appellant was walking along the Valanthan Kottai Road, proceeding towards north at Kammankaattu Kalam Pirivu, a Pulsar / two wheeler bearing Reg.No.TN-33-BM-3341 came in a rash and negligent manner and dashed against the appellant. Due to the said impact, he sustained grievous injuries is not in dispute.

9. It could be seen from the discharge summary-Ex.P2 that the appellant was admitted in Bewell hospital, Erode on 03.06.2017 and got discharged on 16.06.2017. He has suffered fracture of lower 1/3rd left tibia and fibula, fracture of base of proximal phanx left great toe, for which open reduction and internal fixation was done. Mr.Karthikeyan, Sub-Inspector of Police, Kodumudi Police Station



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was examined as PW2 and through him Exs.P8 to P13 were marked namely Accident Register issued by Kodumudi Government Hospital, Rough Sketch, Motor Vehicle Inspector's Report of motor cycle(TN-33-BM-3341), Accident Register issued by Bewell Hospital, Erode, Wound Certificate issued by the same Hospital and Final Report. The Staff of the said Hospital who was examined as PW3- Mohammed Riaz, through him, Ex.P3 Medical Bills were marked.

10. On a perusal of the judgment, it appears that the claimant was not examined by the Medical Board, in order to assess the disability suffered by him. However, the Tribunal has held that considering the serious injuries sustained by the claimant, the amount of Rs.1,10,000/- was granted for loss of earning power. The disability has to be assessed by the Medical Board. When the claimant is granted for loss of earning capacity / loss of earning power, he is not entitled for loss of earning during treatment period. In order to assess the disability of the claimant, this matter has to be remanded back to the Tribunal.

11. Accordingly, the claim petition in M.C.O.P.No.



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534 of 2017 is remanded back to the Tribunal, with a direction to send the appellant/claimant to the Medical Board for the purpose of fixing the disability. After the disability assessment is made, the Tribunal is directed to pass an award, after hearing both sides, preferably within a period of three months from the date of receipt of a copy of this judgment.

12. With the above directions, this Civil Miscellaneous Appeal stands disposed of. No costs.

22.09.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Special Subordinate Judge Court, Erode.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,



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