

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA
C.M.A.No.2168 of 2017

Harihara Karna

... Appellant/Petitioner

Versus

1. R. Gowtham

2. Reliance General Insurance Company Ltd.,

3rd Floor, No.408, Perunthurai road,

Erode District

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 25.01.2016 made in M.C.O.P. No.1166 of 2013 of the file of MACT / Additional District Court at Namakkal.

For Appellant : Mr. Ma.P.Thangavel

For Respondents: Mr.K. Moorthy for R2

R1 - Ex-parte

JUDGMENT

The claimant Harihara Karna, aged about 19 years, a Second year Civil Engineering Student, met with an accident on 07.04.2013. He suffered com-minuted fracture shaft of femur / fracture V neck MT - Left /

com-minuted fracture lower end radius - left. The claimant, therefore, filed a claim petition claiming a sum of Rs.10,00,000/=.

2. The Tribunal, considering the oral and documentary evidence, awarded compensation in a sum of Rs.2,92,841/=, the break-up details of which are as hereunder :-

Sl.No.		Amount in Rs.
1	Permanent Disability at 35%	70,000/-
2	Medical expenses as per bills	1,70,341/-

Sl.No.		Amount in Rs.
3	Loss of Income	7,500/-
4	Transport expenses	10,000/-
5	Pain and suffering	10,000/-
6	Nutrition	5,000/-
7	Attender charges	10,000/-
8	Loss of future amenities	10,000/-
	Total	2,92,841/-

3. Challenging the said compensation awarded as inadequate and insufficient considering the the injury suffered, the claimant has preferred the present appeal.

4. The learned counsel for the claimant submits that this is a fit case for applying multiplier method, as, apart from the injury over the head and leg, there is fracture and it will certainly have a life long effect upon the earning capacity of the claimant.

5. Per contra, learned counsel for the 2nd respondent / insurance company submits that even though the physical disablement is taken at 35%, the functional disability will not be the same and the disablement will diminish in due course. Therefore, functional disablement should be assessed at a lesser rate. Considering the age and the possibility of reduction in the disablement, functional disability should be fixed at 25%.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

7. The records reveal that the claimant had originally taken treatment at C.M. Hospital, Namakkal and he was later referred to Ragavendra Hospital at Madurai, where he was continued his treatment, as the injury did not heal. The Doctor who examined the claimant has spoken about the three surgeries performed to him.

8. It is further evident from the records that the claimant was admitted at Madurai, Ragavendra Hospital from 07.04.2013 to 24.04.2013 i.e., for a period of 17 days. During that time, surgery had been done on the right paratal region as well as on the right side of the head and on the left side of the left knee. The surgeries have been done and plate and screws have

been used as implant for the surgery performed in the left knee. It is further evident from the records that movement of the left knee was only to the extent of 0 to 60 degree, as there was malunion in the bone resulting in persistent pain over the left knee.

9. The head injury is stated to have caused giddiness, head ache and that the claimant was unable to stand for a long time due to the head injury. In the left hand also, there has been a fracture of the wrist. That injury has been considered by the doctor to be grievous injury in nature and the doctor has assessed the disability at 45%. The Doctor has spoken about the loss of muscle strength, mobility and stability of the claimant, which has resulted in assessing the disability of the claimant at 45%. The Doctor has also spoken about the loss of muscles and further has stated that the disablement will have a telling effect on the earning capacity of the claimant. Considering the totality of the facts and circumstances, the

Tribunal has fixed the disability at 35%, even though the Doctor has assessed the disability at 45% and awarded compensation.

10. Considering the above stated circumstances, this Court of the view that it is case for application of multiplier method. Accordingly, fixing the disability at 35% considering that the claimant is a student of engineering, this Court, following the ratio laid down by the Supreme Court in a catena of decisions, fixes the notional monthly income of the claimant at Rs.10,000/= and adopting a multiplier of 18, quantifies the compensation payable under the head disability at Rs.7,56,000/=. Further, the Tribunal has awarded very meagre amounts under the other heads, which needs enhancement. Accordingly, the award passed by the Tribunal is modified and the enhanced compensation is awarded as shown hereunder :-

Disability		
(Rs.10000 x 12 x 18 x 35%)	:	Rs.7,56,000/-
Medical expenses, as per bills	:	Rs.1,70,341/-
Transport expenses	:	Rs. 10,000/-
Pain and sufferings	:	Rs. 50,000/-
Extra nourishment	:	Rs. 10,000/-
Attendant charges	:	Rs. 10,000/-
Loss of amenities	:	Rs. 10,000/-

Total	:	Rs.10,16,341/-

11. Insofar as the order passed by the Tribunal directing the insurance company to pay the compensation and recover the same from the owner of the vehicle, viz., the 1st respondent herein, the same stands confirmed.

12. For the reasons aforesaid, the civil miscellaneous appeal is allowed modifying the compensation awarded by the Tribunal from Rs.2,92,841/- to Rs.10,16,341/- along with interest at 7.5%. However, there shall be no order as to costs.

13. The Insurance Company is directed to deposit the enhanced award amount, as quantified by this Court above, less the amount, if any, already deposited, along with interest to the credit of the claim petition within a period of four weeks from the date of copy of a receipt of the Judgment. The Insurance company shall recover the above said award amount from the first respondent herein in accordance with law. On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimant through RTGS within a period of two weeks thereafter. The appellant/claimant shall pay the requisite court fee on the enhanced amount of compensation before receipt of copy of this Judgment.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi2/GLN

To

1 The Additional District Court,
Namakkal.(MACT)

2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.K.Moorthy, Advocate Sr.No.58220

+1cc to M/s.Ma.P.Thangavel, Advocate Sr.No.58066

RSI (CO)

sm:6.7.2018

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