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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2021
PRONOUNCED ON : 02.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.204 OF 2017

R.Raja

.. Appellant/Petitioner

/versus/

1.T.Govindan

2.M/s HDFC Chubb General Ins. Co.Ltd.,
Raheja Towers,
Anna Salai, Chennai 600 002.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.3794/2006 on the file of VI Judge, Small Causes Court at Chennai dated 9th day of September 2011.

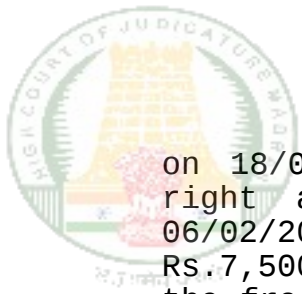
For Appellant : Mr.T.G.Balachandran

For Respondents : Ms.S.Kumudha for
Mr.K.Poomalai for R1 and R2

JUDGMENT

The appeal is by the claimant for enhancement of compensation.

2.On 30/08/2006, at about 4.15 p.m, when the claimant was proceeding from South to North along the East Coast Road, near Thanthoniamman Koil Junction in his Hero Honda motor cycle bearing registration No. TN 07 AD 5802, a Toyota car bearing registration No. TN 02 U 6627 coming from North to South on the opposite direction, hit the motorcycle. The claimant was admitted in the Government Hospital, Chennai as inpatient and got treated for the fracture of right medial malleoles and dislocation of right talus from 30/08/2006 to 11/09/2006. He again got admitted at P.M.Hospital on 13/09/2006 and discharged



on 18/09/2006. Then he was treated for treatment of unstable right ankle joint at V.H.S.Hospital between 08/01/2007 and 06/02/2007. At the time of accident, the claimant was earning Rs.7,500 per month as concrete jelly machine operator. Due to the fracture of right knee. he is not able to walk, climb stairs and ride motor cycle. Hence, claim petition for Rs.4,00,000/- laid against the Toyota car owner and its insurer.

3.The insurance company filed counter stating that the accident occurred only due to the negligence of the claimant. Unmainful of the flow of traffic along ECR Road, without following the traffic rules, he tried to cross the road rash and negligently and hit the Toyota car. The Toyota car was not duly insured under them. The cheque given for the payment of the premium bounced and after intimation to the insured, the insurance coverage to the Toyota car was cancelled. Therefore, the guilty of contributory negligence and liability has to be fixed only on the owner of the motor cycle. The claim of Rs.4,00,000/- as compensation is excessive and speculative.

4.In support of the claimant, three witnesses were examined as PW-1 to PW-3 and 13 documents were examined as Ex.P1 to Ex.P13. On the side of the 2nd respondent, one witness was examined as RW-1 and two documents were examined as Ex.R1 and Ex.R2.

5.The Tribunal, based on the FIR-Ex.P1 registered against the driver of the Toyota car and the sketch Ex.P-2 held that the evidence of PW-1 regarding the negligence of the car driver is proved. The contention of the insurance company that the claimant had no valid driving license was disproved through his licence- Ex.P-9. For want of proper communication regarding dishonour of cheque and cancellation of insurance coverage, the tribunal held the coverage deemed to be in force. Taking into consideration the three spells of in-patient treatment and the discharge summaries and other medical records assessed the injury had caused 25% disability and awarded a sum of Rs.1,70,590/-.

6.The learned counsel for the appellant, in support of the appeal, submitted that the Tribunal failed to apply the multiplier method for computing compensation. The claimant was working as concrete mixing operator earning more than Rs.7,500/- pm. Whereas the Tribunal has fixed the monthly income as Rs.4,500/- and awarded the loss of income only for two months. Whereas the claimant was taking treatment for more than a year and was in patient for nearly 46 days in three spell. The injury has caused functional disability to the claimant and following the dictum of the Hon'ble Supreme Court laid in Raj Kumar -vs- Ajay Kumar reported in (2011) 1 SCC 343, compensation should have been awarded.



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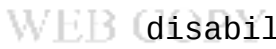
7. Per contra, the submission of the learned counsel for the respondents is that, the claimant has not produced evidence to prove his income. The injury sustained are not schedule injuries. No evidence to show that it has caused functional disability. The Disability Certificate given by PW-3-the Doctor, who clinically examined the claimant indicate that the injuries has caused only partial permanent disability. No surgery was conducted. Therefore, the award of the Tribunal is fair and reasonable need no interference.

8. The point for consideration in this case is, whether the injuries had caused functional disability to the claimant to apply multiplier method.

9. From the Discharge Summary Ex.P-3 given by the Government Hospital, Chennai, we find that the claimant sustained fracture of right medial malleolus and dislocation of right talus for which BK slab was applied. On improvement he was discharged on 11/09/2006. No surgery conducted. Two days later, the claimant has got admitted in Adayar, P.M.Hospital. From the Discharge Summary Ex.P-4, given by APM Hospital, we find, he was treated for right ankle comminuted fracture body of right talus with diastasis of ankle joint with dislocation and discharged on 18/09/2006. The third discharge summary given by the VHS hospital is marked as Ex.P-5 indicates, for the unstable ankle joint, arthrodesis done. (fusion of bones across a joint space by surgical means, in order to eliminate movement). The summary reports says, the post operation was uneventful. Thus, from the three Discharge Summaries, it is clear that the fracture of right ankle after treatment at Government Hospital and APM Hospital was unstable. Hence, at VHS Hospital, the claimant had undergone arthrodesis and the unstable movement had been arrested.

10. Based on the discharge summaries, CT brain report Ex.P-8, the X-ray films Ex.P-11 and Ex.P-13, Dr.K.J.Mathiazhagan of M.R. Hospital (PW-2) had given the disability certificate Ex.P-10 assessing 35% for the difficulty to raise the leg, squat and sit due to restriction of right ankle movement. Dr.M.Saravanabavanandham (PW-3) had given the disability certificate Ex.P-12, assessing 10% disability for headache, 10% disability for post traumatic vertigo and 10% disability for anti-convulsant therapy totally 30%.

11. In the cross examination, PW-2 had admitted that the patient had not undergone surgery. His assessment of disability is for the part of the body and not for whole body. The disability certificate-PW-3 on the face of it clearly indicates that the disabilities mentioned are general in nature and not related to the accident injury. Both the disability certificates



12. However, taking note of the fact that though the disability certificate given by PW-2 and PW-3 are unscientific and highly exaggerated, the discharge summaries Ex.P- 3 to Ex.P-5 issued by concern hospitals reveals that the claimant had undergone medical treatment for a prolonged period and had suffered loss of income, pain and suffering till his unstable right ankle got cured at VHS Hospital after arthrodesis. Hence, this Court holds that due to the restricted ankle movement, his functional capacity would have been reduced by 10%. Therefore, this Court holds that this is a fit case to apply multiplier.

Sl. No.	Particulars	Award passed by this Court (Rs.)
1.	Loss of Income during the treatment period Rs.4500 x 10 months	45,000-00
2.	Functional disability - 10% (4500+ 40% FP(1800) = 4500 +1800= 6300 x 12 x 18 x 10/100	1,36,080-00
3.	Pain and suffering	25,000-00
4.	Medical expenses	21,100-00
5.	Extra nourishment	10,000-00
6.	Loss of amenities	10,000-00
7.	Assistant charge (2000 x 10 months)	20,000-00
8.	Damages to cloths	500-00
9.	Transportation	5,000-00
	Total	2,72,680-00

15. The insurance company/second respondent herein is directed to pay compensation of Rs.2,72,680/- with 7.5% p.a,



interest from the date of petition ie 26/06/2007 till the date of realisation, within 12 weeks from this date. On such deposit, the claimant/appellant is permitted to withdraw the entire amount on appropriate application.

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16. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
VI Judge, Small Causes Court, Chennai.

Copy To

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

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.12727

+1cc to Mr.K.Poomalai, Advocate, S.R.No.12491

C.M.A.No.204 of 2017

PVS(CO)
RLP(29/09/2021)