IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2021	Pronounced on : 12.02.2021

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.3175 of 2017

Ravikumar .. Appellant/Petitioner

/versus/

1.Ethirajulu

2.United India Insurance Co.Ltd.,
Divisional Office at No.4 & 5,
Kandasamy Mudali Street,
Ranipet.

3.J.Surendra .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 11.08.2017 made in M.C.O.P.No.300 of 2012 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Vellore, Ranipet.

For Appellant : Ms.A.Subadra

For R2 : Mr.P.Sankaranayanan

For R1 & R3 : Dismissed on 05.08.2020

J U D G M E N T

The claimant in M.C.O.P.No.300 of 2012 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Ranipet, Vellore, is the appellant herein.

2. This appeal is filed for enhancement of compensation being not satisfied with the quantum of compensation awarded by the Tribunal for the injuries sustained by the claimant in the road traffic accident occurred on 29/01/2012 at Chennai to Bangalore Road, near Arapakkam Middle School, Arcot Town.

3.As per the claim petition, the accident occurred when the claimant was proceeding from East to West, in his two wheeler bearing registration No.JH-02-L-5035, a car bearing registration No.KA-02-Z-7009, which came in the same direction, hit the motorcycle of the claimant. In the said impact, the claimant was thrown out and sustained multiple injuries over his head, ribs and right foot. The claimant was treated from 29/01/2012 to 30/01/2012 as impatient at CMC Hospital at Vellore. Then, shifted to M.I.O.T Hospital at Chennai, where he was treated as inpatient from 01/02/2012 to 04/02/2012. Alleging the accident occured due to the rash and negligent driving of the car driver, the owner of the car and its insurer were called upon to pay compensation of Rs.10,00,000/- for the injuries.

4. The Counter filed by the 2nd respondent/insurance company stating that, the manner of the accident as narrated in the claim petition denied. The injuries alleged to have been sustained in the accident are denied. The claim petition is bad for non-joinder of necessary party, namely the insurer of the two wheeler, which the claimant was riding at the time of accident. At the time of causing accident, the claimant had no valid driving license. He was carrying two persons on the pillion contrary to the MV Act and Rules. Driving vehicle without proper driving license is violation of policy condition. The insurer of the two wheeler not impleaded as respondent. The omission to implead the insurer of the two wheeler render the claim petition liable to be dismissed for non-joinder of necessary party.

5. It was further contended in the counter, the claimant along with two persons on the pillion, without proper signal, suddenly turned to his right, without reducing the speed at the point diversion of the Highways Road. He crossed the line of the car proceeding behind. The car hit the ride side of the motorcycle. The right side of the motorcycle and the left side of the car got damaged. The claimant paid fine of Rs.3,200/- for non-possession of Driving License and driving the two wheeler with two persons on the pillion. Hence, the principle of contributory negligence is applicable. Further, the quantum of compensation claimed under various heads are highly exorbitant.

6. Before the Tribunal, the claimant and one another witness were examined as PW-1 and PW-2. Ex P-1 to Ex P-15 were marked. On the side of the respondent no evidence let in.

7. The Tribunal, based on the evidence produced, held that the accident occurred due to 90% negligence on the part of the car driver, and 10% contributory negligence on the part of the claimant. Awarded a sum of Rs.1,17,500/-, after deducting 10% for contributory negligence.

8. The appeal is filed for enhancement on the ground that the claimant had sustained 100% functional disability due to loss of hearing capacity. Disability Certificate (Ex.P-14) is given by the Doctor assessing the functional disability due to loss of hearing capacity as 100%. The Tribunal failed to apply the multiplier method, even though the claimant had suffered injuries causing total disability. The Tribunal failed to consider Ex.8 and Ex.B-15 medical bills issued by C.M.C.Hospital at Vellore and MIOT Hospital at Chennai. As against the claim of Rs.1,20,000/-, the claimant was awarded only 10,000/- for medical expenses. The Tribunal also failed to note that the claimant was admitted in the MIOT Hospital as inpatient for 25 days and thereafter treated as outpatient for nearly 6 months. The loss of income during the treatment period not adequately compensated. As per Ex.P-14, the claimant had suffered fracture of right skull and fracture of right ribs. He had lost hearing of both ears. The functional disability is 100%. The accident injury has totally taken away his earning capacity. The Trial Court erred in not considering these facts, while awarding compensation.

9. Per contra, the learned counsel for the 2nd respondent/insurance company submitted that the discharge summary [Ex.P-3] dated 30/01/2012 given by CMC Hospital, Vellore, indicates that the claimant sustained right foot laceration and right chest scapula fracture. The discharge summary [Ex.P-4] dated 04/02/2012 given by MIOT Hospital indicates, the claimant diagnosed chest injury with multiple ribs fracture on the right side with minimal Hemothorax. Head injury, fracture of right scapula and lacerated wound over the right foot. The other discharge summaries relied by the claimant are not in respect of the accident injury. They are of the year 2013 and 2017 for treatment unconnected to the accident injuries. Since those discharge summaries and medical bills were not issued for the relevant point of time, the trial Court rightly held that the claimant is entitled only Rs.10,000/- towards medical expenses and a total sum of Rs.1,17,500/- awarded, after due reduction for the contributory negligence.

> The point for consideration in this appeal is, whether the medical records of subsequent period relates to continuous treatment for the accident injury or not ?

10. The learned counsel for the appellant relying upon the deposition of PW-2, the Pubic Relation Officer of MIOT Hospital; Ex.P-7-discharge summary dated 12/05/2014; Ex.P-8; and Ex.P-15 which are the medical bills of MIOT Hospital between 12/05/2014 and 19/05/2014, Ex.P-14 discharge summary of MIOT hospital dated 02/03/2017 along with the report of one Dr.Narendran, submitted

that these documents prove that the claimant was in continuous treatment for his accident injury and suffer bilateral sever mixed hearing loss. Dr.Narendran of MIOT hospital who treated the claimant had certified that the claimant sustained head injury in the year 2012, since then he suffers hearing loss. His Audiometry shows that he has a bilateral severe sloping hearing loss secondary to the injury sustained.

11. The learned counsel for the respondent countering this argument submit that the said Dr. Narendran was not examined as a witness. Further, the loss of hearing is only secondary to the head injury. The said disability was not soon after the accident, but only after 5 years. Therefore, the Tribunal is right in not considering these medical records.

12. On examining the medical records, this Court finds that though Dr.Narendran has opined that the loss of hearing was the secondary to the injury sustained obviously it was sloping hearing and only in the year 2017, it was diagnosed. The claimant was first treated by the Doctors at CMC, Vellore, then shifted to MIOT hospital. Ex.P-2 the wound certificate issued by CMC hospital had listed the injuries as below:-

1. Laceration over medial aspect of right foot.
2. Closed fracture right scalpa.

13. Thereafter, the claimant got admitted at MIOT Hospital on 01/02/2012 and got discharged on 04/02/2012. The discharge summary of MIOT hospital dated 04/02/2012, reports treatment of following injuries on diagnosis.

1. Chest injury with multiple Rib fracture on right side with minimal hemothorax.
2. Head injury.
3. Fracture of right scapula
4. Lacerated wound over the right foot.

14. The patient was advised suture removal for scalp wound after 2 days and suture removal of foot injury after 7 days. Thus, there is medical record to show that the claimant sustained head injury in the said road accident. After nearly one year, the claimant had again got admitted in the MIOT hospital on 15/03/2012 complaining swelling of right scapula region. The gradually progressive swelling was treated. Excision of large lipoma right chest wall/scapula conducted on 19/03/2013. The claimant got discharged on 21/03/2013. The discharge summary of MIOT hospital marked as Ex.P-6 reveals this fact. This treatment is to be considered as continuous treatment, since the excision was done on the injured area. The tribunal after taking into account the ESI medical reimbursement

received by the claimant and the irrelevance of certain bills, had awarded only a sum of Rs.10,000/- towards medical expenses. In the opinion of this Court, the Tribunal ought to have taken into consideration Ex.P-15(Rs.72,524/-) and Ex.P-8(Rs.16,806.30) the medical bills for the treatment at MIOT hospital for the period between 12/05/2014 and 19/05/2014. As far as the third spell of medical records dated 02/03/2017 and the certificate of Dr.Narendran, which are marked as Ex.P-14 (series) to be rejected to the remoteness of time. The disability namely loss of hearing and the nature of injuries sustained and diagnosed five years after the accident does not given an impression that the said disability was due the accident. The Tribunal right in disallowing the claim on this ground.

15. In the result, for the reasons stated above, the award of the Tribunal is modified as below:-

Sl. Nos.	Compensation under various heads	Award passed by the Tribunal	Award passed by this Court
1.	Loss of earnings	15,000/-	15,000/-
2.	Pain and Sufferings	75,000/-	75,000/-
3.	Transportation	5,000/-	10,000/-
4.	Attender Charges	2,000/-	6,000/-
5.	Damage to clothings	500/-	500/-
6.	Medical Bills	10,000/-	72,524.00 (+)16.806.30 ___________ Rs.89,330.30
	Total	Rs.1,17,500/-	Rs.1,95,830/-
	Less 10% towards contributory negligence	----	Rs.1,76,247/-

16. The award of the Tribunal is enhanced from Rs.1,17,500/- to Rs.1,76,247/- with interest at the rate of Rs.7.5% p.a from the date of petition (09.02.2012) till the date of realisation. (Excluding the period between dismissal for default till realisation). The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount with interest, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the said award amount, on filing proper application.

17. Accordingly, the Civil Miscellaneous Appeal is Partly-Allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

bsm

To,

The Motor Accident Claims Tribunal,
II Additional District Judge,
Vellore, Ranipet.

+1cc to Mr.P.Sankaranarayanan, Advocate Sr No.8621
+1cc to Mr.V.Parivallal, Advocate Sr No.8575

C.M.A.No.3175 of 2017

CA (CO)
PR (04/10/2021)