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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.51 of 2017

M.Raja @ Rajaram

...Appellant/Petitioner

Vs

1. Mrs.C.Malathi

2. M/s.ICICI Lombard Genl. Ins. CO. Ltd.,
C/o. Motor Third Party Claims Office,
Arihant Plaza, 1st Floor,
No.84 & 85, Walltax Road,
Chennai 600 003.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.06.2016 made in M.C.O.P.No.5114 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.K.Poomalai

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2.The appeal is filed by the accident victim for enhancement of compensation.

3. According to the claim petition, on 04.10.2011, at about 07.15 hours, when the appellant was proceeding in his motor cycle bearing Registration No.TN07-BK-4042 on Royapettah High Road towards Mandaveli, a car bearing Registration No.TN-06-B-1671 proceeding from Kutcherri Road towards Mandaveli, rash and negligently dashed against the motor cycle near Luz junction. As a result, the claimant sustained injury over his body. He was admitted in the hospital. He was treated as inpatient from 04.10.2011 to 07.11.2011. His left big toe was amputated. The skin grafting was done and cross leg flap is causing loss of earning capacity. Therefore, he has filed the claim petition against the owner of the car and the insurer seeking compensation of Rs.3,81,000/- restricting to Rs.3,00,000/-.



4. The Insurance Company has filed a counter stating that the claimant has contributed to the occurrence of the accident. He was not road conscious while driving the motor cycle. Therefore, he alone is liable for the accident and not entitled for any compensation. Regarding the income and employment as claimed in the petition, the respondent/Insurance Company has denied the same and contended that the claimant has to prove his avocation and income.

5. Before the Tribunal, the claimant was examined as P.W.1. Doctor, who gave the Disability Certificate was examined as P.W.2. Six exhibits were marked. On behalf of the respondents, no witnesses were examined and no documents marked.

6. The Tribunal, after considering the evidence, has awarded a sum of Rs.1,00,000/- as compensation. Not satisfied with the quantum of compensation, the present appeal is filed.

7. Learned counsel for the appellant would submit that the amputation of big toe is total permanent disability and as per the schedule of Workmen Compensation Act, the disability is 14% whereas in this case, the claimant has not only lost his big toe, but due to skin grafting, cross skin flap, he is unable to walk and climb the ladder. Being a Painter by profession, the injury has substantially hampered the earning capacity of the claimant and therefore, the Tribunal ought to have applied the dictum laid by the judgment of the Supreme Court in Rajkumar vs. Ajay Kumar, 2011 ACJ 1 and should have applied multiplier. Further, the learned counsel would also submit that the Tribunal ought to have considered awarding higher compensation under other heads including loss of income during the treatment period.

8. Learned counsel for the respondents would submit that the injury sustained by the claimant caused the total disability, the amputation of big toe has been assessed at 10% and Rs.3,000/- per percentage of disability has been awarded by the Tribunal. Besides, the Tribunal has awarded adequately for pain and suffering, loss of income and loss of amenity. For the total disability, if multiplier is applied, the schedule under the Workmen Compensation Act may be taken into account. Learned counsel would submit that the award of the Tribunal is otherwise fair and need no interference.

9. It is now well settled by the Supreme Court that in case of total disability, the loss of income has to be assessed by applying multiplier and the percentage of functional disability should be correlated with the employment/avocation and the nature of injury. In this case, the claimant has lost his left big toe. The photograph shown by the learned counsel reveals that a big cross leg flap near the amputated side is seen. This



will naturally cause functional disability for a Painter. Therefore, this Court is of the view that it is appropriate to apply multiplier.

10. The accident occurred on 04.10.2011. Since there is no other evidence except self serving evidence of the claimant, the notional income of the claimant is fixed at Rs.6,500/-. The loss of earning capacity is thus computed as $15/100 \times 6,500 \times 12 \times 16 =$ Rs.1,87,200/-. Accordingly, the award of the Tribunal is enhanced as below:

Compensation under Various Heads	Award passed by this Court
Loss of Earning Capacity due to 15% total disability ($15/100 \times 6500 \times 12 \times 16$)	Rs.1,87,200/-
Loss of earning during the treatment period (6500×4)	Rs. 26,000/-
Pain and Suffering	Rs. 20,000/-
Transport and extra nourishment	Rs. 10,000/-
Attender Charges	Rs. 4,000/-
Loss of amenities	Rs. 10,000/-
Total	Rs.2,57,200/-

10. Accordingly, the award is enhanced from Rs.1,00,000/- to Rs.2,57,200/- payable with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The money shall be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall withdraw the same on appropriate application.

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

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar



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To

1. Motor Accidents Claims Tribunal
VI Court of Small Causes,
Chennai.

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2. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.Poomalai, Advocate sr 2050.

CMA NO.51 OF 2017

BR(CO)
SP(09/09/2021)