



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.01.2021

Pronounced on :20.01.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.794 of 2017

1.Sasi Kumar

.. Appellant / Petitioner

/versus/

1.G.Rama

(R1-already set exparte in Lower Court)

(R1-Notice may be dispensed with)

2.ICICI Lombard General Ins.Co.Ltd.,
No.140, Chottabai Centre,
Nungambakkam High Road, Chennai 600 034.

.. Respondents / Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decreetal order dated 27.07.2012 passed in M.C.O.P.No.911 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.

For Appellant : Mrs.Maithri Mahalingam

For Respondents : Mrs.R.Sreevidhya for R2
R1-Exparte

J U D G M E N T

(The case has been heard through video conference)

This appeal filed by the claimant seeking enhanced compensation for the injury sustained in the road accident.

2.On 07.02.2007 at about 11.25 a.m., while the appellant was riding his motorcycle bearing Reg.No.TN-01-V-5109 at the Junction of Sathiyamoorthy Road and Kengu Reddy Road, a car bearing Reg.No.TN-01-AB-9285 dashed against the motorcycle. The claimant sustained fractured injury and was treated as out



patient at Kilpauk Medical College Hospital and thereafter, took native treatment for the fractured bone. At the time of accident, the claimant was earning Rs.4500/- p.m., as a delivery and purchase boy at Net Avenue Technologies (P) Ltd., Chetpet. Seeking compensation of Rs.6,88,000/- claim petition was filed against the owner of the car and its insurer.

3.The insurance Company filed counter stating that the claim petition is bad for non-joinder of necessary party namely, the Insurance Company of the motor cycle which the claimant was riding. The accident occurred due to the contribution of the claimant who rash and negligently rode his two wheeler and colluded against the car. The claim of Rs.6,88,000/- is extremely high and exorbitant.

4.Before the Tribunal, the claimant and Doctor Subramaniam, who gave the disability certificate were examined as PW-1 and PW-2. 11 exhibits were marked in support of the claim petition. The Tribunal, on considering the evidence, awarded a sum of Rs.90,000/- with interest at the rate of 7.5% p.a, from 07.10.2009 to till the the date of deposit, excluding the period of dismissal for default, if any.

5.Not satisfied with the quantum of compensation, the claimant has preferred the appeal stating that the Doctor, who has clinically examined the claimant has assessed the disability at 25%. While so, the Tribunal ought to have adopted multiplier method under the head ?compensation for the future loss of earning capacity? and ought to have awarded compensation accordingly. It was also contended that the Tribunal has failed to award adequate compensation under the other heads like disfiguration of face; pain and suffering; mental agony; loss of amenities; loss of expectation of life and medical attendance.

6.The learned counsel appearing for the 2nd respondent/insurance Company submitted that the claimant was 19 years old at the time of accident and had no valid driving license. Due to his negligence he met with the accident, while driving the motorcycle. He has not produced the licence and the insurance policy of the motor cycle. The insurer of his motorcycle was not impleaded as party respondent for appropriate adjudication. Since there was contributory negligence on the part of the claimant, his insurer is a proper party. However, the



Tribunal ignoring the said defect and has awarded Rs.90,000/- as compensation. The Doctor, who only clinically examined the claimant has assessed the disability as 25% and the Tribunal has accepted the same and awarded a sum of Rs.50,000/- for the said disability. The claimant for the injury has incurred a sum of Rs.15,509/- towards medical expenses and the same was reimbursed. The claimant had not proved any other loss. However, for the loss of earning during the treatment period a sum of Rs.4,500/- was awarded. For pain and suffering a sum of Rs.15,000/- was awarded Rs.2,000/- each for transportation and extra nourishment also awarded.

7. Therefore, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the injury sustained by the claimant namely, fracture of left clavicle was treated and cured. It is not a scheduled injury and no evidence to indicate that the said injury has impaired the earning capacity of the claimant. Hence, prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent. Records perused.

9. As per the evidence given by the claimant, the car driver rash and negligently, while overtaking his two wheeler, dashed against him and caused the accident. Since the First Information Report was registered against the car driver, the Tribunal has held the negligence on the part of the car driver and its insurer. According to the claimant, he was treated as inpatient at Bone and Joint Hospital and Research Institute Pvt.Ltd. at Anna Nagar from 04.03.2007 to 10.03.2007. In support of the Exs.P5, P6 and P7 are marked, the medical bills are marked as Ex.P8.

10. In the cross examination, it has been suggested that the accident has occurred due to negligence of the claimant, since he was riding the two wheeler without valid driving licence. Though the claimant has denied the said suggestion, he has not produced his driving licence to prove that he had valid driving licence at the time of the accident. In the cross examination also he has admitted that he took treatment for bone fracture at Puttur Bone and Joint clinic for two weeks only and he has not produced any prove to show that he was gainfully



employed at Net Avenue Technologies Pvt. Ltd. and earning Rs.4500/- per month. The Doctor who has clinically examined the claimant has given the disability certificate marked as Ex.P10, based on the Ex.P11. For fracture in the left clavicle, he has assessed 25% partial and permanent disability. The X-Ray perused him has disclosed that left clavicle shoulder old fracture clavicle with plate in present evidence of union.

11.As far as functional disability is concerned, he has observed that the patient finds difficult in overhead actions and to lift heavy objects and also doing strain works. The evidence placed before the Court indicates that the left shoulder fracture has been joint after conservative treatment. Therefore, it is not a fit case to apply multiplier as claimed by the appellant/claimant. The accident took place on 07.02.2007. whereas the claim petition was filed after 2 ½ years and the Doctor has examined the claimant clinically after 2 ½ years and certified that the accident has caused 25% disability. The Tribunal has assessed the disability and other non-functional heads to award a sum of Rs.90,000/-as compensation with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation, excluding the period of default. On over all consideration of the evidence, this Court finds no material to enhance the compensation.

12.In the result, this Civil Miscellaneous Appeal is dismissed. No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
III Additional District Court,
Poonamallee.

+1cc to M/s.R.Sreevidhya, Advocate, S.R.No.3315

C.M.A.No.794 of 2017

GP(CO)
SB(08/09/2021)