

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2021

Pronounced on : 20. 01.2021

Coram:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.800 of 2017

R.Annamalai Amended as per memo dated 10.04.2015 sd/-III
ADJ/PNE),

S/o.Ramasamy,

Residing at No.14, 2nd street, Nethaji Nagar,
Porur, Chennai - 113.

.. Appellant

/versus/

1. B.Sekar,

No.8-A, Elango Street,
Chennai - 600 028.

[R1 - already set exparte in lower court]

[R1 - notice may be dispense with]

2. ICICI Lombard Gen. Insurance Co. Ltd.,

No.140, Chottabai Centre,

Nungambakkam High Road, Chennai - 34.

... Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and award dated 23.12.2014 made in M.C.O.P.No.124 of 2013 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamalle.

For Appellant : Mrs. Maithri Mahalingam

For R2 : Mrs.R.Sreevidhya

For R1 : exparte

J U D G M E N T

(The case has been heard through video conferencing)

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

2. On 16.11.2012 at about 16.15 hours while appellant/claimant was walking along the southern side of Sardar Patel Road, Adyar, the rider of the motor cycle bearing registration No.TN-06-C-3700 dashed against the

claimant/appellant causing grievous injury. The claimant was admitted at Fortis Malar Hosiptal and was treated as out-patient for the injury sustained. Alleging that the injury has caused him permanent disability and loss of earning capacity, assessing the loss at Rs.9,85,000/-. Claim petition filed restricting to Rs.5,00,000/- against the owner of the two wheeler and his insurer. The owner remain exparte.

3. The Insurance Company filed counter stating that they have not received any intimation about the accident involving the vehicle insured under them. Hence, the claimant has to prove the accident and involvement of the vehicle bearing registration No.TN-06-C-3700. The accident occurred while the claimant and his cousin negligently tried to cross the road, risking their life without considering the traffic flow. Having contributed to the accident by their recklessness, the claimant is not entitled for compensation as claimed. The Tribunal, in his common order, considering the evidence of the claimant and the Doctor who has issued disability certificate, awarded a sum of Rs.83,252/- with 7.5% interest from the date of filing the claim petition (01.02.2013) till the date of realization.

4.In this appeal, the claimant has stated that, he sustained fracture in the left shoulder and lacerated wound in his legs. He was not able to walk because of the wound in the 5th metatarsal. He is running a grocery shop in the name and style of "Ramya Provision Store", earning a sum of Rs.10,000/- per month. Due to the injury, he is not able to freely move and effectively carry on business. The fracture in the left shoulder has immobilised him with restricted movement. The Doctor, who examined him, has assessed 25% disability which is functional disability and therefore, the Tribunal ought to have applied multiplier method to compute the loss of earning capacity.

5.Relying upon the judgments rendered by the Hon'ble Supreme Court in Arvind Kumar Vs. New India Insurance reported in 2010 (1) SCC 254 and Raj Kumar Vs. Ajaya Kumar reported in 2011 (1) SCC 343, the Learned Counsel for the appellant would submit that the compensation for disability should be enhanced by applying multiplier method and for the other heads like compensation for loss of income during the treatment period, pain and sufferings, disfigurement of face, mental agony, loss of amenity and medical expenses, the compensation has to be adequately enhanced.

6.The Learned Counsel for the Insurance Company/respondent would submitted that the claimant/appellant met with an accident while crossing the road without taking note of the traffic flow and invited the accident. For his injury, he was taken to Fortis Malar Hospital and treated. Though, he

was advised to get admitted as in-patient, he was not willing. The O.P. case records marked as Ex.P.5 will show that the claimant was advised not to take alcohol. Thereafter, he has been treated as out-patient in the Department of Physiotherapy, Fortis Malar Hospital and same is marked as Ex.P.7. The doctor, who has clinically examined the claimant has assessed 25% permanent disability resulting in loss of earning capacity due to Greater tuberosity fracture in the left shoulder. According to the Doctor, the injury has restricted 35% movement and decrease in muscle power by 20%.

7.The Learned Counsel for the appellant mainly harping on this disability certificate contended that the said injury has caused functional disability and as a grocery shop owner, his earning capacity is restricted.

8.Per contra, the Learned Counsel appearing for the respondent would submitted that the injury sustained by the claimant is not a scheduled injury. The fracture was treated conservatively and no evidence to show the said injury will cause functional disability. P.W.3, Doctor is a regular visitor of the Court, who has given an exorbitant assessment of disability and his evidence regarding functional disability is unreliable.

9.The Discharge summary issued by Fortis Malar Hosiptal and the physiotherapy record indicates that there was dislocation of shoulder join and he was fixed with shoulder immobiliser and thereafter, he has taken physiotherapy. The doctor has assessed 25% disability with 30% restricted movement. The said injury is neither a scheduled injury nor have impact on the earning capacity. The Tribunal, therefore, had awarded a sum of Rs.2,000/- per percentage of disability, accepting the percentage of disability certified by the Doctor. Apart from that a sum of Rs.10,000/- has been awarded for pain and sufferings. The claimant has spend Rs.8,752.36 for medical expenses and same has been reimbursed. Rs.5,000/- for transport and Rs.5,000/- for nutritious food has been awarded. For the loss of income during the treatment period Rs.4,500/- has been awarded.

10. On considering the compensation awarded by the Tribunal based on the evidence, this Court finds that the quantum of compensation awarded is in consonances with the evidence. However, the accident has been taken place on 16.11.2012, the compensation of Rs.2,000/- for percentage of disability is enhanced to Rs.3,000/- and the award is modified and enhanced from Rs.83,252/- to Rs.1,08,252/- with 7.5% interest from the date of filing the petition till the date of realization.

11. The award of the Tribunal is modified and enhanced from Rs.83,252/- to Rs.1,08,252/-. The Insurance Company is directed to deposit the amount in the M.C.O.P. account with 7.5% from the date of filing the petition till the date of realization, within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit, the Appellant is permitted to withdrawn the same on filing proper application.

12. Accordingly, the Civil Miscellaneous Appeal is partly-allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

Index: Yes/No

Internet: Yes/No

To,

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

Copy to:

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

+1 cc to M/s.R.Sreevidhya, Advocate Sr No.2159

delivery Judgment in
C.M.A.No.800 of 2017

VSN-II (CO)

RG.21.04.2021 (4P/4C)

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