IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.02.2021

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.956 OF 2017

Kutti alias Subramani ...Appellant / Petitioner

/versus/

1.Thiru.P.Rajendran,
2.Cholamandalam MS General Insurance Company Limited,
12/1, 1st Floor, Sai Towers,
Pidamaneri Main Road,
Dharmapuri Town and District. ...Respondents / Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the order in M.A.C.T.O.P.No.1652 of 2014 dated 18.04.2016 on the file of the Learned Motor Accident Claims Tribunal, (Special Sub Court), Dharmapuri.

For Appellant : Mr.B.Gopala Krishnan

For R2 : Mr.E.Rajadurai
for M.B.Gopalan Associates

For R1 : Not ready notice

JUDGMENT

Heard the Learned Counsel for the appellant and the Learned Counsel for the respondent.

2. This Appeal is filed by the Motor accident victim for enhancement of compensation being not satisfied with the quantum of compensation awarded by the Tribunal.

3. The brief facts of the case is that on 19.11.2012 at about 01.30 p.m, when the claimant was riding his Hero Honda Splendor motorcycle bearing registration No.TN-29-H-5689 along the Dharmapuri to Solakkottai Road near J.J. Company junction, the JCB poclain bearing registration No.TN-29-AH-0199 moving with a bucket, rash and negligently hit the petitioner motorcycle. In the said accident, the claimant sustained multiple grievous injury all over the body and he was admitted in the Government Hospital, Dharmapurai. After first aid, he was

shifted to Kovai Ganga Medical Hospital, for better treatment. From 19.11.2012 to 24.11.2012, he was treated as inpatient in the said hospital. In the accident, the claimant sustained injury on his forehead and right AC joint. Claiming to be a granite work contractor, earning Rs.50,000/- per month, claim petition was filed for Rs.15,00,000/- against the owner of JCB Poclain and the Insurance Company.

4. The Insurance Company filed counter, whereas, the owner of the vehicle remind absent. In the counter filed by the Insurance Company, the liability of the Insurance Company was denied on the ground that the said JCB was not duly insured under them and the driver of the JCB had no valid driving licence. The accident occurred only due to rash and negligently driving of the rider of the motorcycle i.e., claimant and therefore, the Insurance Company is not liable to pay compensation to the petitioner. The accident occurred due to head on collusion of two vehicles hence, the owner and the insurer of the two wheeler are also equally liable. The claimant has to prove that, whether he had valid driving license and valid Insurance Coverage to the motorcycle which he was riding.

5. Before the Tribunal, the claimant and one Dr.Ramakrishnan were examined as P.W.1 and P.W.2 respectively. 8 Exhibits were marked on behalf of the plaintiff. In support of the respondent no witness examined.

6. The Tribunal, after considering the disability certificate given by the Doctor P.W.2 assessing the disability incurred by the claimant in the accident as 30% and taking into consideration, the notional income of the claimant as Rs.5,000/- per month, awarded a total compensation of Rs.1,55,000/-.

7. In the appeal, the Learned Counsel for the appellant submitted that, the claimant had suffered severe head injury, causing functional disability and therefore, the Tribunal ought to have applied multiplier for assessing loss of income. The notional income fixed by the Tribunal is also very less and taking into consideration the avocation of the claimant, being a granite contractor, earning about Rs.50,000/- per month. For Loss of income during the treatment period should have been awarded adequately.

8. It is also pointed out by the Learned Counsel for the appellant that, when medical bills for Rs.53,179/- was produced and marked as Ex.P.3 series, the Tribunal has erroneously awarded only Rs.10,000/- towards the medical expenses.

9. The Learned Counsel appearing for the Insurance Company would submit that the discharge summary marked as Ex.P.4 indicates Head Injury-Left Frontal SDH & BI-Parietal Contusion.

Conservative Management for head injury was provided and the injured person had regained his normal life after treatment. Ex.P.4 discharge summary issued by Ganga Medical Centre and Hospital, would clearly show that the patient is comfortable and neurologically stable. Therefore, even though P.W.2 the Doctor, who has not treated the claimant given disability certificate on clinical examination, the Tribunal has accepted his opinion and has awarded Rs.90,000/- for the disability.

10. The contention of the Learned Counsel for the appellant that, multiplier should be applied for the disability is unsustainable. Since, there is no evidence to show that the injured had suffered disability impairing his earning capacity. As far as the medical bills marked as Ex.P.3, the Learned Counsel for the Insurance Company would state that, if the Court is the convinced about the genuineness of the bills produced, no objection in awarding the actual expense incurred towards treatment.

11. On considering the rival submissions, this Court finds that the First Information report marked as Ex.P.1 registered by Dharmapurai Police station is against the driver of JCB. The negligence is attributed against the JCB driver and therefore, the Insurance Company which has insured the vehicle under Ex.P.5 policy is liable to indemnify the owner and compensate the claimant. The wound certificate is marked as Ex.P.2, wherein, following injured were noted by the Doctor who admitted the claimant in his hospital on 19.11.2012.

(i). Tenderness in forehead
(ii).Tenderness present right AC joint. Range of movements right shoulder terminally painful.

12. The x-ray was taken on right shoulder and C.T scan was taken. x-ray indicates no evidence of fracture. The C.T scan disclosed the following procedures, Cortical hemorrhagic contusion in the right anterior temporal lobe and bilateral frontal lobes. Thin extra cerebral bleed in the left frontal region, minimal subarachnoid hemorrhage in posterior interhemispheric fissure and bilateral parietal regions. Fracture in the occipital bone.

13. As pointed out earlier, the head injury was conservatively treated and the patient had recovered from the injury, except complaining pain on the right shoulder. The doctor had advised him to wear arm sling clavicle strapping. Under Ex.P.3 medical bills as well as the automobile bills have been produced by the claimant. On cumulative assessment and appreciation of evidence, this Court is of the view that the award passed by the Tribunal has to be enhanced as under:-

Sl. Nos	Compensation under various heads	Award passed by this Court
1.	Disability 30% x 3000	Rs.90,000/-
2.	Pain and Sufferings	Rs.15,000/-
3.	Loss of income during the treatment period Rs.8,000 x 3	Rs.24,000/-
4.	Medical expenses, as per bill	Rs.36,500/-
5.	Damage to vehicle	Rs.6,000/-
6.	Transportation charges	Rs.5,000/-
7.	Nutritious Food	Rs.5,000/-
	Total	Rs.1,81,500/-

14. The 2nd respondent/Insurance Company is directed to pay a sum of Rs.1,81,500/- with 7.5% interest from the date of filing the petition (31.01.2013) till the date of realisation. The 2nd respondent/Insurance Company shall deposit the award amount within a period of 8 weeks, from the date of receipt of copy of this judgment. On such deposit, the claimant is entitled to withdraw the same on filing proper application.

15. Accordingly, the Civil Miscellaneous Appeal is Allowed. No costs.

Sd/-
Deputy Registrar

// True Copy //

Sub Assistant Registrar

bsm

To

1.The Motor Accident Claims Tribunal,
(Special Sub Court),
Dharmapuri.

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

C.M.A.No.956 of 2017

AK-I(CO)
RVM(03/09/2021)