

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2023

Delivered on : 05.09.2023

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.854 of 2017

M.Jeyamurugan : Appellant/Petitioner

Vs.

1.T.Chandran

2.Claims Manager,
Bajaj Allianz General Insurance Co., Ltd.,
142/7, I Floor, Sri Bajaj Arcade,
Trivandrum Road, Murugankurichi,
Palayamkottai, Tirunelveli 627 002. : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the fair and decreetal order, dated 14.03.2017 made in M.C.O.P.No.92 of 2014 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar District at Srivilliputhur.

For Appellant : Mr.N.Tamil Mani

For Respondents : Mr.M.Thirunavukkarasu, for R1.

: Mr.V.Sakthivel, for R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.92 of 2014, dated 14.03.2017 on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Virudhunagar District at Srivilliputhur.

2. The appellant/claimant, who was awarded with compensation of Rs.30,820/- for the injuries suffered by him consequent to an accident occurred on 09.12.2013, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

3. It is not in dispute that in an accident occurred on 09.12.2013, the appellant had sustained the following injuries :

- (i) Abrasion over parietal Scalp present.
- (ii) Abrasion Right Gluteal region with tenderness, Edema.
- (iii) Sutured wound Right thigh Lower third, Lateral aspect.
- (iv) Sutured wound Right leg middle third anterolateral.
- (v) Edema Left Ankle present with Tenderness Left Leg.

4. It is evident from Ex.P.8/out-patient card and Ex.P.7/Accident Register extract that after the accident, he was taken to Government Hospital, Rajapalayam and after first-aid treatment, he was referred to Government Rajaji Hospital, Madurai for further treatment.

5. It is the specific case of the claimant that he was admitted in G.V.Ortho Centre, Rajapalayam on 09.12.2013 and was discharged on 14.12.2013. It is evident from Ex.P.9 that he was given conservative management for multiple injuries sustained in the accident occurred on 09.12.2013.

6. It is the further case of the claimant that he was taking out-patient treatment continuously in G.V.Ortho Centre, Rajapalayam; that subsequently, he was admitted in A.R.Hospital, Madurai on 08.09.2014 for left knee ligament injury and after surgery, he was discharged on 11.09.2014; that the claimant had spent more than Rs.1,50,000/- for medical expenses; that the claimant, after the treatment, is unable to sit, stand, walk, squat and cycling; that he has suffered permanent disability and that therefore, he was not in a position to do any work as before.

7. The defence of the second respondent/insurer is that the claimant has suffered only simple injuries in the accident occurred on 09.12.2013; that the claimant, after treatment has completely recovered from the injuries; that the complainant's contention that he had ligament injury on his left knee and got in-patient treatment and underwent surgery, has no connection whatever with the injuries sustained in the accident occurred on 09.12.2013 and that therefore, the claimant is not entitled to claim any amount for the disability allegedly sustained due to left knee ligament injury and for the medical expenses incurred with respect to the same.

8. The claimant has produced MRI Scan report, Referral Slip issued by the G.V.Ortho Centre, Rajapalayam, Discharge Summary issued by the A.R. Hospital, Madurai, Medical prescriptions and bills, M.R.I. Films and X-Ray under Ex.P.10 to Ex.P.18.

9. In Ex.P.12/Discharge summary issued by the A.R Hospital Private Limited that the claimant was diagnosed to have ACL Tear with both meniscus tear with chondral injury patella/medial femoral ligament

left knee and was treated with arthroscopic ACL reconstruction with quadpled hamstring graft fixed with endobutress and titanium screws, partial menisectomy of both meniscus with chondraplasty patella/MFL.

10. It is pertinent to note that when the claimant was admitted in A.R Hospital, he had complaints of pain and swelling of left knee, restricted movements over (LT) knee and instability (LT) knee while walking. In Ex.P.10/MRI Scan report, it has been specifically stated that there was complete rupture of ACL from femoral attachment site with hyperbuckling of PCL representing grade III ACL injury, complex tear of posterior horn of medial meniscus disrupting the lateral postero inferior articular surfaces, partial strain of inner fibers of proximal attachment site of PCL seen, Degeneration with vertical tear of lateral meniscus seen, mild synovial effusion seen, partial thickness chondral defect involving patellar eminence and medial patellar facet, soft tissue swelling and edema seen along the proximal aspect of medial tibial articular surfaces.

11. As rightly contended by the learned counsel for the second respondent, when the petitioner was taken to Government Hospital,

Rajapalayam and subsequently to G.V. Ortho Centre, Rajapalayam, the claimant has not made any complaint with regard to injury or pain over the left knee and that both the hospital authorities have also not referred that the claimant was having some issues or problems in his left knee, consequent to the accident occurred on 09.12.2013. No doubt, they have noticed the edema left ankle with tenderness left leg, but not left knee injury.

12. The learned counsel for the claimant has relied on Ex.P.19 and Ex.P.20 inpatient and outpatient records maintained in G.V.Ortho Centre, Rajapalayam, wherein they have made an entry on 05.04.2014 that the claimants was having mild pain over left knee, but there was no further entry with respect to the said injury subsequently. Ex.P.19/inpatient record does not refer anywhere about left knee injury.

13. No doubt, the claimant was referred to Medical Board Government Headquarters Hospital, Virudhunagar and the Medical Board has certified that he has suffered disability at 47% taking note of the ACL Tear. ACL is an anterior cruciate ligament, which is one of four major ligaments of knee. As per medical jurisprudence, ACL tear or

injury would include a loud popping sound at the moment of injury, inability to bear weight on your leg, instability, severe knee pain at the moment of injury and more pain when you try to stand and also swelling. Generally a tore ACL while walking, quadriceps (thigh muscles) makes it difficult to lift their leg or even straighten it out. An ACL injury usually makes it difficult to walk or stand because of intense pain in your knee and the same would also experience significant, rapid swelling.

14. Admittedly, as rightly pointed out by the learned counsel for the second respondent, the claimant has not produced any medical records to show that he was having left ligament injury on his left knee and was taking treatment continuously, more importantly, when the injury suffered by the claimant due to the accident occurred on 09.12.2013 are simple in nature.

15. Considering the entire medical evidence available on record, the finding of the Tribunal that the left knee ligament injury was not due to the accident occurred on 09.12.2013 cannot be found fault with. Though the claimant has produced the medical bills for the treatment taken for left knee ligament injury, the Tribunal has rightly granted

amount towards medical expenses with regard to the injuries sustained on 09.12.2013 and not for the treatment taken from 08.09.2014. As already pointed out, the Medical Board has assessed the disability only with regard to the left knee ligament injury.

16. The Tribunal has granted compensation of Rs.20,000/- for the pain and suffering, mental agony, extra nourishment and loss of income, as the claimant has suffered only simple injuries. As rightly pointed out by the learned counsel for the appellant, the injured was admitted on 09.12.2013 and discharged on 14.12.2013 for five kinds of injuries sustained by him. Considering the injuries sustained, period of treatment, consequent pain and suffering, extra nourishment, loss of income and other attending circumstances, the lumpsum compensation awarded at Rs.20,000/-, as rightly contended by the learned counsel for the appellant side, is definitely on lower side. Considering the evidence available on record, this Court fixes the lumpsum compensation at Rs.50,000/-.

17. The Tribunal, considering the medical bills has rightly granted Rs.10,820/- towards medical expenses. Considering the above, the claimant is entitled to get total compensation of Rs.60,820/-

(Rs.50,000/- + Rs.10,820/-) and as such, this Court is not inclined to interfere with the finding of Tribunal with regard to the left knee ligament injury and the treatment therefor. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

18. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal is **enhanced from Rs.30,820/- to Rs.60,820/-**. The second respondent /Insurer is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit, the claimant is permitted to withdraw the award amount, less amount already withdrawn, if any, by filing a necessary application before the Tribunal. The parties are directed to bear their own costs.

05.09.2023

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To

- 1.The Motor Accident Claims Tribunal (Chief Judicial Magistrate),
Virudhunagar District at Srivilliputhur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.854 of 2017

K.MURALI SHANKAR,J.

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Pre-delivery order made in
C.M.A(MD)No.854 of 2017

05.09.2023