

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1572 & 1577 of 2015

National Insurance Company Limited.,
Sundaram Buildings,
25, Coimbatore Road,
Pollachi.

... Appellant in both CMAs/3rd Respondent

Vs.

1.Jaiganesh Kannan ... 1st Respondent in
C.M.A.No.1572/2015/Petitioner

1.Solai ... 1st Respondent in
C.M.A.No.1577/2015/Petitioner

2.Nahulsamy

3.Sri Kamalam Bus Transport,
4, Municipal High School Road,
Pollachi. ... 2nd and 3rd

Respondents in both CMAs/1 & 2 Respondent

Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 28.02.2014 made in M.C.O.P.Nos.281 & 282 of
2011 on the file of the Motor Accidents Claims Tribunal, Sub
Court, Udumalpet.

For Appellant : Mr.S.Vadivel

For R1 : Mr.N.Sakthivel

For RR2 & 3 : No Appearance

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the
judgment and decree dated 28.02.2014 made in M.C.O.P.Nos.281 &

282 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Udumalpet.

2.Both the appeals are arising out of the same accident and hence, disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

4.The first respondents are the claimants, respondents 2 and 3 are the respondents 1 and 2 and appellant is third respondent in M.C.O.P.Nos.281 & 282 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Udumalpet. The claimants filed the said claim petitions claiming a sum of Rs.15,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 17.05.2011.

5.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the second respondent and as insurer of the said vehicle, third respondent is liable to pay compensation and awarded a sum of Rs.7,98,885/- in M.C.O.P.No.281 of 2011 and a sum of Rs.6,70,575/- in M.C.O.P.No.282 of 2011 as compensation to the claimants.

6.Against the said award dated 28.02.2014 made in M.C.O.P.Nos.281 & 282 of 2011, the third respondent/Insurance Company has come out with the present appeals.

7.The learned counsel appearing for the third respondent/Insurance Company contended that the Tribunal erroneously awarded compensation by applying multiplier method. The Tribunal has failed to consider that the claimant in M.C.O.P.No.281 of 2011 suffered only 14% disability and the claimant in M.C.O.P.No.282 of 2011 suffered 20% disability. The claimants joined duty, continued to do their work and there is no loss of income. The Tribunal erred in accepting the evidence let in by the claimants with regard to salary earned by them. The Tribunal ought to have seen that those documents are self-serving statements and no statutory documents was produced to prove the employment and salary marked. The Tribunal ought to have fixed Rs.7,500/- and Rs.6,000/- per month as notional income of the claimants in both M.C.O.Ps. respectively and ought to have awarded compensation at 50% and 60% respectively at the rate of Rs.3,000/- per percentage by following the percentage method instead of applying multiplier method. Therefore, he prayed for setting aside the award passed by the Tribunal.

8.Per contra, the learned counsel appearing for the claimants contended that the claimants have proved that they are

not able to do work as they have done earlier as their earning capacity is reduced. The Tribunal considering the evidence of P.W.3/Doctor, evidence of employer and documents filed by the claimants fixed loss of earning capacity at 1/6 and 1/5 respectively and awarded compensation by applying multiplier method. The Tribunal has rightly fixed monthly income of the claimants only on the basis of oral and documentary evidence let in by the claimants. The compensation awarded by the Tribunal is a just compensation and therefore, prayed for dismissal of both the appeals.

9. Heard the learned counsel appearing for the third respondent/Insurance Company as well as the first respondents and perused the materials available on record.

10. The learned counsel appearing for the third respondent/Insurance Company in the grounds of appeals as well as during arguments, have contended that the Tribunal ought to have granted compensation at the rate of Rs.3,000/- per percentage for 50% and 60% respectively. The learned counsel appearing for the third respondent/Insurance Company is not able to substantiate this claim with regard to percentage of disabilities suffered by the claimants. The disabilities mentioned by the learned counsel for the third respondent are not supported by any evidence. The Tribunal considering the oral and documentary evidence let in by the claimants have concluded that the claimants have suffered future loss of income at 1/6 and 1/5 respectively. The said finding is based on the evidence and the same is valid. The Tribunal following the judgment of the Hon'ble Apex Court reported in (2010 INSC 697) in (Yadhav Kumar Vs Divisional Manager, National Insurance Company), applied the multiplier method. It is well settled that in the facts and circumstances of each case, multiplier method can be applied even in the case of injuries suffered by the claimants. At the same time, the Division Bench of this Court in the judgment reported in 2005 1 CTC 38 (United India Insurance Company vs. Veluchamy), held that lesser multiplier can be applied while awarding compensation to the injured claimants while applying the multiplier method. The income fixed by the Tribunal is based on the oral and documentary evidence let in by the claimants and there is no reason warranting interference by this Court with the said findings.

11. Considering the entire materials on record, in the interest of justice, in M.C.O.P.No.281 of 2011, multiplier 12 instead of 17 is applied to arrive at a just compensation towards loss of earning capacity and in M.C.O.P.No.282 of 2011, multiplier 11 instead of 16 is applied to arrived at a just compensation towards loss of earning capacity and the same are modified as follows:

In M.C.O.P.No.281 of 2011: CMA.No.1572/2015
 Rs.12000 X 12 X 12 X 1/6 = Rs.2,88,000/-
 In M.C.O.P.No.282 of 2011: CMA.No.1577/2015
 Rs.10000 X 12 X 11 X 1/5 = Rs.2,64,000/-

Amounts awarded by the Tribunal under all the other heads are not excessive and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

In M.C.O.P.No.281 of 2011: CMA.No.1572/2015

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity and future loss of income	4,08,000	2,88,000	reduced
2.	Medical expenses and Transportation	2,43,885	2,43,885	confirmed
3.	Loss of income	72,000	72,000	confirmed
4.	Extra nourishment and attendant charges	25,000	25,000	confirmed
5.	Future medical expenses	20,000	20,000	confirmed
6.	Pain and suffering, mental agony and loss of amenities	30,000	30,000	confirmed
	Total	7,98,885	6,78,885	Reduced by Rs.1,20,000/-

In M.C.O.P.No.282 of 2011: CMA.No.1577/2015

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity and future loss of income	3,84,000	2,64,000	reduced
2.	Medical expenses and Transportation	1,51,575	1,51,575	confirmed
3.	Loss of income	60,000	60,000	confirmed
4.	Extra nourishment and attendant charges	25,000	25,000	confirmed
5.	Future medical expenses	20,000	20,000	confirmed
6.	Pain and suffering, mental agony and loss of amenities	30,000	30,000	confirmed
	Total	6,70,575	5,50,575	Reduced by Rs.1,20,000/-

12. With the above modification, both the Civil Miscellaneous Appeals are partly allowed. In M.C.O.P.No.281 of 2011, the compensation of Rs.7,98,885/- awarded by the Tribunal is hereby reduced to Rs.6,78,885/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. In M.C.O.P.No.282 of 2011, the compensation of Rs.6,70,575/- awarded by the Tribunal is hereby reduced to Rs.5,50,575/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The third respondent/Insurance Company is directed to deposit the modified award amount, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/first respondents are

permitted to withdraw their respective award amount with accrued interest, after adjusting the amount if any, already withdrawn. The third respondent/Insurance Company is permitted to withdraw the excess amount, if any lying in deposit to the credit of M.C.O.P.Nos.281 and 282 of 2011, if the entire award amount has already been deposited by them. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
Subordinate Judge
Udumalpet.

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

+2cc to Mr.S.Vadivel, Advocate, S.R.No. 78097, 78096

+1cc to Mr.N.Sakthivel, Advocate, S.R.No. 78171

C.M.A.Nos.1572 & 1577 of 2015

NM(CO)
GN(07/01/2019)

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