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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.194 of 2016
and C.M.A.No.2476 of 2017

C.M.A.No.194 of 2016

M/s.Reliance General Insurance Co. Ltd.,
3rd Floor, No.408, Perundurai Road,
Erode-638 011. .. Appellant/2nd Respondent

Vs.

1.Perumal.V ..1st Respondent/Petitioner
2.A.M.V.J. Bus Transports
No.15, K.N.K Road,
Erode-638 003. .. 2nd Respondent/1st Respondent

C.M.A.No.2476 of 2017

V.Perumal .. Appellant/Petitioner

Vs.

1.A.M.V.J. Bus Transports
No.15, K.N.K Road,
Erode-638 003.
2.M/s.Reliance General Insurance Co. Ltd.,
3rd Floor, No.408, Perundurai Road,
Erode-638 011. .. Respondents/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.09.2015 made in M.C.O.P.No.1317 of 2013 on the file of the Motor Accident Claims Tribunal / Additional District Court at Namakkal.



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In C.M.A.No.194 of 2016

For Appellant : Mr.S.Arun kumar
For R1 : Mr.Ma.P.Thangavel
For R2 : No appearance

In C.M.A.No.2476 of 2017

For Appellant : Mr.Ma.P.Thangavel
For R2 : Mr.S.Arun kumar

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

C.M.A.No.194 of 2016 is filed by the Insurance Company against the award dated 15.09.2015 made in M.C.O.P.No.1317 of 2013 on the file of the Motor Accident Claims Tribunal / Additional District Court at Namakkal.

C.M.A.No.2476 of 2017 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 15.09.2015 made in M.C.O.P.No.1317 of 2013 on the file of the Motor Accident Claims Tribunal / Additional District Court at Namakkal.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed M.C.O.P. No.1317 of 2013 on the file of the Motor Accident Claims Tribunal / Additional District Court at Namakkal, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.07.2013.

4.According to the claimant, on 23.07.2013 at about 8.45 P.M, the claimant was walking on the Sangagiri to Salem Main Road near Kondalampattu sandhapettai. At that time, a bus bearing Registration No.TN 33 BE 1199 driven by its driver in a rash and negligent manner belonging to the first respondent and insured with the second respondent, dashed against the claimant and caused the accident. In the said accident, the claimant sustained injuries and was admitted in Government Hospital, Salem for first aid and for further treatment he was admitted in R.P.S Hospital, Salem. P.W.2 - Doctor assessed the percentage of disability suffered by the claimant as 55%. Due to the injuries, the claimant could not do the work as he was doing earlier and



hence filed claim petition claiming compensation against the respondents.

5.The first respondent remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company filed counter statement, claiming that the claimant has to prove that driver of the bus had valid driving license, valid insurance, RC permit and FC to ply. The driver of the bus drove the same with due care and caution and on the proper side at a slow speed following traffic rules and regulations. But the claimant without minding the traffic rules and regulations suddenly crossed the road and invited the accident. The accident occurred only due to the carelessness and the negligent act of the claimant. Hence, the second respondent-Insurance Company is not liable to pay any compensation to the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1 and examined Dr.Shyamsundar as P.W.2 and marked 13 documents as Exs.P1 to P13. The 2nd respondent did not let in any oral evidence but marked two documents as Exs.R1 and R2.

8.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 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.2,94,100/- as compensation to the claimant .

9.Against the said award dated 15.09.2015 made in M.C.O.P.No.1317 of 2013, the 2nd respondent-Insurance Company has filed C.M.A.No.194 of 2016 challenging the quantum of compensation awarded by the Tribunal. Not being satisfied with the amounts awarded by the Tribunal, the claimant has filed C.M.A.No.2476 of 2017 for enhancement of the compensation.

10.The learned counsel appearing for the claimant contended that the claimant was earning a sum of Rs.7,000/- per month by doing agricultural work. The Tribunal has fixed only a meagre sum of Rs.6,000/- per month as notional income of the claimant. The accident is of the year 2013. The Tribunal ought to have fixed the notional income of the claimant not less than Rs.7,000/- per month. The claimant was aged 64 years at the time of the accident. The Tribunal ought to have adopted proper multiplier and awarded compensation for permanent disability separately apart from the compensation granted for loss of earning capacity and prayed for enhancement of compensation.



11. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal erred in adopting multiplier method for granting compensation for loss of earning capacity. P.W.2/Doctor has not assessed the percentage of disability for whole body and also assessed that the claimant has not suffered any functional disability. The claimant is aged 70 years and there will not be any loss of earning capacity and loss of income to the claimant. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

12. Heard the learned counsel appearing for the second respondent -Insurance Company as well as the claimant and perused the entire materials available on record.

13. From the materials available on record, it is seen that the claimant suffered multiple injuries and fracture in left leg, chest and head. The claimant has taken treatment as in-patient in RPS Hospital, Salem for 5 days for removing the blood clot in the head. P.W.2 after verifying the medical records and examining the claimant has assessed the percentage of disability suffered by the claimant as 55% and deposed as P.W.2 about the nature of injuries and disability suffered by the claimant. The second respondent-Insurance Company has not let in any evidence to disprove the evidence of P.W.2/Doctor. The Tribunal in such circumstances accepted the evidence of P.W.2/Doctor and adopted multiplier method for granting compensation to the claimant. There is no error in the reason given by the Tribunal for adopting multiplier method.

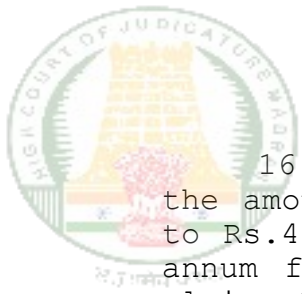
14. The contention of the learned counsel for the claimant that the claimant suffered 100% loss of earning power and the Tribunal ought to have granted compensation for 100% loss of earning power and ought to have granted compensation separately for disability and loss of earning capacity are without merits. P.W.2/Doctor has not deposed that the claimant could not do any work and the appellant lost his entire earning capacity. The Courts have power to grant compensation for loss of earning power as well as permanent disability separately. Granting of compensation under the heads disability as well as loss of earning capacity, depends upon the facts of the each case. In the facts of the present case, the claimant is not entitled for compensation separately for permanent disability apart from loss of earning power.

15. The claimant has claimed that he was earning a sum of Rs.7,000/- per month by doing agricultural work. The claimant has not filed any document to prove the same. In the absence of



material evidence with regard to his avocation and income, the Tribunal fixed notional income of the appellant at Rs.6,000/- per month. The accident occurred in the year 2013 and the notional income fixed by the Tribunal is meagre. A sum of Rs.7,000/- is fixed as monthly income of the appellant. P.W.2/Doctor assessed that the appellant suffered 55% disability. The Tribunal considered the disability assessed by the Doctor and has rightly granted compensation by applying multiplier method. The appellant was aged 64 years at the time of the accident. The correct multiplier applicable is 7. The Tribunal applied the multiplier '5' instead of '7'. Hence, by applying the correct multiplier '7', the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.3,23,400/- [Rs.7,000/- X 12 X 7 X 55/100]. A sum of Rs.5,000/- each awarded by the Tribunal towards extra nourishment and transportation are meagre and the same are hereby enhanced to Rs.10,000/- each. The Tribunal has awarded a sum of Rs.10,000/- towards attendant charges which is excessive and the same is reduced to Rs.5,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

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	1,98,000/-	3,23,400/-	Enhanced
2.	Medical expenses	26,079/-	26,079/-	Confirmed
3.	Pain & sufferings	25,000/-	25,000/-	Confirmed
4.	Extra nourishment	5,000/-	10,000/-	Enhanced
5.	Transportation	5,000/-	10,000/-	Enhanced
6.	Attendant charges	10,000/-	5,000/-	Reduced
7.	Loss of amenities	25,000/-	25,000/-	Confirmed
	Total	2,94,079/-	4,24,479/-	
	Rounded off to	Rs.2,94,100/-	Rs.4,24,500/-	Enhanced by Rs.1,30,400/-



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16. In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.2,94,100/- is enhanced to Rs.4,24,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1317 of 2013. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the claimant is not entitled for any interest for the delay period on the amount of Rs.1,30,400/-, enhanced by this Court, as per the order of this Court dated 27.07.2017, made in C.M.P.No.11490 of 2017 in C.M.A.SR.No.43067 of 2017. No costs.

Sd/-

Assistant Registrar(VIII)

//True copy//

Sub Assistant Registrar

vr

To

1.The Additional District Court,
Motor Accident Claims Tribunal,
Namakkal.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.12031

+1cc to Mr.S.Arun kumar, Advocate SR.No.12519

C.M.A.No.194 of 2016
and C.M.A.No.2476 of 2017

CA(CO)
GMY(16/07/2021)