



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

WEB COPY

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.652 of 2014

and

C.M.P.Nos.4656 of 2017 & 24804 of 2019

R.Saravanan

... Appellant/Petitioner

Vs.

1.National Insurance Company Limited,

Villupuram.

...Respondent 1/Respondent 2

2.Geetha

...Respondent 2/Respondent 1

(No relief sought against the 2nd respondent

and also set exparte in the lower Court.

So 2nd respondent may be given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.03.2011 made in M.C.O.P.No.595 of 2005 on the file of Motor Accident Claims Tribunal, 1st Additional Sub Court, Villupuram.

For Appellant : Mr.M.Sivakumar

for Mr.D.S.Thiruma Valavan

For R1 : Mr.J.Chandran

For R2 : Given up

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 23.03.2011 made in M.C.O.P.No.595 of 2005 on the file of Motor Accident Claims Tribunal, 1st Additional Sub Court, Villupuram.

2.The appellant is claimant in M.C.O.P.No.595 of 2005 on the file of Motor Accident Claims Tribunal, 1st Additional Sub Court, Villupuram. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.04.2005.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 2nd respondent and directed both the 1st respondent/Insurance Company being insurer of the said bus as well as the 2nd respondent, owner of the bus to jointly and severally pay a sum of Rs.1,05,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant was working as a barber and was earning a sum of Rs.12,000/- per month at the time of accident. The Tribunal without considering the same, erred in fixing notional income of the appellant at Rs.4,500/- per month. In the accident, the appellant suffered lacerated injury on the left upper arm with bone fracture on left humerus. The appellant has taken treatment as in-patient for 8 days in Government Hospital, Villupuram, from 12.04.2005 to 19.04.2005 and thereafter, in Government Hospital, Cuddalore, from 20.04.2005 to 21.05.2005 for 32 days. Due to the injuries, he could not do the work as he was doing earlier. The amount awarded by the Tribunal towards loss of earning power is meagre. P.W.2/Doctor after examining the appellant, certified that the appellant suffered 45% disability. The Tribunal awarded only a sum of Rs.45,000/- towards disability, which is meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 1st respondent/Insurance Company contended that the Tribunal after considering the materials on record, awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant through Video-conferencing/Hybrid mode as well as the learned counsel for the 1st respondent, who is appearing before this Court physically and perused the entire materials on record.

8.From the materials available on record, it is seen that the appellant claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.04.2005. According to the appellant, he was aged 30 years at



the time of accident, he was a barber by profession and was earning a sum of Rs.12,000/- per month. In the accident, he suffered fracture in the left hand and lacerated injuries all over the body. He took treatment as in-patient for 8 days in Government Hospital, Villupuram, from 12.04.2005 to 19.04.2005 and thereafter, in Government Hospital, Cuddalore, from 20.04.2005 to 21.05.2005 for 32 days. Due to the fracture and other injuries, he could not do his work as he was doing earlier. He examined himself as P.W.1 and deposed to that effect. The appellant examined Dr.Raveendar as P.W.2. P.W.2/Doctor examined the appellant and certified that the appellant suffered 45% permanent disability. The Tribunal applying percentage method, awarded a sum of Rs.45,000/- towards disability. The Tribunal considering the nature of injuries and avocation of the appellant, awarded a sum of Rs.7,000/- towards loss of earning power. The 1st respondent/Insurance Company did not let in any evidence to disprove the case of the appellant that he is a barber and prove that appellant is doing some other work. Considering the evidence of the appellant and P.W.2/Doctor, this Court is of the opinion that the appellant being a barber, due to fracture in his left hand and disability, his work would have been affected. P.W.2/Doctor certified that the appellant suffered 45% disability for a particular part. This Court converts the same into 15% for whole body and adopts multiplier method for granting compensation. The accident is of the year 2005. The appellant claimed that he was earning a sum of Rs.12,000/- per month. He has failed to prove the same. In the absence of any evidence with regard to income of the appellant, the Tribunal fixed a sum of Rs.4,500/- per month as notional income. Considering the date of accident and nature of work done by the appellant, this Court fixes a sum of Rs.5,000/- per month as notional income. The appellant was aged 30 years at the time accident and multiplier applicable is '17'. The amount granted by the Tribunal towards loss of earning power is modified to Rs.1,53,000/- (Rs.5,000/- x 12 x 17 x 15/100). In view of the above, a sum of Rs.45,000/- granted by the Tribunal towards permanent disability is set aside.

9.The appellant has taken treatment as in-patient in Government Hospital, Villupuram, from 12.04.2005 to 19.04.2005 for 8 days and thereafter, in Government Hospital, Cuddalore, from 20.04.2005 to 21.05.2005 for 32 days. The Tribunal has not granted any amounts for attendant charges, loss of amenities and damage to clothes. Considering the nature of injuries and disability suffered by the appellant, Rs.10,000/-, Rs.10,000/- and Rs.500/- are hereby granted towards attendant charges, loss



of amenities and damage to clothes respectively. The amounts awarded by the Tribunal under all 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 or reduced
1.	Loss of earning power	7,000	1,53,000	Enhanced
2.	Loss of earning during treatment period	18,000	18,000	Confirmed
3.	Transport to hospital & Extra nourishment	10,000	10,000	Confirmed
4.	Pain and suffering	25,000	25,000	Confirmed
5.	Permanent disability	45,000	-	Set aside
6.	Attendant charges	-	10,000	Granted
7.	Loss of amenities	-	10,000	Granted
8.	Damage to clothes	-	500	Granted
	Total	1,05,000	2,26,500	Enhanced by Rs.1,21,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,05,000/- is hereby enhanced to Rs.2,26,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is not entitled to any interest for the default period from 09.03.2010 to 11.08.2010. The respondents 1 & 2 are jointly and severally directed to



deposit the 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. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

The 1st Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Villupuram.

Copy to

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

+1cc to Mr.D.S.Thirumavalavan, Advocate Sr.59712

C.M.A.No.652 of 2014
and
C.M.P.Nos.4656 of 2017 & 24804 of 2019

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srg 14/12/2021