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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A.NO.393 OF 2022

Ravi

... Appellant

vs.

1. Pasteur Health Care India Pvt. Ltd.,
No.1/10A, East Coast Road,
Kottivakkam, Chennai-600 041.
2. Tata AIG General Insurance Co.Ltd.,
Claims Department, 2nd Floor,
Samson Towers, No.403-L,
Pantheon Road, Egmore,
Chennai-8.

... Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against Judgment and Decree dated 28.10.2021 in M.C.O.P.No.5081 of 2018 on the file of the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates[R2]
R1 - Served - No Appearance

JUDGMENT

The claimant is the appellant challenging the award passed by the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai, in M.C.O.P.No.5081 of 2018 has come forward with the above appeal.

2. The facts in brief are as follows:

The appellant had sustained injuries in a road traffic



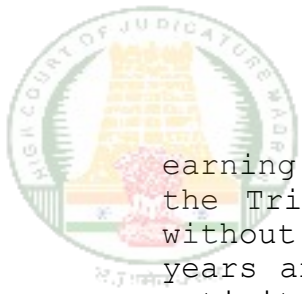
accident involving the vehicle belonging to the 1st respondent which is insured with the 2nd respondent. It is the case of the appellant/petitioner that on 13.07.2018 at about 6.30 p.m., when he was riding his motor cycle bearing Reg.No.AP-03-AM-5354 along the Srikalahasti-BN Kandriga Main Road near Parlapalli Village, the Car bearing Reg.No.TN-07-BR-9000 which was driven in a rash and negligent manner dashed against the motor cycle, as a result of which, the appellant had sustained grievous injuries. The accident was caused only on account of the rash and negligent act of the driver of the Car. Therefore, the appellant who claimed to be a farmer and aged about 47 years earning Rs.15,000/- p.m., had filed the claim petition claiming compensation of Rs.45,00,000/-.

3. The 1st respondent remained absent and was set exparte. The 2nd respondent/Insurance Company had filed the counter inter-alia denying the negligence on the part of the driver of the Car, the nature of injuries sustained by the appellant/petitioner and also the compensation claimed by him. The 2nd respondent had denied that the Car was insured with them and that the driver of the Car had a valid licence.

4. The Tribunal below, after considering the evidence had held that it was only the driver of the Car who was responsible for the accident and granted the compensation for a sum of Rs.14,69,750/- which is detailed herein below:

S.No.	Description	Amount awarded by Tribunal (Rs)
1	Loss of Earning	Rs.13,65,000/-
2	Attender Charges	Rs.8,750/-
3	Loss of Amenities	Rs.40,000/-
4	Towards Pain and Sufferings	Rs.40,000/-
5	Towards Extra Nourishment & Transportation	Rs.15,000/-
6	Damages to Clothes	Rs.1,000/-
	TOTAL	Rs.14,69,750/-

5. The Tribunal had adopted a monthly notional income of Rs.10,000/-. The appellant is aggrieved by the said award inasmuch as the claimant had been assessed disability at 70% as per Ex.P2 Disability Certificate, he has suffered an amputation and being a farmer he has therefore suffered a loss of his



earning capacity. The appellant is aggrieved by the fact that the Tribunal had only adopted a notional income of Rs.10,000/- without taking into account the fact that the appellant was 47 years and earning around Rs.15,000/- p.m., from his agricultural activities. He would also submit that though the claimant had been hospitalised for 25 days, a very meagre amount has been given under the head of attender charges. Despite, the appellant sustaining an amputation only a sum of Rs.40,000/- has been granted under the head of Pain and Suffering and a sum of Rs.15,000/- was granted under the head of Extra Nourishment and Transportation. He would therefore seek for an enhancement of the award amount.

6. The learned counsel for the 2nd respondent/Insurance Company would submit that a very well considered and reasonable award has been passed by the Tribunal. The Tribunal has rightly adopted the monthly notional income since the appellant/claimant has not come forward to provide any proof of his income. The amounts granted under the various heads is reasonable. He would therefore prayed that the award passed by the Tribunal be sustained.

7. Heard the learned counsel on either side and perused the records.

8. The accident had taken place in the year 2018. The appellant claimed to be a farmer and on account of the accident would submit that he has suffered an amputation which has resulted in the appellant's earning capacity being reduced to nothing. The Tribunal ought to have adopted a notional income of Rs.12,000/- and further, higher amounts ought to have been given under the head of Attender Charges, Pain and Sufferings and Extra Nourishment & Transportation. Therefore, this Court proceeds to modify the above award as follows: A Notional income of Rs.12,000/- is taken and 25% towards Future Prospects, is added to this. Therefore, the notional monthly income would be Rs.15,000/-. The appellant/petitioner was aged 47 years and the appropriate multiplier is 13, to which, 70% disability is also got to be taken into account. Therefore, the award under the head of loss of earning capacity would be Rs.16,38,000/- [$\text{Rs.15,000/-} \times 12 \times 13 \times 70/100 = \text{Rs.16,38,000/-}$]. Attender Charges is enhanced to Rs.15,000/- and the loss of Amenities remains the same. This Court grants Rs.60,000/- towards Pain and Sufferings and Rs.25,000/- towards Extra Nourishment and Transportation. The amounts granted under the head of Damages to clothes by the Tribunal is confirmed. Therefore, the Compensation awarded by the Tribunal is reworked as below:



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S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Earning	Rs.13,65,000/-	Rs.16,38,000/-	Enhanced
2	Attender Charges	Rs.8,750/-	Rs.15,000/-	Enhanced
3	Loss of Amenities	Rs.40,000/-	Rs.40,000/-	Confirmed
4	Towards Pain and Sufferings	Rs.40,000/-	Rs.60,000/-	Enhanced
5	Towards Extra Nourishment & Transportation	Rs.15,000/-	Rs.25,000/-	Enhanced
6	Damages to Clothes	Rs.1,000/-	Rs. 1,000/-	Confirmed
	TOTAL	Rs.14,69,750/-	Rs.17,79,000/-	

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation of Rs.14,69,750/- awarded by the Tribunal is hereby Enhanced to a sum of Rs.17,79,000/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the enhanced amount of Rs.17,79,000/- to the credit of M.C.O.P.No.5081 of 2018 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellant/claimant is permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn



To

1. The Motor Accident Claims Tribunal,
III Court of Small Causes,
Chennai.

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+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.29194

C.M.A.No.393 of 2022

SVI (CO)
PM/23/05/2022