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C.M.A.No.1482 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1482 of 2022

and

C.M.P.No.10983 of 2022

National Insurance Company Ltd.,
No.46, Moore Street,
Chennai – 600 001.

... Appellant

Vs

1.Pandiyan

2.S.R.Kandasamy

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 02.01.2020 made in M.C.O.P.No.6840 of 2016 on the file of the Motor Accidents Claims Tribunal (In the II Court of Small Causes), Chennai.

For Appellant	:	Mr.D.Baskaran
For R1	:	M/s.Ramya V. Rao
For R2	:	No appearance



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JUDGEMENT

The Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in M.C.O.P.No.6840 of 2016.

2.The Insurance Company is aggrieved by the fact that the Tribunal below by taking into account Ex.P7, disability certificate as disability in respect of the whole body had fixed a huge compensation of Rs.14,17,500/- under the head of loss of earning.

3.The facts in brief facts are as follows :-

(i) The petitioner had filed the above claim seeking compensation of a sum of Rs.15,00,000/- for the injuries sustained by him in a road accident on 28.08.2016 at about 12.30 hours.



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(ii) It is his case that on the said date, when he was driving his TVS XL Super motorcycle bearing registration No.TN-22-BB-4453 in a North to South direction on the Kundratthur Bazar Road, a Tipper lorry belonging to the first respondent and insured with the second respondent bearing registration No.TN-36-S-6451 came in the opposite direction and dashed against the petitioner's motorcycle. As a result of which, the petitioner has sustained grievous injuries in both legs.

(iii) The petitioner would contend that he is employed as a painter earning a monthly income of Rs.25,000/- and aged about 47 years.

(iv) The first respondent, owner of the vehicle did not contest the claim petition and was set *ex-parte*.

(v) The second respondent/Insurance Company has filed a counter *inter-alia* contending that the driver of the tipper lorry was not made a party to the proceedings so as to establish the factum of negligence. They would



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also submit that the owner of the vehicle has to prove that the driver of the vehicle had a valid driving. That apart, the Insurance Company had denied the age, income and occupation of the petitioner and put him to strict proof of the same.

(vi) The Tribunal below after considering the materials on record held that the accident occurred only on account of the rash and negligent driving of the tipper lorry belong to the second respondent. The second respondent being the insurer was therefore liable to compensate the petitioner. Ultimately, the Tribunal had arrived at a compensation of a sum of Rs.17,64,100/-. The Tribunal has adopted a notional monthly income of Rs.15,000/-, to which, 25% was added towards future prospects. The disability certificate, Ex.P7 would show that the petitioner had suffered a disability of 45%. The petitioner had lost his big toe and lost finger in his left leg and degloving injury to both his legs. Therefore, the amount on account of disability was worked out to a sum of Rs.14,17,500/-. In all, a sum of Rs.17,64,100/- was granted as compensation.



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4. Aggrieved by the adoption of monthly income at Rs.15,000/- and the disability at 45%, the Appellant/Insurance is before this Court.

5. The first respondent has lost his big toe and lost a finger in his left feet and degloving injury in both his legs. Ex.P8, photographs would show the injuries suffered by the first respondent. Therefore, taking into account, the functional disability, the notional income can be assessed at Rs.13,000/-, to which, 25% has to be added towards future prospects and the appropriate multiplier would be 14 and the disability has to be down scaled to 25%. Therefore, the amount under the head of functional disability would be a sum of Rs.6,82,500/- (**Rs.16,250 x 12 x 25/100 x 14**). The Tribunal has awarded a sum of Rs.50,000/- towards extra nourishment, which has to be reduced to a sum of Rs.25,000/-. Likewise, the amount granted under the head of transportation would also be reduced to a sum of Rs.25,000/-. The claimant has been hospitalized for a considerable period of time. Therefore, the attender charges shall be enhanced to a sum of Rs.40,000/- and the future medical expenses is enhanced to a sum of Rs.25,000/-. The amount



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granted under the head of loss of income is deleted and the amount granted under the head of loss of amenities is enhanced to a sum of Rs.75,000/-.

Therefore, the modified compensation is as follows:

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Functional Disability	14,17,500	6,82,500 (reduced)
Pain and Sufferings	1,00,000	1,00,000
Extra nourishment	50,000	25,000 (reduced)
Transport to Hospital	50,000	25,000 (reduced)
Damages to clothes	1,000	1,000
Attender charges	10,600	40,000
Medical Expenses	25,000	25,000
Future Medical Expenses	15,000	25,000
Loss of income	45,000	-
Loss of Amenities	50,000	75,000
Total	17,64,100	9,98,500

6.The appeal is partly allowed and the Award of the Tribunal is modified, reducing the compensation amount from **Rs.17,64,100/-** to **Rs.10,00,000/- (rounded off)**. The Appellant-Insurance Company is



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directed to deposit the said amount to the credit of M.C.O.P.No.6840 of 2016 along with interest at the rate of 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 six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

01.09.2022

Index : Yes/No

Speaking order/non-speaking order

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To

1.The Motor Accidents Claims Tribunal (In the II Court of Small Causes), Chennai.

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

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P.T.ASHA, J.,

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