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C.M.A.No.2823 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2823 of 2022

R.Sathya
W/o.Ramkumar
No.55/39, Gandhi Street,
Kamarajapuram,
Velachery, Chennai 600042

... Appellant

Vs.

1.R.Raselraj,
No.55/39, Gnadhi Street, Kamarajapuram,
Velachery, Chennai 600 042.

2.ICIC Lombard General Insurance Co. Ltd.,
Chotah Bhai Centre, 2nd Floor,
No.140, Nungambakkam High Road,
Chennai 600 034.

3.Ramkumar,
No.55/39, Gandhi Street, Kamarajapuram,
Velcherey, Chennai 600042.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in MCOP.No.1217 of 2013 dated 18.02.2019 on the file of the Motor Accident Claims Tribunal/(IV Judge, Court of Small Causes, Chennai).



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For Appellant : Ms.Ramya V.Rao
For Respondents : Ms.R.Sree Vidhya (for R2)
R1 & R3 (No Appearance)

J U D G M E N T

The Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP.No.1217 of 2013 on the file of the Motor Accident Claims Tribunal/(IV Judge, Court of Small Causes, Chennai).

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed the claim Petition for the injuries sustained by him in a road traffic accident occurred on 11.01.2012. The Tribunal has awarded a sum of Rs.2,84,500/- with interest at the rate of 7.5% per annum. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.



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4.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the offending vehicle, insured with the 2nd Respondent/Insurance company are not under challenge in this Appeal and therefore, the findings rendered by the trial Court in this regard are hereby confirmed.

5.Heard the learned counsel for the claim Petitioner and learned counsel for the Insurance Company on the point of quantum of compensation.

6.In respect of the injury, the claim Petitioner examined the medical witness, PW2/Doctor, who had issued Ex.P.9/Disability Certificate, indicating the injuries and fixed the disability at 55%. A perusal of Ex.P.1/discharge summary, Ex.P.9/disability certificate and also the evidence of the Doctor, reveals that the claim Petitioner has taken treatment at Xcellent Care Hospitals, Velachery, Chennai, from 11.01.2012 to 16.01.2012 for "Right Distal Humerus Supracondylar with Intercondylar comminuted Fracture" and hence, I am inclined to fix the disability at 40% and grant the loss earning capacity at the rate of Rs.3,000/- per percentage. Accordingly, the loss of earning capacity,



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due to the disability sustained by the claim Petitioner comes to Rs.1,20,000/- (Rs.3,000/- X 40). Considering the nature of injuries suffered by the claim Petitioner, I find that the claim Petitioner will not be in a position to join duty as before and hence, monthly income is fixed at Rs.7,000/- and loss of income, for a period of five months comes to Rs.35,000/- (Rs.7,000/- x 5). The other aspects of the compensation awarded by the Tribunal appear to be just and reasonable and hence, the same are hereby confirmed.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Loss of earning capacity	120000
2	Pain and sufferings	40000
3	Transportation	10000
4	Future medical expenses	50000
5	Loss of income	35000
6	Attender charges	3000
7	Loss of amenities	20000
8	Medical expenses	80263
	Total	358263
	Rounded off	358300

7.In total, the claim Petitioner is entitled to a sum of Rs.3,58,300/- (Rupees three lakh fifty eight thousand and three hundred only).



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8.The Tribunal has also awarded 'pay and recover'. After hearing learned counsel for the Petitioner and after perusing the records, I find that the 'pay and recover' imposed by the Tribunal is just and fair and the same does not warrant any interference of this Court. Accordingly, 'pay and recover' ordered by the Tribunal is hereby confirmed.

9.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.2,84,500/- to Rs.3,58,300/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount before the Tribunal, with interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited and recover the same from the 1st Respondent.

(iii) on such deposit being made, the claim Petitioner is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the



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award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

24.01.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order/Non-Speaking Order

sai

To

The IV Judge,
Court of Small Causes,
Chennai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 24.01.2023