

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.8 of 2014 &  
M.P.No.1 of 2014

The Branch Manager,  
M/s.National Insurance Company Ltd.,  
D.O., Saradha College Road,  
Salem-636 007.

.. Appellant

*Versus*

1.Velayutham

2.M.Veeraabathiran

(Respondent 2, owner of the vehicle, are called  
absent and became ex-parte, hence notices to R2  
is dispensed with)

.. Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 06.02.2013 made in M.C.O.P.No.636/2011 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.G.Udayashankar

For Respondents : Mr.V.Kumaravelan for R1

**J U D G M E N T**

The Civil Miscellaneous Appeal, filed by the appellant/Insurance

Company, is directed against the correctness of the impugned award dated 06.02.2013 made in M.C.O.P.No.636/2011 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Dharmapuri.

2. According to the 1<sup>st</sup> respondent/claimant, on 15.09.2011, at about 08.15 a.m., while the 1<sup>st</sup> respondent/claimant was riding in TVS super XL motor cycle bearing Registration No.TN 29 AJ 7773 , from Thoppur to his residence in Ummiyampatti, on the left side of the road, a Hero Honda Splender bearing Registration No.TN 29 AH 0864 came from opposite direction and dashed against the 1<sup>st</sup> respondent/claimant's vehicle. On account of accident, the 1<sup>st</sup> respondent/claimant sustained grievous injuries in his right maxillary region and occipital region, right knee, right knee joint sternum and all over the body. Immediately he was admitted in Government Hospital, Thoppur and took first aid and thereafter, he was taken to Sri Gokulam Hospital, Salem, for further treatment as inpatient from 15.09.2011 to 21.09.2011. Immediately after the accident, FIR was registered on the file of the Thoppur Police Station in Cr.No.549 of 2011 for the offence under Sections 279 and 337 of IPC against the rider of the Hero Honda Splender bearing Registration No.TN 29 AH 0864.

3. Learned counsel appearing for the appellant/Insurance Company would

contend that when the injured / claimant had sustained injuries in the accident, Dr.S.Krishnakumar, who was examined as PW2, has deposed before the Tribunal that he has assessed the disability at 30%. The Tribunal, without accepting the disability certificate and the evidence adduced by Doctor-PW2, has fixed disability at 20%. Therefore, it is not open to the Tribunal to resort to apply the multiplier method. More particularly, when there is no total functional disability, the Tribunal has wrongly applied multiplier method and arrived at the quantum of compensation towards permanent disability at Rs.1,31,040/- which is on the higher side. He would further contend that the Tribunal failed to consider the contributory negligence on the part of the 1<sup>st</sup> respondent/claimant . He also submitted that the learned Tribunal has grossly erred in awarding excess amount on various heads and therefore, the quantum of compensation is liable to be interfered with.

4. But this Court is not able to find any merit in the contentions made by the learned counsel for the appellant. The Tribunal, accepting the version of the 1<sup>st</sup> respondent/claimant supported by the First Information Report, has given a finding that the accident has happened only due to the rash and negligent driving of the rider of the Hero Honda Splender. Since Ex.P9 - copy of the Insurance Policy of the Hero Honda Splender was valid from 18.10.2010 till

17.10.2011 and at the time of accident, the policy was in force. When the Tribunal had answered the negligence on the part of the rider of the Hero Honda Splender and finally held that the Insurance Company which has got coverage on the said Hero Honda Splender, this Court is not able find any interference therein. However, with regard to quantum of compensation, PW2- Doctor, has issued disability certificate which is also marked as Ex.P10, certifying 30% disability in regard to injuries sustained all over his body. The Tribunal, without accepting the evidence of PW2, fixed disability at 20%. However, as per Ex.P5-CT Scan Report, which was proved before the Tribunal that the injured has sustained communitated fracture on the maxillary region and other injuries, had fixed the disability at 20%. After fixing 20% permanent disability, without accepting the case of the claimant that he was earning a sum of Rs.9,000/- p.m., had fixed Rs.3,000/- as notional monthly income and following the decision of **Santhosh Devi vs. National Insurance Company Limited reported in 2012 (2) TNMAC 1 (SC)**, 30% towards future prospects has been added to the income of the 1<sup>st</sup> respondent/claimant petitioner and hence the income of the petitioner was arrived at Rs.3,900/- p.m.. The age of the injured is 45 years at the time of accident. The Tribunal has rightly applied the multiplier method for calculating permanent disability ,  $\text{Rs.3900} \times 12 \times 14 = \text{Rs.6,55,200/-}$  and for 20% disability, it may be arrived at  $\text{Rs.6,55,200} \times 20\% =$

Rs.1,31,040/-. Hence, this Court is not able to interfere with the impugned award passed by the learned Tribunal and the same is confirmed.

5. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petitions are closed.

6.It is submitted that the entire award amount has already been deposited by the appellant/Insurance Company. Therefore, it is for the 1<sup>st</sup> respondent/claimant to move a petition before the learned Tribunal for withdrawing the said amount.

**01.11.2016**

Index : Yes / No  
kal

To

1. The Motor Accidents Claims Tribunal,  
Additional District Judge, Dharmapuri

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

T.RAJA,J.

kal

C.M.A. No.8 of 2014 &  
M.P.No.1 of 2014

01.11.2016