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C.M.A.No.2551 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2551 of 2023

S.Kannan

... Petitioner/Appellant

Vs.

1. R.Prabaharan

2. M.Raja

3. Reliance General Insurance Co. Ltd.,

Branch Office,

2nd Floor, Abirami Towers,

No.43B, Cowly Brown Road,

R.S.Pruam, Coimbatore – 641 002.

...

Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the compensation amount made in judgment and decree dated 21.09.2022 made in M.C.O.P.No.356 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Erode.

For Appellant : Mr.S.P.Yuvaraj



C.M.A.No.2551 of 2023

WEB COPY

JUDGEMENT

The Civil Miscellaneous Appeal is filed to set aside and enhance the compensation amount made in judgment and decree dated 21.09.2022 made in M.C.O.P.No.356 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Erode.

2. It is the case of the appellant that on 15.12.2017 at about 9:30 a.m. when the appellant was travelling as a pillion rider in the motor cycle bearing registration No.TNN 66 L 9554 driven by the first respondent in a rash and negligent manner in an uncontrollable speed, fell down from the vehicle and sustained grievous injuries. While so, the appellant filed a claim petition before the Tribunal claiming compensation to the tune of Rs.70,00,000/-, wherein the Tribunal awarded a sum of Rs.37,87,758/- as compensation. Not satisfied with the said amount, the appellant has filed the present appeal seeking appropriate enhancement.

3. The learned counsel for the appellant submits that the appellant is employed as Assistant at SKM Animal Feeds and Foods (India) Ltd.,



C.M.A.No.2551 of 2023

Nanjai Uthukuli. He further submits that though the appellant was earning monthly salary of Rs.20,000/- and due to the said accident the appellant was not able to perform his avocation which he was carrying on before the accident, however, the Tribunal has fixed only a sum of Rs.17,050/- as monthly income which is on the lower side. He further submits that though the appellant sustained grievous injuries due to the said accident, however the Tribunal has fixed only 70% disability instead of 100% disability which is *per se* unsustainable. Accordingly, he prays for appropriate enhancement in favour of the appellant.

4. Heard the learned counsel for the appellant and perused the materials placed on record.

5. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant / claimant is with regard to quantum of compensation awarded by the Tribunal. It is borne from the Award passed by the Tribunal that the medical board opined that due to the injury sustained by the appellant he had sustained 70% disability. Since



C.M.A.No.2551 of 2023

the disability was not assessed by an independent Doctor, the Tribunal has accepted the disability assessed by the Medical Board.

6. On a perusal of the award passed by the Tribunal it reveals that the appellant is aged about 32 years, in order to prove his income he adduced the income certificate before the Tribunal which was marked as Ex.P.26, the appointment order of the appellant's is marked as Ex.P.25. As per Ex.P.26 the Tribunal fixed the notional income as Rs.17,050/- and added 40% for future prospects as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in *2017 (16) Supreme Court Cases 680* and by adopting the multiplier of 16 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the Tribunal has awarded a sum of Rs.32,08,128/- under the head loss of earning due to disability is wholly sustainable and the same cannot be said to be on the lower side. Further, the compensation awarded under the other heads are just and reasonable, which does not require any interference. Therefore, this Court is not inclined to interfere with the



C.M.A.No.2551 of 2023

award passed by the Tribunal.

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7. In the result, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 21.09.2022 passed by the Motor Accident Claims Tribunal, Erode in M.C.O.P.No.356 of 2018 is confirmed. There shall be no order as to costs.

18.10.2023

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Index : Yes / No

Speaking order / Nonspeaking order

Netrual Citation Case : Yes / No

To

1. The Motor Accident Claims Tribunal, Erode.
2. The Section Officer, V.R.Section, High Court, Madras.



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C.M.A.No.2551 of 2023

M.DHANDAPANI, J.

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C.M.A.No.2551 of 2023

18.10.2023