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C.M.A.No.1479 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1479 of 2017

N.Marimuthu

... Appellant

Vs.

1.V.Suresh Babu

2.Reliance General Insurance Co. Ltd.,
Rai's Tower, 2nd Floor,
Plot No.2054, 2nd Avenue Road,
Anna Nagar,
Chennai – 600 040.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 05.09.2013 made in M.C.O.P.No.2918 of 2011 on the file of the Motor Accidents Claims Tribunal, (VI Small Causes Court) Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For Respondents : R1 – AOS not filed
Mrs.C.Bhuvana Sundari for R2

J U D G M E N T

The petitioner before the Motor Accidents Claims Tribunal is the



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appellant herein. This appeal has been filed against the decree and judgment dated 05.09.2013 passed by the Motor Accidents Claims Tribunal, (VI Small Causes Court) Chennai, in M.C.O.P.No.2918 of 2011.

2.The brief facts of the case is that on 24.06.2011, at about 22.15 hours, the appellant was going on in his motor cycle bearing Registration No.TN 01 AM 0592 at Ambattur Estate Road, Opposite to DAV Boys School, Chennai, from East to West. At that time, a TATA Sumo Car bearing Registration No.TN 02 AK 8220 proceeding in the opposite direction was driven by its driver in a rash and negligent manner ran over the centermedian line and hit against a motor cycle and thereafter hit against the motor cycle driven by the appellant, due to which, the appellant sustained grievous injuries.

3.Thereafter, the injured claimant/ appellant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.10,60,300/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs and directed



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the second respondent Insurance Company to deposit the compensation. Aggrieved by the same, the appellant claimant has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the appellant was employed as AC Mechanic and in order to substantiate the same, his Diploma Certificate was marked as Ex.P8. The learned counsel further submitted that due to the accident, the appellant sustained comminuted proximal tibia fracture (right), lateral condyle femur fracture of right side and crush injury in the 5th over the right foot and calcaneocuboid dislocation over right foot for which orif was done and wound debridement was done on 29.06.2011 and after the accident the appellant was not able to continue his avocation. Thereby, the Doctor assessed the disability at 50% functional disability and the Tribunal awarded a sum of Rs.4,96,800/- towards loss of earning capacity by adopting the multiplier method. However, the Tribunal has not awarded any amount towards future prospects. Hence, the appellant claimant is entitled for enhancement in compensation.



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5.Per contra, the learned counsel appearing for the second respondent Insurance Company submitted that the appellant did not suffer any amputation. Further, without any proof for income, the Tribunal fixed the monthly income of the appellant as Rs.17,250/- and awarded compensation by adopting the multiplier method, as if the appellant sustained functional disability, which is not sustainable one. The learned counsel further submitted that the second respondent Insurance Company has already filed civil miscellaneous appeal, questioning the negligence and the same is pending.

6.Heard the learned counsel appearing for the appellant claimant as well as the learned counsel appearing for the second respondent and perused the materials available on record.

7.Admittedly, on 24.06.2011, at about 22.15 hours, the appellant was riding in his motor cycle at Ambattur Estate Road, Opposite to DAV Boys School, Chennai, from East to West. At that time, a TATA Sumo Car came in the opposite direction in a rash and negligent manner and ran over the centermedian line and hit against a



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motor cycle and thereafter hit against the appellant's motor cycle, due to which, the appellant sustained grievous injuries.

8.Perusal of records reveal that the appellant was employed as AC Mechanic and was earning a sum of Rs.17,250/- per month. Inorder to prove the same, pay slip was marked as Ex.P10 and based on the same, the Tribunal fixed the monthly income of the claimant. However, due to the accident, the appellant sustained only fracture and there is no amputation and has also not produced any evidence to substantiate that after the accident, the appellant was not able to continue his avocation. In the absence of any evidence, the Tribunal awarded the compensation by adopting the multiplier method, as if the appellant sustained functional disability, which is not sustainable one.

9.However, since it is represented by the learned counsel appearing for the second respondent that the second respondent Insurance Company has already filed civil miscellaneous appeal questioning the negligence and the same is pending, this Court is not inclined to interfere with the impugned judgment.



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M.DHANDAPANI,J.
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10.The civil miscellaneous appeal is dismissed. The judgment and decree dated 05.09.2013 made in M.C.O.P.No.2918 of 2011 on the file of the Motor Accidents Claims Tribunal, (VI Small Causes Court) Chennai, is confirmed. No costs.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
(VI Small Causes Court) Chennai.

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