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C.M.A.No.1035 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1035 of 2022

ICICI Lombard Insurance Company Ltd.,
II & III Floor
Nungambakkam High Road
Chottabhai Centre
Chennai – 600 034.

... 2nd Respondent /Appellant

Vs

1.Arvind

... claimant / 1st Respondent

2.P.Pothumani

... 1st Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989 (Act IV of 1939) against the order dated 09.11.2021 in M.C.O.P.No.878 of 2019 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) at Dharmapuri.

For Appellant	:	Ms.R.Sree Vidhya
For Respondent-1	:	Mr.D.Ramesh Kumar
For Respondent-2	:	Not ready in notice



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JUDGEMENT

The Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal, Special Subordinate Judge (MACT), Dharmapuri in M.C.O.P.No.878 of 2019 on the ground that the compensation for disability has been arrived at by the Tribunal by adopting a multiplier method, when the disability is not a permanent one and has not caused any functional loss or a loss of earning capacity to the first respondent/claimant.

2. In order to appreciate the arguments, it is necessary to briefly relate the facts of the case.

One Aravind/first respondent herein/claimant, who is a lorry driver by profession and aged about 24 years, earning a sum of Rs.30,000/- has filed the above claim petition stating that he had suffered injuries in a road accident involving the vehicle belonging to the second respondent herein and insured with the appellant-Insurance Company. It is his contention that



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on 07.08.2019, he was travelling in his two wheeler, bearing Registration No.TN-29-BJ-8195 on the Dharmapuri to Salem National Highways keeping to the extreme left of the road. At about 09.00 p.m, the second respondent's lorry, bearing Registration No.TN-88-D-9392 was proceeding in front of him, the vehicle was being driven in a rash and negligent manner and at a great speed. The driver of the lorry all of a sudden had applied the brakes, as a result of which, the first respondent had hit the rear of the lorry and sustained facial injuries. Therefore, he had filed the claim petition, seeking a compensation of a sum of Rs.10,00,000/-.

3. The first respondent owner of the lorry had not contested the claim and was set *ex-parte*. The Insurance Company had filed a counter *inter-alia* contending that the accident had occurred only on account of the negligence of the first respondent. It is their contention that on the said date, it was the first respondent, who had invited the accident by not maintaining the distance between the two vehicles. They had further contended that the Police have closed the case as a mistake of fact after due



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investigation. Therefore, they contented that they are not liable to compensate the first respondent. They had also questioned the compensation sought for by the first respondent/claimant.

4. The Tribunal below, after hearing the parties and considering the evidence, came to the conclusion that it is only the second respondent herein, as the owner of the lorry, who is vicariously liable to compensate the claimant once the negligence is found on his driver. The appellant as the insurer was therefore liable to pay the compensation. With reference to the compensation, the Tribunal has accepted the disability certificate issued by the Medical Board, which assessed the disability at 11%. The apportionment of this was 5% towards facial disfigurement and 6% towards the dental disability. The Tribunal has adopted the multiplier method and arrived at a just compensation of Rs.1,42,560/- and a total compensation of Rs.2,77,304/-.



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5. The Insurance Company being aggrieved by the calculation of compensation on a multiplier method for the disability is before this Court.

6. Heard the learned on either side and perused the materials available on record.

7. A perusal of the original claim petition would indicate that the claimant has kept the details regarding the injuries sustained by him which was to be filled in Column No.11 blank. In Column No.23, the claimant has stated that he has sustained injuries to his fore head, nose, mouth and teeth. He has not mentioned that he has suffered any fracture or loss of teeth. The Tribunal has relied upon the Ex.C1-Disability Certificate issued by the Medical board and Ex.P2-Discharge summary of the Dharan hospital, Salem and Ex.P3-Wound Certificate. The Tribunal has not discussed as to how the disability has curtailed the functioning of the first respondent-claimant in his day to day activities. The Tribunal has simply taken the assessment and adopted a multiplier method. In the judgment of the



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Hon'ble Supreme Court in the case of *[Sarala Varma and Others vs. Delhi Transport Corporation and another]* reported in (2009) 6 SCC 121, the assessment of disability and the calculation of the compensation for the same has been discussed, in which, the Hon'ble Supreme Court has held that if the disability does not impair the day-to-day functioning of a person as well as cause a hindrance to his avocation, then in such cases, the compensation has to be assessed only on percentage basis.

8. The learned counsel for the Insurance Company would state that the disability assessed by the Medical Board is on the higher side. However, taking into account the age of the claimant and the fact that the injuries were on his face, which would cause a slight disfigurement, the percentage as fixed by the Medical Board at 11% is taken and the amount per percentage is fixed at Rs.5,000/-. Therefore, the compensation under the head of disability would be a sum of Rs.55,000/- (Rs.5,000 x 11%).



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9. The first respondent/claimant would submit that the accident had occurred only on account of the driver of the lorry applying the brake suddenly. If the first respondent/claimant had maintained the mandatory distance, he would not have suffered any injuries. In fact the Rule 23 of the Rules of Road Regulations, 1989 would provide as follows:-

"Distance from vehicles in front:- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop".

Therefore, he has also contributed for the accident and his negligence is assessed at 10%. Therefore, the compensation under head of just compensation is reduced from Rs.1,42,560/- to a sum of Rs.55,000/-.

Therefore, the re-worked compensation is as follows:-

<i>Heads</i>	<i>Amount by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Just Compensation	1,42,560	55,000



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<i>Heads</i>	<i>Amount by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
		Rs.5,000 x 11% (Reduced)
Loss of earnings	12,000	12,000
Pain and Suffering	20,000	20,000
Cost of Nourishment	15,000	15,000
Cost of the Attender	10,000	10,000
Transport Expenses	10,000	10,000
Medical Bills	41,744	41,744
Mental Agony	25,000	25,000
Loss of clothing on accident	1,000	1,000
Total	2,77,304	1,89,744

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the appellant -Insurance Company is liable to pay 90% of the Award Amount i.e, a sum of Rs.1,70,770/- to the claimant. The appellant-Insurance Company is directed to deposit the above said amount to the credit of M.C.O.P.No.878 of 2019 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



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of six weeks from the date of receipt of a copy of this judgment. The first respondent / claimant shall forfeit the remaining 10% of the award amount due to his own contributory negligence. On such deposit being made, the first respondent/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.

01.07.2022

Index : Yes/No
Speaking order/non-speaking order
srn

To

- 1.The Special Sub Judge
Motor Accident Claims Tribunal,
Dharmapuri.
2. The Section Officer, V.R.Section, High Court, Madras

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P.T.ASHA, J.,

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