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C.M.A.No.1360 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1360 of 2022
and C.M.P.No.9863 of 2022

The Branch Manager,
National Insurance Company Limited,
Branch Office, No.88F, Bypass road,
Dharmapuri 636 701.

...Appellant

Vs.

1.Muniyammal
2.A.Chinnasamy

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2022 in M.A.C.T,O.P.No.957 of 2018 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Dharmapuri.

For Appellant : Mrs.N.B.Sureka
For Respondents : Mr.R.Prabhakaran for
Mr.S.P.Yuvaraj for R1

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the
appellant/Insurance Company to set aside the award dated 24.02.2022 in

<https://www.mhc.tn.gov.in/judis>



M.A.C.T.O.P.No.957 of 2018 on the file of the Motor Accident Claims Tribunal
/ Special Subordinate Judge, Dharmapuri.

2.The appellant/Insurance Company is the 2nd respondent in M.A.C.T.O.P.No.957 of 2018 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Dharmapuri. The 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 07.10.2017.

3.According to the 1st respondent/claimant, on the date of accident i.e., on 07.10.2017, at about 15.00 hours, while she was travelling in an auto bearing registration No.TN 29 AD 4937 on Dharmapuri to Melmodakeri road, the driver of the auto drove the same in a rash and negligent manner by turning left side, due to the sudden turn, the first respondent fell down and sustained injuries. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent, owner of the auto and appellant, insurer of the auto.

4. The second respondent, who is the owner of the said auto (first respondent before the Tribunal) remained ex-parte.



5.The appellant/Insurance Company filed a counter statement, denying the averments made in the claim petition and stated that the accident was not due to rash and negligent driving by the driver of the auto belonging to the second respondent. At that time of accident, the first respondent, without proper balance, fell down from the auto and invited the accident. In any event, the compensation claimed by the first respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent examined two witnesses as P.W.1 and P.W.2 and marked 19 documents as Exs.P1 to P19. The appellant/Insurance Company examined two witnesses as R.W.1 and R.W.2 and marked 2 documents as Exs.R1 and R2.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving by the driver of the auto belonging to the second respondent and directed the appellant being insurer of the said auto to pay a sum of Rs.2,63,088/- as compensation to the first respondent.

8.The learned counsel for the appellant/Insurance Company submitted that the award of the Tribunal is erroneous on two aspects. The first respondent



herself is the tort-feasor and the Tribunal ought to have fixed the contributory negligence on the first respondent as she shared the driver seat along with the auto driver in a share auto, which is impermissible. Secondly, the learned counsel submitted that though the first respondent had suffered minor injuries, the Tribunal has erroneously adopted multiplier method, based on the Disability Certificate issued by the Medical Board, which was marked as Ex.P17. The Medical Board found the injuries to be temporary and therefore, the adoption of multiplier method was unwarranted. The learned counsel hence prayed for setting aside the award of the Tribunal.

9. Per contra, the learned counsel for the first respondent/claimant submitted that the accident took place only due to the sharp left taken by the driver of the auto at an high speed, as a result of which, she fell down from the auto and the Tribunal was right in fixing the entire negligence on the driver of the auto. The Tribunal, considering the nature of injuries, accepted the percentage of disability assessed by the Medical Board and adopted multiplier method by giving valid reasons. The total compensation awarded by the Tribunal under the other heads are not excessive and prayed for dismissal of the appeal.



10. The Tribunal after taking into consideration the First Information Report and the evidence of eye-witness found that the accident took place only due to the rash and negligent driving by the driver of the auto. The first respondent examined herself as P.W.1 and in her deposition, she has stated that the driver of the auto drove the same in a rash and negligent manner. The accident took place only due to the sharp left taken by the driver of the auto at an high speed, as a result of which, she fell down from the auto. R.W.1 / driver of the auto further stated that the first respondent fell down from the auto because she did not hold on to the auto properly and she was talking in her mobile phone while travelling in the auto. From the above evidence, this Court finds that the 1st responent fell off from the auto. Considering the evidence adduced on either side, this Court is of the view that not holding on to the auto alone could not have contributed to the fall of the appellant from the auto. The accident had occurred only due to rash and negligent driving by the driver of the auto. Hence, this Court is of the view that the Tribunal was right in fixing the entire negligence on the driver of the auto. There is no reason to interfere with the finding of the Tribunal on negligence.

11. As regards quantum, this Court finds that according to P.W.1, she has suffered the following injuries:

(i) Abrasion + in right knee joint and right big toe,



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(ii) Abrasion + right little finger

(iii) Swelling + middle 1/3 of right arm deformity + tenderness +
abnormal mobility + fracture of shaft right humerus,

(iv) Fracture – phalanx middle finger right hand

12.The first respondent has produced Ex.P5 / Accident Register and Ex.P6 / Wound Certificate to prove the injuries suffered by her. The Medical Board examined the first respondent and issued the disability assessment certificate, which was marked as Ex.P17, by stating that the disability is temporary and it was 10%. This Court also finds that the first respondent has not established before the Tribunal that she has suffered functional disability. Considering the nature of injuries and the disability certificate issued by the Medical Board, this Court is of the view that the Tribunal erred in adopting the multiplier method. However, the first respondent is entitled to compensation by applying percentage method. Admittedly, the first respondent has suffered 10% disability and the accident is of the year 2017 and hence, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, a sum of Rs.50,000/- (Rs.5,000/- X 10%) is awarded under the head disability. The amount of compensation awarded under the other heads are just and reasonable and the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	1,15,200	50,000	Reduced
2.	Loss of earnings	24,000	24,000	Confirmed
3.	Pain & suffering	30,000	30,000	Confirmed
4.	Cost of Nourishment	25,000	25,000	Confirmed
5.	Cost of the attender	10,000	10,000	Confirmed
6.	Transport expenses	7,500	7,500	Confirmed
7.	Medical bills	20,388	20,388	Confirmed
8.	Future medical bills	30,000	30,000	Confirmed
9.	Loss of clothing on accident	1,000	1,000	Confirmed
	Total	2,63,088	1,97,888	Reduced by Rs.65,200/-

13. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.2,63,088/- awarded by the Tribunal is hereby reduced to Rs.1,97,888/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this



judgment. On such deposit, the first respondent is permitted to withdraw the modified award amount now determined by this Court, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.957 of 2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Dharmapuri, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

03.08.2023

Index: Yes/No

Internet: Yes/No

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To

1.The Motor Accident Claims Tribunal /
Special Subordinate Judge, Dharmapuri.

2.The Section Officer
VR Section, High Court of Madras.



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