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C.M.A.(MD)No.300 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

C.M.A. (MD)No.300 of 2008

and

Cross Objection (MD)No.22 of 2010

C.M.A(MD)No.300 of 2008 :

M/s.United India Insurance Co. Ltd.,
Through the Branch Manager,
Chennai.

... Appellant / 2nd Respondent

Vs.

1.G.Chittammal
2.J.Rajeshkannan

... 1st Respondent / Petitioner
...2nd Respondent / 1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree dated 24.10.2007 passed in M.A.C.O.P.No.49 of 2006 on the file of M.A.C.T. Chief Judicial Magistrate, Theni.

For Appellant : Mr.S.Muthalraj
For 1st Respondent : Mr.R.Subramanian
For 2nd Respondent : No Appearance

Cross Objection (MD)No.22 of 2010:

G.Chittammal ... Cross Objector / 1st Respondent / Petitioner

Vs.

1.United India Insurance Co. Ltd.,
Through the Branch Manager,
Chennai. ... 1st Respondent / Appellant / 2nd Respondent

2.J.Rajesh Kannan ...2nd Respondent / 2nd Respondent / 1st Respondent

PRAYER: Cross Appeal filed under Order XLI Rule 22 r/w. Section 96 (1) and (2) of the Code of Civil Procedure, against the judgment and decree dated 24.10.2007 passed in M.A.C.O.P.No.49 of 2006 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Theni.

For Cross Objector : Mr.R.Subramanian



For 1st Respondent : Mr.S.Muthalraj
For 2nd Respondent : No Appearance

COMMON JUDGMENT

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This Civil Miscellaneous Appeal and Cross Objection petition have been filed against the order passed in M.A.C.O.P.No.49 of 2006, dated 24.10.2007, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Theni.

2.Since both the civil miscellaneous appeal and cross objection petition are filed against the same order, C.M.A.(MD)No.300 of 2008 is taken up as the lead case.

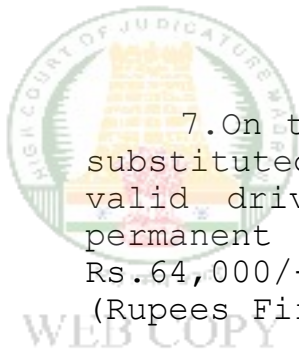
3.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

4.The case of the claimant in M.A.C.O.P.No.49 of 2006 is that on 20.10.2003 at about 10 a.m., the claimant and her husband were walking along the Theni -Periyakulam road near Kailasanathar Koil. When they were about to cross Theni-Periyakulam road, a Indica car bearing the registration No.TN-58-J-3537, which belongs to the first respondent was driven by the driver in a rash and negligent manner and dashed against the claimant. Due to which, the claimant sustained multiple injuries. However, her husband who saw that the vehicle, is being driven by its driver in a rash and negligent manner jumped into a pit on his left side and escaped from the accident. She claimed a sum of Rs.2,50,000/- (Rupees Two Lakhs and Twenty Thousand only) as compensation.

5.The brief substance of the statement of objections filed by the appellant herein/insurance company is as follows:

The appellant/insurance company stated that the driver of the Indica car is not negligent and he is not the cause for the accident. The claimant crossed the road suddenly and that was the cause for the accident. The driver of the second respondent herein drove the vehicle only in a slow speed and followed the road rules. The appellant/insurance company is not liable to pay any compensation to the claimant. At the time of accident, the car was driven by the first respondent, who is the owner of the vehicle and he was not having a valid driving license at the time of accident.

6.The Tribunal after considering both sides, awarded a sum of Rs.79,000/- (Rupees Seventy Nine Thousand only) as compensation. Against which, the appellant/insurance company preferred C.M.A.(MD) No.300 of 2007 and the claimant has preferred Cross Objection (MD) No.22 of 2010.



7.On the side of the appellant, it is stated that the driver is substituted instead of insured Rajesh Kanna who was not having any valid driving licence. The Tribunal has wrongly determined the permanent disability as 64 % and wrongly awarded a compensation of Rs.64,000/- (Sixty Four Thousand only) and again awarded Rs.15,000/- (Rupees Fifteen Thousand only) for three injuries.

8.On the side of the first respondent, it is stated that the Tribunal ought to have enhanced the compensation towards loss of income and that the Tribunal could also award a sum of Rs.10,000/- (Rupees Ten Thousand only) towards pain and suffering.

9.It is seen that the car which met with the accident was driven by the second respondent herein and the FIR was filed against him. As per the order passed in C.C.No.50 of 2004, the second respondent has paid fine for the rash driving before the learned Judicial Magistrate, Periyakulam and that the copy of the order was marked as Ex.A4. Since the second respondent herein has admitted his negligence and paid the fine amount, the Tribunal has fixed the liability on the driver of the car. There was no rebuttal evidence on the side of the appellant. Hence, there is nothing sufficient enough to interfere in the findings of the Tribunal regarding the liability.

10.Regarding the quantum, though the claimant has took treatment only in the Government Hospital, there may be some minor medical expenses and hence, the claimant is entitled to Rs.5,000/- (Rupees Five Thousand only) towards medical expenses and transportation expenses.

11.Since the claimant was having three fractures, she must have suffered temporary loss of income. Hence, the claimant is entitled to Rs.5,000/- (Rupees Five Thousand only) towards temporary loss of earning power. The claimant is entitled to Rs.2,000/- (Rupees Two Thousand only) towards Nutritious food.

12.The claimant is also entitled to Rs.4,000/- (Rupees Four Thousand only) towards pain and suffering. The compensation fixed by the Tribunal under the other heads are confirmed. Therefore, the total compensation would be Rs.95,000/- (Rupees Ninety Five Thousand only). The interest awarded by the Tribunal is maintained.

13.In the result,

(i)This Civil Miscellanoues Appeal is dismissed, enhancing the award of the Tribunal from **Rs.79,000/-** (Rupees Seventy Nine Thousand only) into **Rs.95,000/-** (Rupees Ninety Five Thousand only). The appellant is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of realization and proportionate costs.



(ii) Cross Objection (MD)No.22 of 2010 is partly allowed.

(iii) The appellant is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw her share without filing any formal petition before the Tribunal and after deducting any amount received by her earlier.

(v) The excess amount if any deposited shall be refunded to the appellant. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal - cum -
Chief Judicial Magistrate,
Theni.

2.The Record Keeper, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-8493[F] dated 26/02/2020)

C.M.A. (MD) No.300 of 2008

AND

Cross Objection (MD) No.22 of 2010

25.02.2020

mrn

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