



C.M.A.(MD)No.1200 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.11.2022

Delivered On : 23.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1200 of 2012

United India Insurance Co.Ltd.,
Through its Branch Manager,
50/1, S.N. High Road, Tirunelveli.

.. Appellant /4th Respondent

Vs.

1.Babitha, D/o.Valavanthan
2.S.Camilla Joy
3.The New India Assurance Co.Ltd.,
Through its Divisional Manager,
41, B, Victoria Street,
Tuticorin-1.

... 1st Respondent / Petitioner

4.The Sertary, Iipe Lakshmi
Raman Matriculation Higher Secondary School,
Tuticorin Road, Uthamapandiankulam,
Tirunelveli.

... Respondents 2 to 4 / Respondents 1 to 3

(R2 Exparte Before the Tribunal)



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree order, dated 22.12.2010, made in M.C.O.P.No.144 of 2010, on the file of the Motor Accident Claims Tribunal (Additional District Judge-Fast Track Court), Thoothukudi.

For Appellant	: Mr.V.J.Kumaravel
For Respondents	: Mr.S.Senthi Sankaranathe Kumar for R1
	:Mr.B.Vijay Karthikeyan for R3
	:Mr.K.Hema Karthikeyan for R4
	: No appearance for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 22.12.2010, made in M.C.O.P.No.144 of 2010, on the file of the Motor Accident Claims Tribunal (Additional District Judge-Fast Track Court), Thoothukudi. The appellant herein is the fourth respondent, the first respondent herein is the claimant and the respondents 2 to 4 herein are the respondents 1 to 3 in the original M.C.O.P. Petition.

2. A brief substance of the claim petition in M.C.O.P.No.144 of 2010, is as follows:



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On 29.10.2009, at about 8.20 am., when the petitioner was travelling in a bus bearing Registration No.TN-69-J-0709, was near Rose Mary Matriculation School, the driver of the bus drove the vehicle in a rash and negligent manner and dashed against the School Van bearing Registration No.TN-72-M-7507 that belonged to the third respondent. As a result, the petitioner sustained multiple injuries. She was taken to Tirunelveli Government Medical College Hospital and she took treatment from 29.10.2009 till 02.12.2009 as inpatient. The petitioner was aged about 21 years and she was doing 3rd year B.Tech (I.T.) in Tirunelveli St. Francis Xaviers Engineering College and she claimed a sum of Rs.5,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent in M.C.O.P.No.144 of 2010, is as follows:

The manner of accident as portrayed in the petition is false. It was the driver of the Van, who was solely responsible for the accident. The claim is very excessive. The petitioner has to prove her age, educational status etc. The petitioner has to prove that the owner of the bus was having the permit, fitness certificate and that the driver was having valid driving licence and prayed the petition to be dismissed.



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4. A brief substance of the counter filed by the third respondent in

M.C.O.P.No.144 of 2010, is as follows:

The averments made in the petition are not true. The petitioner has to prove the age, occupation, monthly income, manner of accident, injuries etc. The petitioner is to prove the averments made in paragraph -23 of the claim petition. The petitioner is not entitled to claim more than 6% interest. The claim is excessive. The third respondent is not liable to pay compensation.

5. Brief substance of the counter filed by the fourth respondent in

M.C.O.P.No.144 of 2010, is as follows:

The averments made in the petition are to be proved. The petitioner has to prove her age and that she was studying Engineering. The accident has happened solely due to the rash and negligent driving of the first respondent. Hence, the fourth respondent is not liable to pay compensation. The fourth respondent is an un-necessary party.

6. 1 witness was examined and 19 documents were marked, on the side of the claimants. No witness was examined and 1 document was marked, on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs.84,980/- as compensation to be paid by the respondents 2 and 4. 75% of the



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award amount is to be paid by the second respondent and 25% of the award amount

is to be paid by the fourth respondent.

7. Against the order, the fourth respondent/ appellant has filed this appeal on the following grounds:-

The Tribunal failed to appreciate the rough sketch-Ex.P3, which clearly shows that the bus belonged to the second respondent has crossed the centre line and has come to the wrong side of the road and caused the accident. The Tribunal failed to appreciate Ex.P1, Ex.P3 and Ex.P5 in the proper prospective. The Tribunal is wrong in fixing the negligence on both the drivers, without any proper evidence. The Tribunal failed to note that Ex.P1 and the oral evidence of P.W.1 are contrary. The complaint for the F.I.R was given only by P.W.1 and that she cannot contradict her own version. The Tribunal ought to have fasten the entire liability only on the respondents 2 and 3. Fixing the negligence as 75% : 25% as against the bus and the van respectively is not fair.

8. On the side of the appellant, it is stated that the rough sketch clearly reveals that the bus, was driven in a rash and negligent manner and that the apportionment of liability is not correct.



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9. On the side of the respondent, it is stated that both the drivers were rash and negligent and that the investigating officer was not examined on the side of the appellant. The Tribunal fixed the liability as 75% for the bus and 25% for the Van and the Tribunal has held that both the drivers are responsible for the accident. .

10. On the side of the appellant, a xerox copy of a paper publication was filed. Photograph published in the news paper is not sufficient, to prove the manner of accident, more than that, the paper publication was not marked as a document. Even in the paper publication it was clearly stated that it was a head on collision.

11. Copy of the F.I.R was marked as Ex.P1, M.V.I. report was marked as Ex.P2, rough sketch was marked as Ex.P3, Observation mahazer was marked as Ex.P4, Charge sheet was marked as Ex.P5. No witness was examined on the side of the appellant.

12. In the claim petition itself, it is stated that the bus driver drove the vehicle in a rash and negligent manner. In the chief examination and in the cross examination of P.W.1, it is stated that the bus driver drove the vehicle in a rash and negligent manner. F.I.R and charge sheet were against the bus driver. Hence, it is decided that the driver of the bus is 75% responsible for the accident. Hence, the



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accident is a head on collision and since there was no evidence on the side of the appellant, it is decided that the appellant is 25% responsible. Hence, the liability fixed by the Tribunal is reasonable.

13. No cross objection or appeal was filed on the side of the third respondent or on the side of the claimants. There is no dispute regarding the quantum. Hence, the compensation awarded by the Tribunal is hereby confirmed.

14. The Civil Miscellaneous Appeal is dismissed. No costs.

(i) The appellant – United India Insurance Company, is directed to deposit 25% of the award amount, that is, Rs.21,245/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) The third respondent herein - New India Assurance Company, is directed to deposit 75% of the compensation, that is, Rs.63,735/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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WEB COPY (iii) On such deposit being made, the first respondent herein / claimant is permitted to withdraw the entire award amount along with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by her. The claimant is not entitled for interest for the default period, if there is any.

23.12.2022

Index : Yes/No
Internet : Yes/No
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To

1.The Additional District Judge-Fast Track Court,
Motor Accident Claims Tribunal,
Thoothukudi.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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23.12.2022