



C.M.A.No.42 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.01.2023	Pronounced on 28.02.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.42 of 2019

and

C.M.P.No.224 of 2019

United India Insurance Company Ltd.,
No.1-A, Thanjavur Main Road,
Tiruverumbur, Trichy.

... Appellant

Vs.

1.K.Jayakumari

2.N.Anthonysamy

3.M/s.Operation Mobilisation,
Rep. by its Manager,
No.260/9, Anna Nagar West, Chennai.

4.P.Muthukamatchi

5.C.Rathinasamy

6.The New India Assurance Company Ltd.,
No.12, New Hospital Road,
Gobi.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Award passed in the above M.C.O.P.No.1273 of 2007 dated



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01.09.2017 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Tiruppur.

For Appellant : Mr.D.Bhaskaran

For Respondents
For RR1 to 5 : No appearance

For R6 : Mr.R.Sivakumar

J U D G M E N T

The Appeal has been filed to set aside the Award passed in MCOP.No.1273 of 2007 dated 01.09.2017 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Tiruppur.

2. The insurance Company is the appellant herein and preferred this appeal against the award passed in M.C.O.P.No.1273 of 2017 on the ground of negligence as well as on quantum.

3. K.Jayakumari, the first respondent herein has preferred the M.C.O.P.No.1273 of 2017 before the Motor Accidents Claims Tribunal,



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Tiruppur, claiming compensation for the injuries sustained by her in a road transport accident occurred on 26.05.2007. The first respondent alleged in her pleadings as well as PW1, while deposing that as she was travelling in a Van bearing Registration No.TN-01-D-6789 near CTC Motel, Karanampettai, from East to West and in an opposite direction, a lorry bearing Registration No.TN-36-A-0487 came and both the vehicles dashed. Hence the accident occurred. She has suffered grievous injuries on the left hand side of the ear, back side of her body as well as on the right leg. Both the drivers and the respective insurance Companies were added as parties.

4. Before the Tribunal, the injured examined herself as PW1 and the Doctor, who treated the injured was examined as PW2 and Exs.P1 to 9 were marked and on the side of the respondent/insurance Company for the offending vehicle, RW1 was examined and the disability certificate issued by the Medical Board was marked as Ex.C1.

5. Based on the oral and documentary evidence, the trial Court has come to the conclusion that due to the negligence on the part of the driver of both the



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vehicles, the accident has taken place. Accordingly, the Tribunal had fixed the negligence on the part of the both the drivers at 50 : 50 ratio.

6. Mr.R.Sivakumar, learned counsel for the 6th respondent/The New India Assurance Company Ltd., submitted that challenging the finding of the claims tribunal, fixing contributory negligence at the ratio of 50:50 between the appellant/United India Insurance Company and the 6th respondent/The New India Assurance Company, an appeal in CMA No.2979 of 2018, was filed and this Court, vide judgment dated 19.12.2018, allowed the appeal and fixed the entire liability on United India Insurance Company, the appellant herein and exonerated them [6th respondent herein] from liability. The relevant portion of the judgment is extracted hereunder.

“ 9. The learned counsel appearing for the appellant-Insurance Company has contended that FIR is lodged only against the 2nd respondent, driver of the van, after due enquiry by police. As rightly pointed out by the learned counsel appearing for the 4th respondent, the Tribunal has to appreciate all the materials on record, including the FIR and come to a conclusion



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with regard to negligence. In the present case, apart from M.C.O.P.No.1273 of 2007 filed by the 1st respondent herein, the other persons who traveled in the van also filed claim petitions viz., M.C.O.P.Nos.1271 and 1272 of 2007 and 177 of 2008 for compensation. From the documents filed by the learned counsel appearing for the appellant in the typed set of papers, it is seen that in M.C.O.P.No.1271 and 1272 of 2007 and 177 of 2008 filed by the other claimants, the Tribunal dismissed the claim petitions against the respondents 5 and 6 and appellant. It is not the case of the 4th respondent that the appeal has been filed against the said award. On the other hand, the 4th respondent had compromised before the Lok Adalat one of the claim petition, M.C.O.P.No.1274 of 2007, admitting the entire negligence and paid compensation to the injured person/claimant. There cannot be different awards fixing negligence differently on the driver of the vehicle.(emphasis supplied)

10.The award passed by the Tribunal fixing negligence on the part of the driver of the van had become final and 4th respondent also accepted the same. In view of the same, the award of the Tribunal fixing 50% negligence on the part of the 5th respondent, driver of the lorry belonging to the 6th respondent is



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liable to be set aside and is hereby set aside. The award of the Tribunal directing the appellant-Insurance Company as insurer of the lorry belonging to 6th respondent to pay 50% of the award amount is also set aside. The 4th respondent, as the insurer of the van is directed to pay the entire compensation awarded by the Tribunal.”

From the above, it is evident that this Court [VMVJ] vide judgment dated 19.12.2018 made in CMA No.2979 of 2018, has already held that the United India Insurance Company Ltd., the appellant herein is alone liable to pay the compensation to the claim petitioners. Further, no ground is raised in this appeal challenging negligence.

8. On the point of quantum of compensation, as per Ex.C1/the Disability Certificate issued by the Medical Board, the petitioner is aged 60 years and accordingly, in the Ex.C1, there is a compression fracture on D12 (stable) area due to the injury and there is no injury to the eye. However, the trial Court has granted a sum of Rs.34,011.40/- towards Cataract operation.



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9. In view of the specific finding of the Ex.C1 that there is no injury on the eye and I find that the award of the Medical claim in respect of the above said Cataract surgery does not arise since the injury was not due to or arising out of the accident. After going through the various types of compensation awarded by the Tribunal towards pain and suffering Rs.1,00,000/- was awarded, towards mental agony another Rs.1,00,000/- was awarded and towards nutrition and extra nourishment Rs.50,000/- was awarded which I find it on higher side and accordingly, the total award amount of Rs.6,09,011.40/- is hereby reduced to Rs.5,00,000/-.

10. In fine,

(i) the judgment and decree dated 01.09.2017 passed in M.C.O.P.No.1273 of 2007 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Tiruppur, is hereby modified, reducing the award amount from Rs.6,09,011.40/- to Rs.5,00,000/-. The interest awarded by the Tribunal remains unaltered.

(ii) The appellant/United India Insurance Company is directed to deposit the entire award amount now quantified to the claim petitioner, within a period



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of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner is permitted to withdraw the entire award amount now quantified, with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the civil miscellaneous appeal stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.02.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order/Non-Speaking Order
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To

The Motor Accident Claims Tribunal
(Chief Judicial Magistrate Court),
Tiruppur.



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RMT.TEEKAA RAMAN.J,

ata

Pre-delivery Judgment made in

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Dated: 28.02.2023