



C.M.A.(MD).No.466 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CMA(MD) No.466 of 2020
and CMP(MD) No.5247 of 2020
and Cross Objection (MD) No.24 of 2021**

CMA(MD) No.466 of 2020

The United India Insurance Company Ltd.,
Through its Manager (HUB)
D.No.7-A West Veli Street,
Madurai 1

...appellant/
respondent No.2

Vs.

1.Karalam

... 1st respondent/
petitioner

2.A.Yesuvadiyan

... Respondents 2 /
1st respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 25.02.2019 in MCOP No.1366 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Madurai.



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For Appellant : Mr.C.Karthick
For Respondents : Mr.S.M.Mohan Gandhi for R1
Mr.Veilmuthu for R2

Cross Objection No.24/2021

Karalam

...Cross objector/
respondent No.1
/claimant

Vs.

1.A.Yesuvadiyan

... 1st respondent/
2nd respondent

2.The United India Insurance Company Ltd.,
Through its Manager (HUB)
D.No.7-A West Veli Street,
Madurai 1

... Respondents 2 /
Appellant

PRAYER: Cross Objection is filed under Order 41 Rule 22 of Code of Civil Procedure r/w 173 of the Motor Vehicles Act, against the judgment and decree order dated 25.02.2019 in MCOP No.1366 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Madurai.

For Appellant : Mr.S.M.Mohan Gandhi
For Respondents : Mr.C.Karthick for R2
Mr.Veilmuthu for R1



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JUDGMENT

RMT.TEEKAA RAMAN, J.

This Civil Miscellaneous Appeal is directed against the award and decree dated 25.02.2018 made in MCOP No.1366 of 2014 by the Motor Accident Claims Tribunal, Special Sub Judge, Madurai.

2.Challenging the award of the tribunal on the ground of negligence and quantum of compensation, the insurance company is before this Court with this appeal.

3.The facts of the case in nutshell are as follows:

The claimant/first respondent herein met with an accident that had occurred on 10.06.2011. On the date of accident, when he had driven his two wheeler bearing Registration No.TN64 P 8662, a mini lorry, bearing registration No.TN-74-V-2161 insured with the 2nd respondent came in a rash and negligent manner, hit the two wheeler driven by the claimant/first respondent. In the said accident, the claimant suffered head injuries and as a result of which, shas become vegetative state lying in



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bed. At the time of accident, the claimant was working as a machine operator in the Sundaram Fasteners Limited and because of his medical unfitness, he was given voluntary retirement. For the injuries sustained, he filed a claim petition in MCOP No.1366/2014 claiming compensation of Rs.54,00,000/-.

4. Before the tribunal, the wife of the claimant, who is looking after the claimant, examined herself as P.W.1 and marked Exs.P1 to P26 and the disability certificate issued by the medical board is marked as Ex.C1. On behalf of the respondents, R.W.1 was examined and Ex.R1 to Ex.R4 were marked.

5. The Tribunal, considering the oral and documentary evidence adduced by both sides, came to the conclusion that the accident had occurred due to the rash and negligent driving of the offending vehicle, which is insured with the appellant/insurance company and accordingly held that the offending vehicle and the insurance company are jointly and severally liable to pay the compensation. On the point of quantum of compensation, the tribunal, while relying upon Ex.C1 – disability



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certificate assessing the disability at 75%, has taken into consideration the oral evidence of P.W.1 to the effect that the injured is in a vegetative state and has assessed the disability at 100% and accordingly, awarded the compensation at Rs.43,27,000/- with 7.5% interest from the date of petition till the date of realization. Aggrieved by the liability fixed and award of compensation, the insurance company is before this Court with this appeal.

6. We have heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 2 and perused the materials available on record.

7. It is to be noted that the claimant has filed cross objection for enhancement on various heads.

8. The learned counsel for the appellant insurance company would contend that at the time of accident, the injured claimant was 51 years and left with seven years of service and due to the medical condition, he has retired voluntarily. He would state that since the



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injured was not wearing the helmet at the time of accident, contributory negligence has to be fixed. We have perused the counter statement filed by the insurance company before the tribunal. It is seen that in the said counter statement, no such plea has been taken by the insurance company and further more, as per Ex.P6 - charge sheet, there is no resemblances of wearing helmet by the injured and hence, the ground that has been raised now by the appellant insurance company has been negated.

9. On the point of quantum of compensation, taking into consideration the fact that even as per the medical records, the injured claimant is in a vegetative state and suffered 100% functional disability and hence, 100% disability was fixed by the tribunal and accordingly, by applying Rajkumar's case, the quantum of compensation is justified. Considering the facts of the case, we find that the computation of compensation awarded by the tribunal is in accordance with the law laid down by the Supreme Court and in that view of the matter, we do not find any infirmity or illegality in the quantum of compensation awarded by the tribunal.



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10. In the result, the Civil Miscellaneous Appeal is dismissed.

Consequently the Cross objection is also dismissed. It is represented that the entire award amount has been deposited. The first respondent/claimant is permitted to withdraw the entire award amount along with accrued interest. No costs. Consequently connected Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)

24.11.2023

NCC : Yes/No

Index : Yes/No

RR

To

1.The Motor Accident Claims Tribunal,
Special Sub Court, Madurai

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



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AND
P.B.BALAJI, J.

RR

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