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C.M.A.Nos.183 & 186 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.183 & 186 of 2023
and
C.M.P.Nos.1528 & 1548 of 2023

M/s.United India Insurance Co. Ltd.,
2, Bhuvaneshwari Complex,
Dr.Sankaran Road,
Namakkal Post - 637 001.

... Appellants in both CMAs

vs.

1. Rekha

... 1st respondent in CMA
No.183/2024

1. Surya

... 1st respondent in CMA
No.186/2024

2. C.Palanisamy

... 2nd Respondents in both
CMAs.

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 28.10.2020 in M.C.O.P.396/2017 and 394/2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Ms.R.Rathna Thara

For Respondents : No appearance



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COMMON JUDGMENT

The appellant is the United India Insurance Company Limited.

The claimants Rekha and Surya filed petitions in M.C.O.P.396/2017 and 394/2017 respectively under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.10,00,000/- each for the injuries sustained by them in a road accident that occurred on 15.03.2017.

2. The brief case of the claimants is as follows :

On 15.03.2017, the claimants were travelling as pillion riders in a two wheeler bearing Registration number TN 29 V 3933 on Harur - Uthangarai road. When they were nearing Konakkalmedu village, a speeding Mahindra Bolero car bearing Registration number TN 28 AF 3511 came in the opposite direction, hit their two wheeler, as a result of which, both of them sustained injuries.

3. According to the claimants, the rash and negligent driving of the driver of the Mahindra Bolero car bearing Registration number TN 28 AF 3511 was the cause of the accident and that since the said vehicle was



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insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal, the owner of the car bearing Registration number TN 28 AF 3511 remained absent and was set *exparte*. The Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, vide its orders dated 28.10.2020, fastened negligence on the part of the rider of the car bearing Registration number TN 28 AF 3511 and directed the appellant, Insurance Company to pay compensation of Rs.5,89,960/- to the claimant in M.C.O.P.396/2017 and Rs.79,000/- to the claimant in M.C.O.P.394/2017, together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal also held that the liability of the owner of the car and the insurer is joint and several.



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6. The appellant, the United India Insurance Company Limited has filed this appeal questioning quantum of compensation and also fastening negligence on the driver of the car.

7. Heard Ms.R.Rathna Thara, learned counsel for the appellant, Insurance Company.

8. Though notice was served on the respondents/claimants and their names are printed in the cause list, there is no representation on their behalf.

9. Ms.R.Rathna Thara, learned counsel for the appellant / Insurance Company contended that the Tribunal had not fixed contributory negligence on the part of the rider of the two wheeler, especially when there is head on collusion between two vehicles. She also contended that the Tribunal has awarded a huge sum of Rs.5,89,960/- to the claimant (Rekha) in MCOP.396/2017.



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10. A perusal of the records shows that the accident took place on Harur - Uthangarai road. Both the claimants had clearly deposed that the driver of the Mahindra Bolero Car was rash and negligent in driving his vehicle and nothing useful was suggested to them during the course of cross examination to discredit or disbelieve their versions. The manner of accident also shows that the driver of the car drove his vehicle in a rash and negligence manner. In the circumstances, the Tribunal was right in fastening negligence on the part of the driver of the Mahindra Bolero car bearing Registration number TN 28 AF 3511.

11. A perusal of the discharge summery (Ex.X1) issued by the Government Dharmapuri Medical College Hospital, Dharmapuri shows that the claimant Rekha had sustained 32% of disability and the injuries sustained by her as shown under:

- i. Superior & Inferior Pubic ram right side*
- ii. Saerum # right side*
- iii. Multiple rib fractures right side and
acute pulmonary Thorombo embolism*



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12. The Tribunal after taking into consideration all these aspects, had awarded just compensation of Rs.5,89,960/- to the claimant Rekha and therefore there is no reason to interfere with the same.

13. As far as the claimant Surya is concerned, he sustained simple injuries. Therefore, the Tribunal has awarded just compensation of Rs.79,000/- which also need not be disturbed.

14. In the result,

The Civil Miscellaneous Appeals are dismissed. No costs.
Consequently, connected miscellaneous petitions are closed.

23.09.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No
vum



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To
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1. The Motor Accident Claims Tribunal,
Special District Court,
Dharmapuri.
2. The Section Officer, VR Section,
Madras High Court, Chennai.



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R.HEMALATHA, J.

vum

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