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C.M.A.(MD)No.1339 of 2008
C.R.P(MD)No.613 of 2008
and Cross Obj(MD)No.43 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : **13.08.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1339 of 2008
C.R.P(MD)No.613 of 2008
and Cross Obj(MD)No.43 of 2008
and M.P(MD)Nos.2 and 3 of 2008

C.M.A(MD)No.1339 of 2008:

The Branch Manager,
United India Insurance Co.Ltd.,
South 4th Street,
Puthukottai Town

... Appellant/2nd Respondent

Vs.

1.Selvaraj
2.M.Ramaiya

..1st Respondent/Claimant
`..2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order made in M.C.O.P.No.40 of 2004 dated 29.06.2006 on the file of the Motor Accident Claims Tribunal (Additional District and Session) (F.T.C), Pudukkottai.

For Appellant	: Mr.J.S.Murali
For R1	: No appearance
For R2	: Mr.R.Balakrishnan



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Cross Obj(MD)No.43 of 2008:

Selvaraj ..Cross Objector/1st Respondent
Vs.

1.The Branch Manager,
United India Insurance Co.Ltd.,
South 4th Street,
Puthukottai Town
2.Ramiah

...1st Respondent/Appellant
.. 2nd Respondent/2nd Respondent

PRAYER: Cross objection is filed under Order 41 Rule 22 C.P.C against the fair and decreetal order made in M.C.O.P.No.40 of 2004 dated 29.06.2006 on the file of the Motor Accident Claims Tribunal (Additional District and Session) (F.T.C), Pudukkottai.

For Cross Objector : No appearance

For R1 : Mr.J.S.Murali

For R2 : Mr.N.Balakrishnan

CRP(MD)No.613 of 2008:

The Branch Manager,
United India Insurance Co.Ltd.,
South 4th Street,
Puthukottai Town

... Appellant/2nd Respondent

Vs.

1.Selvaraj ..1st Respondent/Claimant
2.M.Ramaiya ..2nd Respondent/2nd Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order made in M.C.O.P.No.41 of 2004 dated 29.06.2006 on the file of the Motor Accident Claims Tribunal (Additional District and Session) (F.T.C), Pudukkottai.



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For Petitioner : Mr.J.S.Murali
For R1 : Mr.R.P.Ramachandran
For R2 : No appearance

COMMON JUDGMENT

C.M.A(MD)No.1339 of 2008 is filed by the Insurance Company against the fair and decreetal order made in M.C.O.P.No.40 of 2004 dated 29.06.2006 on the file of the Motor Accident Claims Tribunal (Additional District and Session) (F.T.C), Pudukkottai. Cross Obj(MD)No.43 of 2008 is filed by the claimant in M.C.O.P.No.40 of 2004 seeking enhancement of compensation.

2. C.R.P(MD)No.613 of 2008 is filed by the Insurance Company against the fair and decreetal order made in M.C.O.P.No.41 of 2004 dated 29.06.2006 on the file of the Motor Accident Claims Tribunal (Additional District and Session) (F.T.C), Pudukkottai.

3. Two claim petitions were filed for the same accident which took place on 13.09.2003. The Tribunal has passed a common award dated 29.06.2006. In both the claim petitions, it is stated that while the



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claimants were riding a TVS Moped, the bus insured with the Insurance Company came in a rash and negligent manner and dashed against them, as a result of which, they sustained grievous injuries.

4. A counter affidavit has been filed by the Insurance Company stating that the accident took place only due to the negligence of the injured persons as three persons travelled in a Two Wheeler and that the compensation awarded by the Tribunal was excessive and prayed interference of this Court.

5. In both the claim petitions, the claimants examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.2.

6. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.50,000/- in M.C.O.P.No.40 of 2004 and awarded a compensation of Rs.8,000/- in M.C.O.P.No.41 of 2004.

7. The learned counsel appearing for the Insurance Company submitted that the compensation amounts awarded by the Tribunal in



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both the claim petitions are excessive and that the Tribunal without taking into consideration the evidence on record had awarded the compensation and that in any case, since the Insurance Company had established the fact that there was triples riding, the Tribunal ought to have fixed contributory negligence on the claimants.

8. The claimant in M.C.O.P.No. 40 of 2004 has filed a Cross Objection. Though notice has been served on him and the learned counsel has entered appearance, there was no appearance on behalf of him on more than one occasion.

9. This Court gave its anxious consideration to the submissions made on the side of the Insurance Company and perused the records.

10. The points for consideration in the instant cases are as follows:

- i) Whether the Tribunal erred in not fixing the contributory negligence on the side of the claimants; and
- ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?



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11. As regards the 1st question, it is seen that the respondents had examined RW.1, who had deposed that the claimants had contributed to the accident since three people travelled in the Two Wheeler. The manner of the accident was spoken to by the eye witnesses, namely, the injured claimants. It would show that the accident predominantly took place only due to the negligence of the driver of the insured vehicle. However, the fact that the three people travelled in Two Wheeler has been established by the Insurance Company. Therefore, in the facts and circumstances of the case and considering the evidence, this Court is of the view that the claimants also had contributed to the accident and contributory negligence can be fixed at 10% on the claimants. Accordingly, the 1st question is answered.

12. As regards the quantum of compensation, it is seen that the claimant in M.C.O.P.No.40 of 2004 was awarded Rs.50,000/- as stated supra. The claimant had established that he had suffered 25% disability and a sum of Rs.25,000/- was awarded under this head. Further, Rs.10,000/- was awarded under the head of pain and suffering and Rs.5,000/- was awarded towards Transport Expenses, Rs.10,000/- was awarded towards loss of love and affection. Totally, Rs.50,000/- was



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awarded. This Court is of the view that the award is very reasonable and no interference is called for.

13. Similarly, in M.C.O.P.No.41 of 2004, the Tribunal has awarded Rs.8,000/- under the two heads, namely, loss of income and medical expenses. This award is also reasonable.

14. However, taking into consideration the fact that 10% contributory negligence is fixed on the claimants, the compensation amount awarded by the Tribunal in M.C.O.P.No.40 of 2004 is reduced from Rs.50,000/- to Rs.45,000/-. Similarly, the compensation amount awarded in M.C.O.P.No.41 of 2004 is reduced from Rs.8,000/- to Rs. 7,200/-.

15. The Insurance Company shall deposit the modified compensation amount with accrued interest within a period of four weeks from the date of receipt of a copy of this judgment after deducting the amount already deposited, if any. On such deposit, the claimants are permitted to withdraw the same. The Insurance Company is permitted to withdraw the excess amount, if any, deposited by it.



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16. In fine, C.M.A(MD)No.1339 of 2008 and C.R.P(MD)No.613 of 2008 are partly allowed. Cross Obj(MD)No.43 of 2008 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

13.08.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To
1. Motor Accident Claims Tribunal
(Additional District and Session) (F.T.C), Pudukkottai.

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



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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.1339 of 2008
C.R.P(MD)No.613 of 2008
and Cross Obj(MD)No.43 of 2008
and M.P(MD)Nos.2 and 3 of 2008

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