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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.1231 of 2016

CMP.No.9310 of 2016

The United India Insurance Co. Ltd.,
No.48, Arcot Road,
Chennai - 93.

...Appellant

versus

1. Minor Balambigai
minor rep by her guardian respondents 2 and 3.
2. R.Natarajan
3. Manvizhi
4. G.Umashankar

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 11.09.2014 made in MCOP.No.73 of 2013 on the file of the Motor Accident claims Tribunal, III Additional District Judge, Poonamallee.

For Appellant :Mr.S.Arun Kumar

For Respondents :Mr.Vardha Kamaraj for R2 to R4
R1 - Minor - Represented by R2 and R3.

JUDGMENT

(This case has been heard through Video Conference)

This appeal has been filed by the insurance company challenging the impugned award dated 11.09.2014 passed by the MACT, III Additional District Judge, Poonamallee in MCOP.No.73 of 2013.

2. The appellant/insurance company has challenged the impugned award on the following grounds :-

(i) the deceased was herself a tort-feaser and responsible for the cause for the accident and therefore they are not liable to pay compensation to the dependants of the deceased.

(ii) the quantum of compensation fixed by the tribunal under the impugned award is excessive.



3. The Tribunal under the impugned award had directed the appellant/insurance company to pay a compensation of Rs.18,02,000/- to the respondents/claimants as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Income (96,000x17)	16,32,000/-
Mental agony	10,000/-
Funeral expenses	10,000/-
Love and affection respondents 2 and 3 - 25,000/-each 1 st respondent - Rs.1,00,000/-	1,50,000/-
Total	18,02,000/-

4. The accident happened on 06.03.2012. The deceased Nirmal was a pillion rider travelling in the insured motor cycle along with her husband who was the rider. In the claim petition, the respondents/claimants who are dependants of the deceased had themselves admitted that the tyre of the motorcycle got punctured and as a result of the same, the deceased fell down and sustained severe head injuries. The rider of the motor cycle is non-else than the husband of the deceased. This being the case, this Court is of the considered view that when the accident had happened only due to the puncture of the tyre in the insured motorcycle, some amount of the contributory negligence ought to have been fixed by the tribunal on the part of the deceased. However, in the impugned award, despite the admission of the claimants that the accident had happened only due to the puncture of the tyre in the insured motorcycle and the FIR (Ex.A1) has also been closed due to mistake of fact, the Tribunal has failed to fix any contributory negligence on the part of the deceased. Therefore, this Court fixes contributory negligence of the deceased at 15%.

5. With regard to the quantum of compensation awarded by the Tribunal is concerned which the appellant/insurance company has questioned, even though under certain heads, the compensation awarded is on the higher side, but in view of the fact that the tribunal has not awarded any compensation towards loss and future prospects which the respondents/claimants are legally entitled to, the overall compensation awarded by the Tribunal cannot be considered to be excessive and therefore there is no scope of interference by this Court with regard to the quantum. Hence, the second contention of the appellant/insurance company



that the quantum of compensation awarded is excessive is rejected by this Court.

6. Hence, after deducting 15% of the compensation towards contributory negligence on the part of the deceased, the compensation awarded by the Tribunal is reassessed by this Court.

7. For the foregoing reasons, the appeal is partly allowed by fixing 15% contributory negligence on the part of the deceased and the appellant/insurance company is directed to deposit the reassessed compensation of Rs.15,31,700/- before the Tribunal.

8. The appellant / Insurance Company is directed to deposit the entire award amount of Rs.15,31,700/- (reduced amount) as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.73 of 2013 on the file of the Motor Accident Claims Tribunal (III Additional District Judge) Poonamallee, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents /claimants, through RTGS, within a period of two weeks thereafter as per the ratio of apportionment fixed by the Tribunal. Necessary Court fee, if any has to be paid by the respondents/claimants before receiving the copy of this Judgment. In case the appellant/insurance company has deposited any excess amount, they are permitted to withdraw the same by filing an appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
III Additional District Judge,
Poonamallee.

+1cc to M/s.S.Arun Kumar, Advocate, S.R.No.39697
+1cc to Mr.K.Vardha Kamaraj , Advocate, S.R.No.39194

CMA No.1231 of 2016

AD[co]
NSK 07/10/2021