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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2692 of 2016
and C.M.P.No.19337 of 2016

The United India Insurance Company Ltd.,
No.48, Arcot Road,
Chennai - 600 093.

... Appellant/2nd Respondent

Vs

1.Mari

2.Jayavel

... Respondents 1 &
2/Petitioners

3.Sudha

... 3rd Respondent/1st
Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 06.04.2015 made in M.C.O.P.No.436 of 2013 on the file of Motor Accidents Claims Tribunal, (2nd Additional District Judge, Poonamallee).

For Appellant : Mr.A.Dhiraviyanathan

For Respondents: Mr.M.Sivakumar for R1 & R2
Mr.S.Gurumoorthy for R3 -

NA

J U D G M E N T

This appeal has been filed by the Insurance Company challenging ratio of contributory negligence fixed by the Tribunal under the impugned Award dated 06.04.2015 passed by the Motor Accident Claims Tribunal (2nd Additional District Judge, Poonamallee) in MCOP.No.436 of 2013.

2.Heard Mr.A.Dhiraviyanathan, learned counsel for the Appellant and Mr.M.Sivakumar, learned counsel for the respondents 1 and 2.

3.The only contention raised by the Appellant Insurance



Company is that the Tribunal has erroneously fixed the contributory negligence of the vehicle insured with the Appellant at 75%.

4. According to them, the insured container lorry was stationary at the time of the accident and hence they cannot be held responsible to pay the compensation. The deceased was the rider of the motorcycle which dashed against the container lorry which is insured with the Appellant and the accident happened on 19.04.2013.

5. Based on the sketch submitted by the Police which has been marked as Ex.R1 before the Tribunal, the Tribunal has fixed the contributory negligence of the driver of the insured container lorry at 75% and the deceased at 25%.

6. Even though, there may be some basis for the Appellant's challenge as seen from the sketch marked as Ex.R1 but however, this Court is of the considered view that since the Tribunal has erroneously failed to Award any compensation towards loss of future prospects and the compensation awarded by the Tribunal towards transportation, loss of love and affection and funeral expenses is low and not accordance with the settled law, the overall compensation awarded by the Tribunal cannot be considered to be an unjust one.

7. Further, the Tribunal has erroneously adopted the multiplier of 17 instead of 18 which is the correct one for a person aged 19 years. Hence, there is no scope for interference with regard to the quantum of compensation from this Court as the total compensation awarded by the Tribunal at Rs.7,39,500/- cannot be considered to be excessive as alleged by the Appellant.

8. The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Particulars	Amount (in Rs.)
Loss of income	9,60,000
Funeral expenses	10,000
Transportation expenses	5,000
Love and affection (2 petitioners)	10,000
Damage to clothing	1,000
Total	Rs.9,86,000/-
75% contributory negligence	Rs.7,39,500/-



6. For the foregoing reasons, this Court is of the considered view that there is no merit in this Appeal. Accordingly, this Appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the entire award amount along with interest and costs as assessed by the Tribunal after deducting the amount already deposited if any to the credit of MCOP.No.436 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.436 of 2013 to the bank account of the respondents 1 and 2 as per the ratio apportioned through RTGS within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(2nd Additional District Judge, Poonamallee).

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

+1cc to Mr. A. Dhiraviyanathan, Advocate, S.R.No.28747
+1cc to Mr. M. Sivakumar, Advocate, S.R.No.28671

C.M.A.No.2692 of 2016

NRL(CO)
CB(13/09/2021)