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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1469 of 2021
and C.M.P.No.7689 of 2021

M/s.United India Insurance Co. Ltd.,
Arabindo Salai, Block-19,
Neyveli.

...Appellant/3rd Respondent

Vs.

1. Vidhya

2. Minor Priyadharshini

3. Minor Iyyappan

4. Chandra

5. Jayaraman

..Respondents 1 to 5/Petitioners

6. Kalai Selvan

7. Gunavathi

..Respondents 6 & 7/Respondents 1 & 2

(R2 & R3 rep by their mother R1)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the judgment and decree dated 07.08.2020, made in M.C.O.P.No.97 of 2019, on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Virdhachalam.

For Appellant

: Ms.R.Rathna Thara

For Respondents 1 to 5

: Mr.Udhaya Kumar

J U D G M E N T

(The case has been heard through video conference)



This appeal has been filed by the insurance company challenging the impugned order dated 07.08.2020, passed by the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Virdhachalam, in M.C.O.P.No.97 of 2019.

2. The appellant / insurance company challenged the award on the ground that the Tribunal has erroneously not fixed any contributory negligence on the part of the deceased as the deceased was admittedly sleeping under the tractor and therefore the Tribunal ought to have fixed contributory negligence on his part.

3. This Court perused and examined the impugned award. As seen from the evidence available on record, it is an admitted fact that the deceased was sleeping under the tractor when a lorry due to its over speed dashed against the tractor which resulted in the death of Packiyaraj. Further, it is an admitted fact that the deceased is also the driver of the tractor. However, under the impugned award, the Tribunal has not fixed any contributory negligence on the part of the deceased, even though he was sleeping under the tractor and was also the driver of the tractor. This Court is of the considered view that contributory negligence ought to have been fixed on the part of the deceased as he was careless in sleeping under the tractor. After giving due consideration to the same, this Court is of the considered view that 25% contributory negligence has to be fixed on the part of the deceased. Accordingly, 25% contributory negligence is fixed on the part of the deceased.

4. In so far as quantum of compensation awarded by the Tribunal is concerned, the appellant insurance company has not raised any serious dispute. Since contributory negligence has been fixed on the part of the deceased at 25%, the total compensation payable to the respondents 1 to 5 / claimants 1 to 5 after deduction of 25% towards contributory negligence on the part of the deceased, the compensation is reduced to Rs.18,43,200/- instead of Rs.24,57,600/- erroneously fixed by the Tribunal.

5. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award is reduced to Rs.18,43,200/- instead of Rs.24,57,600/- erroneously fixed by the Tribunal. The details of the compensation now awarded by this Court is detailed hereunder:

Sl No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or set aside or granted or reduced (Rs.)
1.	Loss of income	22,17,600	22,17,600	Confirmed
2.	Loss of consortium (R1)	40,000	40,000	Confirmed
3.	Loss of love and affection (R2 to R5)	1,60,000	1,60,000	Confirmed
4.	Loss of Estate	15,000	15,000	Confirmed
5.	Transport charges	10,000	10,000	Confirmed
6.	Funeral expenses	15,000	15,000	Confirmed
	Total (Rounded)	24,57,600	24,57,600	
	Less: 25% Contributory Negligence	---	18,43,200	Reduced by Rs.6,14,400/-

6. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.24,57,600/- is hereby reduced to Rs.18,43,200/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant / insurance company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.97 of 2019, on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Virdhachalam. On such deposit of the compensation amount, the claimants are permitted to withdraw their respective award amount as directed by the Tribunal along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. So far as the amount awarded to the minor claimants are concerned, the amount should be deposited in a fixed deposit in a nationalised bank as directed by the Tribunal and the accrued interest shall be withdrawn as directed by the Tribunal. The claimants are



entitled to refund of Court fee, in any, on the reduced amount of compensation now determined by this Court. Consequently, the connected miscellaneous petition is closed. No costs.

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s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
III Additional District and Sessions Court,
Virdhachalam.
2. The Section Officer,
VR Section, High Court, Madras.

+1 CC to Mr.S. Udayakumar, Advocate sr 56418.

C.M.A.No.1469 of 2021
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NRL (CO)
SP (10/12/2021)