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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1330 of 2021

1. Dhanabakkiyam
W/o.Late Rajavel
2. Subramani
S/o.Late Rajavel ... Appellants

Vs.

1. Kumaresan,
S/o.Ganesan
2. Sadhasivam,
S/o.Muthugounder
Prop: Sri Murugan Bus Service,
A2 Kudi Street, Kollapatti,
Tiruchengode Taluk,
Namakkal District.
3. The United India Insurance Co.Ltd.,
146/N, 2nd Floor, Kumar Complex,
Anna Salai, Tiruchengode Town & Taluk,
Namakkal District.
4. The United India Insurance Co.Ltd.,
Branch Office at 1170, Muthaih Complex,
Mettur Road, Erode 638 011. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order in M.C.O.P.No.649 of 2018 dated 23.01.2021 on the file of the Motor Accident Claims/Special District Judge, Erode.

For Appellants : Mr.T.S.Arthanareeswaran

For R3 & R4 : Ms.I.Malar



JUDGMENT

The claimants are the appellants in this appeal. In this appeal, the appellants/claimants have sought for enhancement of compensation.

2. By the impugned Judgment and decree dated 23.01.2021 in M.C.O.P.No.649 of 2018, the Motor Accidents Claims Tribunal (Special District Judge, Erode) has determined a total compensation of Rs.10,11,347/- under various heads as detailed below:-

Sl.No	Heads of Compensation	Amount Awarded by the Tribunal
1.	Loss of Income	Rs.7,91,964/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Parental Consortium	Rs. 40,000/-
5.	Loss of Consortium	Rs. 40,000/-
6.	Medical Expenses	Rs.1,09,383/-
	Total	Rs.10,11,347/-

After deducting 50% contributory negligence on the part of the deceased the Tribunal has awarded a sum of Rs.5,05,673/- as compensation to the appellants/claimants.

3. The Tribunal has come to a conclusion that the deceased was also equally responsible for the accident considering the fact that the deceased neither possessed driving license nor renewed the Registration Certificate and therefore has deducted 50% of the compensation towards contributory negligence of the deceased.

4. Heard the learned counsel for the appellant and the 3rd & 4th respondents. I have perused the impugned Judgment and decree and the exhibits which were marked before the Tribunal.

5. The narration of the manner of the accident indicates that the deceased attempted to turn the two wheeler for west to north on a busy intersection, when the bus insured with the 3rd respondent was hit the two wheeler from behind. Both the vehicles were proceeding from west side of the road. P.W.2-Manikandan is an eye witness who has deposed that the driver of



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the bus was negligent. There are no contra evidence of any other eye witness. Thus, unless failure to renew the Registration Certificate Book and failure to possess a driving license cannot warrant 50% contributory negligence.

6. Considering the manner in which the accident had taken place, I am inclined to reduce the contributory negligence of the deceased to 15%. Accordingly, the award amount of Rs.5,05,673/- is enhanced to Rs.8,59,645/- i.e, $\text{Rs.10,11,347/-} \times 85/100 = \text{Rs.8,59,645/-}$.

7. The 3rd respondent/Insurance Company is therefore directed to deposit the aforesaid compensation of Rs.8,59,645/- together with interest at 9% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by it, within a period of six weeks from the date of receipt of a copy of this Judgment.

8. On such deposit being made by the 3rd respondent/Insurance Company, the appellants/claimants are permitted to withdraw the same together with interest accrued thereon, less any amount already withdrawn in the same proportion as was ordered by the Tribunal.

9. This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal,
Special District Court, Erode.

C.M.A.No.1330 of 2021

VSN-II(CO)
SB(12/10/2021)