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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2210 of 2017

United India Insurance Company Ltd.,
Mettupalayam Branch,
Mettupalayam.

...Appellant/3rd Respondent

Vs

1.Sudarkodi @ Selvi

2.S.Andal

..Respondents 1 & 2/Petitioners

3.Lakshmanan

4.M/s.Kannan Steel Corporation,
rep. by its Proprietor,
Charu Complex, 41/5,L, 53L,
Kothari Road, Mettupalayam.

5.R.Karthikeyan

...3 to 5 Respondents/Respondents 1,2 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2013 made in M.C.O.P.No.53 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.S.Makesh for R1 and 2

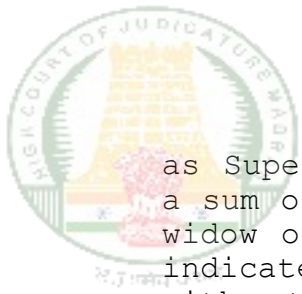
R3 and R5 - steps not taken

R4-No Appearance

J U D G M E N T

Heard the learned counsel for the appellant and the respondents.

2.It is case of fatal accident where the Tribunal has awarded a sum of Rs.9,00,000/- as compensation for the deceased accident victim who was at that time aged 33 years old, working



as Supervisor in a garment export company alleged to be earning a sum of Rs.7,600/- per month. The claimants are the mother and widow of the deceased. The evidence placed before the Tribunal indicates that the accident has occurred when the deceased along with three others travelling in a two wheeler bearing Registration No.TN 37 V 6121 was dashed by a lorry bearing Registration No.TN 40A 3010 insured under the appellant company.

3.In the appeal, the learned counsel for the appellant Insurance Company submitted that the Tribunal erred in awarding a high compensation of Rs.9,00,000/- to the claimants, when it has been proved and accepted that the deceased was riding the two wheeler carrying three persons in the pillion contrary to the traffic Rules. Thus, the accident victim has contributed for the accident. The Tribunal has not considered the said contribution of the deceased for the accident. It has attributed the entire negligence on the lorry driver.

4.This Court on considering the evidence, find that the Tribunal ought to have taken note of the fact that there is gross traffic violation committed by the deceased and even if he had been travelling cautiously on the road margin, one cannot expect he would have driven the vehicle with proper care and alacrity, when the three others were on the pillion. The Tribunal ought to have fixed the contributory negligence on the rider/victim and should have deducted compensation to that extent. Having failed to deduct for the contributory negligence, it is a fit case where the Court on appeal has to interfere. However, it has to be taken note of the fact that the accident occurred on 21.04.2006 and the claimants who are the wife and the mother have come to the court nearly five years after the accident seeking compensation and while computing the loss of income, the Tribunal has not awarded any compensation towards the loss of future prospects.

5.For the aforesaid reasons, this Court is not inclined to interfere in the award passed by the Tribunal, though it is a fit case to deduct substantially for the contributory negligence. As a result, the appeal is dismissed.

6.Learned counsel for the appellant reports that the entire award amount has already been deposited in the MCOP Account and 50% of it withdrawn by the claimants as per the order passed by this Court. In such case, the balance amount is permitted to be withdrawn by the claimants in the ratio as apportioned by the Tribunal, on appropriate petition.



7. In the result, the civil miscellaneous appeal is dismissed. No order as to costs.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vri
To

The Subordinate Judge
Motor Accidents Claims Tribunal,
Pollachi.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.D. Bhaskar, Advocate sr 13665.

CMA NO.2210 of 2017

AJS (CO)
SP(06/09/2021)