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C.M.A.No.2776 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

C.M.A.No.2776 of 2022

United India Insurance Company Ltd.,
Rep. By its Manager,
AKM Towers, 1st Floor,
397-1 Junction Main Road,
Salem – 636 004

... Appellant

Vs.

1. Mangammal
W/o of Late Durairaj
2. Minor Agalya
D/o Late Durairaj, aged about 11 years,
3. Minor Seguvera,
D/o Late Durairaj, aged about 9 years
(Minors rep. by next friend mother/
1st respondent)
4. Samanthi
W/o Vedyappan aged about 50 years
5. M.Nagarajan,
S/o Marimuthu

..Respondents



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Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and decree dated 28.01.2022 in M.C.O.P.No.70 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Harur.

For Appellant : Mr.C.Paranthaman
For Respondents : Mr.M.Selvam

J U D G M E N T

This Appeal is directed against the order of the learned Motor Accident Claims Tribunal, Harur, dated 28.01.2022 in M.C.O.P.No.70 of 2012, wherein, in respect of a fatal accident, on the claim made by four claimants, being the wife and minor daughters and mother of the deceased, a total sum of Rs.24,46,472/- was awarded by the Tribunal. Aggrieved by the quantum thereof, the present Appeal is filed by the Insurance Company.

2. Mr.C.Paranthaman the learned counsel appearing on behalf of the appellant would submit that in this case, the deceased was driving a two wheeler without a licence and also not wearing a helmet and the two wheeler is also not insured. All these three factors ought to have been



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taken as a failure to take reasonable care and therefore, the Tribunal should have treated this as contributory negligence and atleast 20% of the award amount should have been deducted for the contributory negligence on the part of the deceased.

3. We find that the Tribunal has considered the question of contributory negligence and had rejected the case of the Insurance Company based on the ratio of the judgments relied upon by the Tribunal in paragraph No.16 and for the fact that the driver of the offending vehicle was not the examined by the Insurance Company so as to prove the contributory negligence. When the accident happened on the sole negligence and rash driving of the offending vehicle, then the Tribunal findings is that the non-possession of the license or non-insurance of the deceased vehicle becomes redundant and was not a proximate cause for the accident and therefore, did not deduct any amount for the contributory negligence. In any event, we see that for the loss of love and affection, only a sum of Rs.44,000/- is granted by the Tribunal. Similarly, for the funeral expenses, only a sum of Rs.16,500/- is granted by the Tribunal. Even if we accept that a portion of the award has to be



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deducted, then, it would again be set right by awarding the appropriate amount towards loss of affection, consortium, funeral expenses etc.

4. In that view of the matter, over all we find that the award of the Tribunal is a reasonable amount and not excessive or exorbitant amount. Therefore, Civil Miscellaneous Appeal fails and the same dismissed. However, there shall be no order as to costs.

5. The insurance Company is directed to deposit the entire award amount, less the amount if any, already deposited within six weeks from the date of receipt of this order and except the minors shares, the other claimants are permitted to withdraw their respective shares as apportioned by the Tribunal.

(J.N.B,J.) (D.B.C, J.)
09.06.2023

Index : Yes / No
Internet : Yes
vsi

To

The Motor Accident Claims Tribunal,
Subordinate Judge, Harur.



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J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY, J.

vsi

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