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C.M.A.No.3878 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3878 of 2019
and C.M.P.No.22118 of 2019

Branch Manager
United India Insurance Company Ltd
Bangalore

.. Appellant

Versus

1.Rajamani
2.Minor. Amsa
3.Minor. Tamilselvi
4.Minor.Shakthi
5.Minor.Sarathi
6.Minor.Srinath
7.Minor.Ramaiya
8.Madammal
(Minor respondents by their next friend 1st respondent Rajamani)

9.The Manager
Vikram Logistics & Maritime
Services Pvt. Ltd
Bangalore Rural District
Karnataka State

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (Additional District Court), Krishnagiri made in MCOP.No.833 of 2013 dated 29.02.2016.

For Appellant

: Mr.Suriya Prakash
for Mr.D.Bhaskaran

For Respondents

: Mr.C.Prabakaran for R1 to R8



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JUDGMENT

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The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal (Additional District Court), Krishnagiri made in MCOP.No.833 of 2013 dated 29.02.2016.

2.The Insurance Company is the Appellant herein seeking to challenge the award passed by the Tribunal in M.C.O.P.No.833 of 2013 on the ground of negligence.

3. The respondents 1 to 8 are the legal representatives of the deceased viz., Mariappan. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The factum of the accident is not in dispute, however, the manner of the accident is in dispute.

4. During the trial before the Tribunal, the Claim Petitioner 1 was examined herself as PW1. Ex.P1 to P7 were marked. Ex.P1 is the FIR in Crime No.882 of 2012. Ex.P4 is the Death Certificate of the deceased, Ex.P5 is the Legal Heirship certificate of the deceased. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the accident has



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taken place due to the carelessness of the driver of the first respondent vehicle, accordingly, fixed the negligence liability on the offending vehicle namely the vehicle insured with the appellant company. Considering the age of the petitioner, i.e., 35 years, as per the death certificate, the Trial Court fixed the notional income as Rs.8,000/- per month. As per Sarla Verma's case, it fixed the total loss of dependency to the claim petitioners as Rs.15,36,000/- (i.e., $8000 \times 12 \times 16 = 15,36,000$) which were divided to the claim petitioners as Rs.1,99,680/- each, to the claim petitioner Nos. 1 to 7 and Rs.1,38,240/- to the claim petitioner No. 8. Furthermore, the Trial Court granted Funeral expenses as Rs.20,000/-, transportation expenses at Rs.20,000/-, loss of consortium as Rs.50,000/- to the first claim petitioner, loss of love and affection to the claim petitioner 1 as Rs.50,000/- and Rs.25,000/- each to the claim petitioners 2 to 8, totalling to the tune of Rs.18,51,000/-.

5. After hearing the counsel for the Appellant Insurance Company and also taking note of the plea raised by the Insurance Company that at the time of accident, the deceased rode the two wheeler carelessly and met with the accident. Therefore, the carelessness of the deceased riding two wheeler on the date of accident, assumes significance. Therefore, this Court is of the considered



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view that contributory negligence of 30% has to be put on the head of the deceased. Accordingly, this Court comes to the conclusion that the accident has taken place due to rash and negligence of the driver of the vehicle/deceased at the ratio of 70:30. Hence, the award amount is reduced by 30% (i.e., 18,51,000 – 5,55,300 (30%) = 12,95,700) after taking note of the contributory negligence.

6. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above and the contributory negligence is fixed at the ratio of 70:30 among the insurance company and the driver of the vehicle/deceased. Accordingly, the compensation awarded is reduced from Rs.18,51,000/- to Rs.12,95,700/-. The rate of interest awarded by the Tribunal remains in tact. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) the Appellant insurance company is directed to deposit the modified reduced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) On such deposit being made, the claimants 1, 2, 3, 6 to 8 are permitted to withdraw their share of the award amount with proportionate



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accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any already withdrawn by filing necessary application before the Tribunal. The share of minor respondents 4 and 5 shall be deposited in any one of the Nationalised Bank till they attain majority and the first respondent/mother is permitted to withdraw the accrued interest for the welfare of the minors.

(iv) If at all the Appellant Insurance Company had already deposited the awarded compensation amount, after satisfaction of the award, the Tribunal is directed to refund the surplus deposited money taking note of the reduced compensation amount herein, to the Appellant Insurance Company.

06.06.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
dhk

A.A.NAKKIRAN, J.

dhk

To

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The Additional District Judge
Motor Accidents Claims Tribunal
Krishnagiri

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