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C.M.A.No.2571 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2571 of 2021

and

C.M.P.No.14722 of 2021

The New India Assurance Co. Ltd.,
Represented by its Divisional Manager,
1st Floor, Amman Complex,
No.1360, EVN Road, Erode - 638 011.

... Appellant

Vs.

1. Madhammal
2. Nishanthi
3. Minor Barathkumar
4. Minor Kowsalya
(Respondent Nos.3 and 4 being minors are
represented by their next friend / 1st respondent
Mother Madhammal)
5. B. Govindaraj

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging the award dated 10.12.2020 made in M.C.O.P. No.59 of 2018 on the file of the Motor Accident Claims Tribunal, (Special District Court), Dharmapuri.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.M.Selvam
for R1 to R4

R5 - *Ex-parte*



JUDGMENT

WEB COPY This appeal has been filed by the Insurance Company, questioning the contributory negligence determined by the Tribunal and also questioning the multiplier adopted by the Tribunal for assessing the loss of income of the deceased. According to the appellant / Insurance Company, being a head-on collision and the deceased had driven his vehicle by violating the traffic rules, the Tribunal ought to have fixed his contributory negligence at a higher percentage than 25%. It is also the contention of the appellant that even though the deceased was aged 51 years, the Tribunal has determined his age at 49 years based on the ex-service man book. But the driving license reveals that his age was 51 years. The contention of the learned counsel for the appellant before this Court is disputed by the learned counsel for the respondents / claimants.

2. The learned counsel for the appellant also contends that the rough sketch with regard to the spot of the accident is very much available, but, however, the same has not been marked as an exhibit before the Tribunal. The learned counsel for the respondents / claimants has also not raised any serious objection if the matter is remanded back to the Tribunal for fresh



consideration on merits and in accordance with law by granting liberty to the appellant / Insurance Company to file additional documents before the Tribunal. Admittedly, the respondents / claimants have not withdrawn any sum from and out of the deposit made by the appellant / Insurance Company before the Tribunal. While that be so, no prejudice would be caused to any of party if the matter is remanded back to the Tribunal for fresh consideration on merits and in accordance with law after granting liberty to both the parties to file additional documents if they deem so fit to file and the Tribunal is directed to pass an award within a time frame to be fixed by this Court.

3. Since sufficient documentary evidence has not been produced by the appellant / Insurance Company despite the fact that certain documents to substantiate their contentions are very much available and in view of the fact that the learned counsel for the respondents / claimants has not raised any serious objection for remanding the matter back to the Tribunal for fresh consideration, this Court deems it fit to set aside the impugned award and remand the matter back to the very same Tribunal for fresh consideration on merits and in accordance with law, after granting liberty to both the parties



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to file additional documents if any before the Tribunal.

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4. In the result, the impugned award is hereby set aside and the matter is remanded back to the very same Tribunal (i.e., The Motor Accident Claims Tribunal, (Special District Court), Dharmapuri) for fresh consideration on merits and in accordance with law and liberty is granted to all the parties to file additional documents before the Tribunal and the Tribunal shall consider the same on merits and in accordance with law after affording an opportunity to cross examine the witnesses to both the parties and the Tribunal is directed to pass a final award within a period of four months from the date of receipt of a copy of this Judgment. No Costs. Consequently, the connected miscellaneous petition is closed.

04.06.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accident Claims Tribunal, (Special District Court),
Dharmapuri.

2. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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