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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 402 of 2021

M/s. IFFCO Tokio General Insurance Company Limited,
Represented by Manager,
KBS Arcade No.2, 2nd Floor,
No.4/1044, Covai Main Road,
Karur.

... Appellant

Vs.

1. Chinnammal
2. Sadhasivam
3. Ganesamoorthi
4. Subramani

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the Judgment and Decree dated 17.03.2020 passed in M.C.O.P.No.312 of 2018 on the file of the Motor Accident Claims Tribunal/District Court, Karur.

For Appellant	: Mr.V.Sakthivel
For R-1 to R-3	: Mr.K.Sudalaiyandi
R-4	: No Appearance



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JUDGEMENT

The Insurance company has filed the Appeal against the award passed by the Motor Accident Claims Tribunal/District Court, Karur, dated 17.03.2020 in M.C.O.P.No.312 of 2018.

2. The contention of the Insurance Company is that the deceased drove his vehicle on the wrong side and hence 100% negligence ought to have been fixed on the deceased, but the Tribunal had fixed the negligence on the lorry as 60% and the deceased as 40%. On seeing the nature of accident as described in the rough sketch filed along with Claim petition is that the deceased drove his vehicle on the wrong side. The deceased ought to have kept left, but he was driving his vehicle on the right side of the road. The lorry which was coming on the opposite side has hit the two-wheeler and the driver of the two-wheeler died.

3. Since the two-wheeler had come on the wrong side the entire liability cannot be fixed on the two-wheeler. The lorry ought to have maintain normal speed. Moreover, the lorry would have stopped the vehicle after seeing the two-wheeler coming on the wrong side.



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4. It is seen that the Tribunal has fixed negligence on the lorry driver as 60% and on the deceased as 40%. Since the deceased had plied the two-wheeler on the wrong side, this Court is of the considered opinion that the correct fixation of negligence and contributory negligence is 50% on the lorry driver and 50% on the deceased. After deducting 50% of contributory negligence, the award of Rs.3,42,000/- is appropriate.

5. The appellant further contended that the compensation fixed under the head of loss of love and affection of sons as Rs.1,00,000/- is illegal. It is seen that the Tribunal had fixed Loss of Consortium as Rs.40,000/- to wife and Rs.1,00,000/- for Loss of Love and Affection for two sons. After adding inflation, the wife is entitled to Rs.48,000/- and after adding inflation the sons are entitled to Rs.48,000/- + Rs.48,000/-. If this is added it would come to Rs. 1,44,000/-. But the Tribunal had granted only Rs.1,40,000/- on both the heads. Therefore, this Court is of the considered opinion that the Tribunal had fixed fair compensation and the plea of the appellant is rejected. Even though the claimant had not filed any appeal this Court is inclined to fix the compensation under the Head of Loss of Consortium as Rs.48,000/- and under the Head of



Loss of Love and Affection as Rs.96,000/- (Rs.48,000/- each). Hence the award amount of Rs.6,84,400/- is increased to Rs.6,88,400/-. 50% of Rs.6,88,400/- is Rs.3,44,200/-

6. It is submitted that the appellant has deposited 60% of the award amount of Rs.4,10,400/-with accrued interest and costs. As per the modified amount the claimants are entitled a sum of Rs.3,44,200/-, as compensation *[50% of the total compensation of Rs.6,88,400]* along with 7.5% interest with costs. The claimants are entitled to withdraw their share as apportionment fixed by the Tribunal. The Insurance Company is permitted to withdraw the balance amount along with accrued interest.

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

No Costs.

09.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The District Court,
[Motor Accident Claims Tribunal],
Karur.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.M.A(MD)No.402 of 2021

09.01.2024