BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.03.2024**

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.432 of 2022
and
C.M.P(MD)No.3847 of 2022

The Manager,
United India Insurance Company Limited,
924-A, Main Road, Catholic Centre,
Kovilpatti, Tuticorin District. ... Appellant

Vs.

1.Satheesh Kumar

2.Saravanan ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment, dated 26.11.2021, made in M.C.O.P.No. 4 of 2019 on the file of Motor Accident Claims Tribunal (Sub Court), Paramakudi.

For Appellant : Mr.I.Robert Chandrakumar

For Respondents : Mr.S.Ramasamy

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JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. It is a case of injury. The contention of the Insurance Company is that the minor who was 17 years old had drove the vehicle without license and helmet and he was produced before Juvenile Court. Hence the Insurance Company cannot be made liable for paying compensation.

3. The learned Counsel appearing for the claimant submitted that the injured suffered 50% disability due to the accident and the Tribunal after considering the issue had fixed the compensation and has also granted pay and recovery. Hence the same need not be interfered with.

4. This Court is of the considered opinion that when the minor has driven the vehicle that too without license and helmet and when the minor was produced before the Juvenile Court, contributory negligence ought to be imposed on the minor as well. Therefore this Court is fixing the contributory negligence on the part of the minor as 30%. And the Insurance Company shall pay 70% of the

compensation granted by the Tribunal. Since pay and recovery is granted by the Tribunal, the same is confirmed by this Court.

5.Total compensation granted by the Tribunal = Rs.4,10,857/-

Deducting 30% contributory negligence = - Rs.1,23,257/-

Total compensation granted by this Court = Rs.2,87,600/- (reduced)

6. The appellant Insurance Company is directed to deposit Rs.2,87,600/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal. The appellant Insurance Company is entitled to recover the same from the owner of the vehicle / 2nd respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in ***2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)***. The Insurance Company shall withdraw the excess amount, if any.

7.With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.03.2024

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

Tmg

To

1.Motor Accident Claims Tribunal (Sub Court),
Paramakudi.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

S.SRIMATHY, J.

Tmg

C.M.A(MD)No.432 of 2022

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