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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.891 of 2021

and

C.M.P(MD)No.8405 of 2021

National Insurance Company Limited,
Divisional Office-II, Hari Block,
Opposite to Head Post Office,
Tiruchirappalli – 620 001.

... Appellant

Vs.

- 1.Renuka
- 2.Minor.Rajesh
- 3.Minor.Nithya
- 4.Ganapathy
- 5.Adhilakshmi
- 6.Mohan

... Respondents

[The respondents 2 & 3 are represented by next friend, natural guardian and mother 1st respondent].

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Judgment and Decree in M.C.O.P.No.214 of 2016 dated 22.12.2020, on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli and allow the appeal with costs.



For Appellant : Mr.J.S.Murali

For Respondents 1 to 5 : Mr.C.Ezhilarasu

For Respondent No.6 : No appearance

JUDGEMENT

This Civil Miscellaneous Appeal is filed by the Insurance company to set aside the Judgment and Decree in M.C.O.P.No.214 of 2016 dated 22.12.2020, on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli and allow the appeal with costs.

2. It is a case of fatal. The contention of the Insurance company is that the deceased is the tortfeasor who had driven his vehicle in a rash and negligent manner. Further the deceased was not having a valid driving license and was not wearing helmet at the time of accident. Moreover, the accident had occurred in a day light in a Broadway at 12.30 p.m. wherein the deceased had dashed the rear side of the parked vehicle. Hence the Tribunal ought to have fixed the appropriate contributory negligence.

3. On perusal of the Judgment and other documents and evidence, it is seen that the vehicle was parked and the deceased has hit the stationed



vehicle. There is no finding whether the offending vehicle was parked on the road side or middle of the road and there is no clarification to that effect. But it is an admitted fact that it is a stationed vehicle. Therefore, contributory negligence ought to be fixed. Even though, the Tribunal has fixed contributory negligence but has fixed lesser percentage of 25% on the deceased. Accordingly, this Court is increasing and fixing contributory negligence on the deceased person to the tune of 35% and therefore, the Insurance Company is liable to pay 65% on the compensation. As far as compensation in other heads the compensation granted by the Tribunal is hereby confirmed.

4. With this modification, this Civil Miscellaneous Appeal is partly allowed. Since this Court is fixing 65% liability on the Insurance Company, the Insurance Company is directed to deposit a sum of Rs.9,66,025/- (65% @ Rs.14,86,192/-granted by the Tribunal), as compensation, with 7.5% interest along with costs, within a period of 8 weeks from the date of receipt of a copy of the Judgment, less the amount if already deposited. On such deposit the claimants are entitled their share as apportionment fixed by the Tribunal. The claimants 1,4,5 are permitted to withdraw their share as per Law. The share of the minor claimants 2 & 3 to be deposited in anyone of the Nationalized Bank till they attain majority. The 1st claimant/mother is permitted to withdraw the



interest amount of the deposited amount of the minor claimants 2 & 3. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2024

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

1. The Motor Accident Claims Tribunal,
Special District Court,
Tiruchirappalli.
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.891 of 2021**

22.02.2024