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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 101 of 2024
and
C.M.P(MD)No.1654 & 1674 of 2024

1. M/s. United India Insurance Company Limited,
Reg. Here Office,
24, Whites Road,
Chennai - 600 014.

2. M/s.United India Insurance Company Limited,
Through its Branch Manager,
No.1, Post Office Road,
Playamkottai, Tirunelveli -2.

... Appellants

Vs.

1. Violet Mary
2. Balapriya
3. J.Ramay Joy
4. M/s.Annai Concrete Solutions,
By its Managing Director,
4/370, Panchayat Office Street,
Avaraikulam,
Tirunelveli District.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the award 14.06.2023 passed in



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M.C.O.P.No.1423 of 2022 on the file of the Motor Accident Claims Tribunal / Principal District Court, Tirunelveli.

For Appellant : Mr.M.Arjun Varman

For R-1 to R-3 : Mr.K.Jeyamohan

For R-4 : Mr.R.Maheswaran

JUDGEMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company to set aside the award 14.06.2023 passed in M.C.O.P.No.1423 of 2022 on the file of the Motor Accident Claims Tribunal / Principal District Court, Tirunelveli.

2. It is a case of fatal. The contention of the insurance company is that the Tribunal has not considered the plea that the deceased was not wearing helmet. Infact it is a case of head injury. The further contention is that the deceased was not possessing valid driving license and for this also contributory negligence ought to be fixed. The next contention that was raised by the insurance company is that the deceased was under influence of Alcohol.



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3. The Learned Counsel appearing for the claimants vehemently opposed the contention of the insurance company and submitted that no sample was collected from the deceased to establish that the deceased had consumed alcohol at the time of accident. This contention was refuted by the insurance company and stated that the report was submitted at the end of the Trial. The date of the report and the order passed by the Tribunal is on the same day. Therefore, they were not granted proper opportunity to contest the same on this issue.

4. Therefore, this Court is of the considered opinion that the driver of the two-wheeler not wearing helmet at the time of accident and therefore, contributory negligence ought to be fixed on the driver of the two-wheeler also. As far as the non-availability of the driving license is concerned it is responsibility of any driver to take proper license, if driving license is not available then it is violation of the rules and a portion of the compensation ought to be reduced. As far as consumption of Alcohol is concerned, this Court relied on the medical report and is of the considered opinion that the deceased person was also under the influence of Alcohol. Instead of fixing separate liability for all these



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violations, this Court is of the considered opinion that the amount of award shall be reduced to Rs.12,00,000/- from Rs.13,16,600/- and the same would be fair and just compensation.

5. Accordingly, the 1st Appellant/Insurance Company is directed to deposit to the tune of Rs.12,00,000/- within a period of 12 weeks, from the date of receipt of a copy of the order, with 7.5% interest from the date of petition till the date of realization along with Costs, less the amount if already deposited. On such deposit the claimants are permitted to withdraw their respective share as apportioned by the Tribunal, less the amount if already withdrawn.

6. With these modifications, this Civil Miscellaneous Appeal is partly allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

19.02.2024

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

1. The Motor Accident Claims Tribunal/
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.101 of 2024

19.02.2024