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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.15 of 2002

National Insurance Co. Ltd.,
Karur.

... Appellant

Vs.

1.Thangammal
2.Minor Lavanya @ Lalitha
3.Minor Prabhakaran
Minors represented by mother and NF Thangammal
4.Mariyayi ammal
5.Gopalakrishnan
6.Mani
7.National Insurance Co. Ltd,
Erode
8.Mahalingam

... Respondents

[Respondents 5 and 6 given up as unnecessary parties in CMA
8th Respondent/driver unnecessary party in CMA]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in MCOP.No.792 of 1998 dated 19.07.2001 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Erode.

For Appellant : Mr.N.Vijayaraghavan
For Respondents 1 to 4 : Mr.V.Raghavachari
Respondents 5 & 6 : Given up
Respondent 7 : Served [No appearance]
Respondent 8 : Ex parte

JUDGMENT

The fifth respondent in MCOP.No.792 of 1998 before the MACT [II Additional District Court, Erode] has come forward with this appeal challenging an award of Rs.50,000/- fastened on it along with the fourth respondent before the Tribunal. Parties would be referred to by their rank before the Tribunal.

2. On 7.5.1997, at about 3.30 hours while certain Rajendran was travelling in his van driven by Mahalingam, the fourth



respondent before the Tribunal, had met with an accident when a lorry bearing no. TAE 8600 driven by the second respondent before the Tribunal dashed against the van, in which Rajendran was crushed into death. The accident had occasioned due to the negligence of the lorry driver/second respondent before the Tribunal. Seeking a compensation for the loss occasioned to him, the heirs of Rajendran approached the Tribunal with the claim.

3. Before the Tribunal, the third respondent, the insurer of the alleged offending lorry has accused the driver of the van in which Rajendran was travelling, for negligence. This was refuted by the insurer of the van, the 5th respondent before the Tribunal/appellant herein.

4. On an appreciation of evidence before it, the Tribunal has held that the driver of the van insured with the 5th respondent had attempted to overtake the lorry in question without observing the oncoming vehicle and that he had invited the accident and accordingly fixed negligence on the driver of the van in question. As to the quantum the Tribunal has awarded compensation under the head no fault liability under Section 140 of the M.V. Act. It is now challenged by the insurer of the van

5. The effort of the appellant is halted by the judgment of a Division Bench of this Court in CMA.No.1269 of 2007 dated 25.03.2015, whereunder this Court has enhanced the compensation payable to the claimants in an appeal filed by the claimants themselves. In view of the same, nothing survives in this appeal and accordingly it is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ds

To:

1.The II Additional District Judge,
Motor Accidents Claims Tribunal,
Erode.



2.The Section Officer
VR Section
High Court, Madras.

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nr 20/06/2018