



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.121 of 2014

1.Geetha

2.Minor Kanimozhi

3.Minor Divya

(Petitioners 2 & 3 represented by
mother and next friend by 1st Appellant) ... Appellants

Vs.

1.M.Sakthivel

2.The Manager,

New India Assurance Company Limited,
Madapparampil Chambers,
M.C.Road, Muvattupuzha,
Kerala State.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2009 made in M.C.O.P.No.666 of 2006 on the file of the Motor Accident Claims Tribunal / Additional District Court, Pudukkottai.

For Appellant	: Mr.N.Balakrishnan
For Respondents	: Mr.B.Vijayakarthykeyan for R2
	No appearance for R1

JUDGMENT

Heard the learned counsel on either side.

2.The claimants have filed this appeal seeking enhancement of the compensation awarded to them on 05.01.2009 in M.C.O.P.No.666 of 2006 on the file of the Motor Accident Claims Tribunal / Additional District Court, Pudukkottai.

3.One Karunanithi was travelling in a goods vehicle on 11.07.2006. The goods vehicle belonged to one Sakthivel, the first respondent herein. It was insured with the second respondent herein, New India Assurance Company Limited. The vehicle was driven in a rash and negligent manner and it capsized. In the resulting accident, the said Karunanithi died. F.I.R was



registered in Crime No.23 of 2006 on the file of the S.S.Kottai police station. In the F.I.R, it was stated that the said Karunanithi travelled as a load man. In the claim petition, it was contended that he travelled as owner of the goods.

4. In view of the discrepancies, the Tribunal chose to hold that there was a breach of the policy condition and that therefore the insurer should be exonerated and a sum of Rs.4,07,000/- was awarded as compensation. Contending that the liability must be fastened only on the insurer, this appeal has been filed.

5. I am of the view that even though there are two contrary versions, in either case, the policy would apply. Whether the deceased travelled as a loadman or as the owner of the goods, the policy would be applicable. Therefore, the Tribunal erred in exonerating the insurance company. In that view of the matter, the impugned award deserves to be modified. As regards the quantum of compensation, it can not be said to be excessive by any standards.

6. The impugned award dated 05.01.2009 made in M.C.O.P.No.666 of 2006 on the file of the Motor Accident Claims Tribunal / Additional District Court, Pudukkottai is accordingly modified.

7. The second respondent insurer is directed to deposit the sum of Rs.4,07,000/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is entitled to withdraw her share as apportioned by the Tribunal. The shares of the minor children shall be deposited in any one of the nationalized bank and the natural guardian, mother of the minors is permitted to withdraw the interest accrued thereon once in three months directly from the bank, till the minors attain majority.

8. This Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

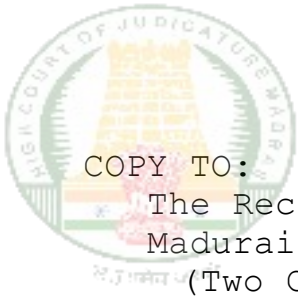
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge,
 Additional District Court /
 Motor Accident Claims Tribunal, Pudukkottai.



COPY TO:

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

(Two Copies)

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+1cc to M/S.N.Balakrishnan, Advocate SR.No. 92410

+1cc to M/S.B.Vijayakarthiskeyan, Advocate SR.No. 92328

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JM/KK/SAR 1/01.02.2018/3P/6C