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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1210 of 2014

and

C.M.A(MD)No.362 of 2015

C.M.A(MD)No.1210 of 2014

United India Insurance Company Ltd.,
Represented by its Branch Manager,
No.3/33-B, P.P.K.Building,
Main Road,
Marthandam,
Kanyakumari District

... Appellant/ Respondent

Vs.

1.Charles
2.Sasikumari
3.Blessed Joy
4.Dharmaraj
5.Vijayakani

... Respondents/Petitioners

(3rd respondent's name amended, vide Court order
dated 15.09.2016 made in C.M.P.No.1514 of 2016 in
C.M.A(MD)No.1210/2014)

(Respondents 4 & 5 are impleaded vide order dated
18.11.2016 made in M.P(MD)No.2 /2015 in
C.M.A(MD)No.1210 of 2014)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the Judgment and decree of the
Motor Accident claims Tribunal, (Sub Judge)Kuzhithurai in
M.C.O.P.No.78 of 2012 dated 09.06.2014.

For Appellant	: Mr.N.Siva Kumar
For R-1 to R-3	: Mr.S.Siva Kumar
For R-4 & R-5	: No Appearance

C.M.A(MD)No.362 of 2015

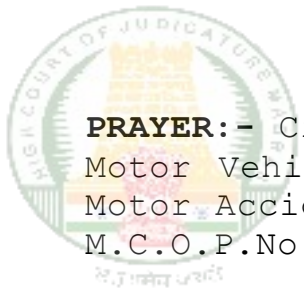
1.Charles
2.Sasikumari
3.Blessed Joy

... Appellants/Petitioners

Vs.

United India Insurance Company Ltd.,
Rep. By its Branch Manager,
No.3/33-B, P.P.K.Building,
Main Road, Marthandam,
Kanniyakumari District.

... Respondent/Respondent



PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree of the Motor Accident claims Tribunal, (Subordinate Judge), Kuzhithurai in M.C.O.P.No.78 of 2012 dated 09.06.2014.

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For Appellants : Mr.S.Siva Kumar
For Respondent : Mr.N.Siva Kumar

COMMON JUDGMENT

Since both the Civil Miscellaneous Appeals are arising out of the same accident, both the appeals are disposed of by this Common judgment.

2. Both the Civil Miscellaneous Appeal are directed under Section 173 of Motor Vehicles Act, 1988, against the award dated 09.06.2014 made in M.C.O.P.No.78 of 2012, on the file of the Motor Accident claims Tribunal, (Subordinate Judge), Kuzhithurai.

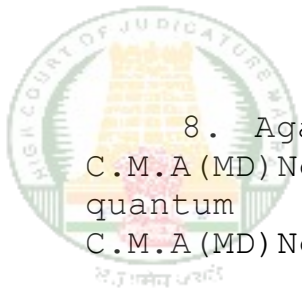
3. It is a case of fatal accident, which took place on 20.11.2011 at about 8.00 p.m., at Nagercoil-Tiruvananthapuram Road near Kalliyankaadu Richard Hospital.

4. It is the case of the claimants before the Tribunal that when the deceased by name Bright Joy was travelling as a pillion rider along with one Jeyasingh Raja, in a Hero Honda two wheeler bearing Registration No.75 C 4578 at Nagercoil-Tiruvananthapuram Road, the two-wheeler was driven by its rider in a rash and negligent manner and due to that, the same was dashed against a tree standing on the left side of the road and in the said accident, the rider of the two-wheeler died on the spot and thereafter, the Bright Joy succumbed to the injuries in the hospital.

5. The claimants filed an application in M.C.O.P.No.78 of 2012 on the file of the Motor Accident claims Tribunal, (Subordinate Judge), Kuzhithurai.

6. Before the Tribunal, the claimants examined one witness as P.W.1 and marked nine documents as Exs.P1 to P9. On the side of the Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and they did not let in any documentary evidence before the Tribunal.

7. The Tribunal after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record held that the accident occurred only due to the rash and negligent riding of the two-wheeler by the deceased Jeyasing Raja and directed the Insurance Company to pay compensation of Rs.9,68,000/- as total compensation.



8. Against which, the appellant/Insurance Company has filed C.M.A(MD)No.1210 of 2014 challenging the liability as well as quantum and the claimants have filed C.M.A(MD)No.262 of 2015 seeking enhancement of compensation.

9. The learned counsel appearing for the Insurance Company submitted that since the rider of the two-wheeler did not possess valid driving licence at the time of accident, the award of the Tribunal may be confirmed and pay and recovery may be ordered following the judgment in **ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS** reported in **2004(2) CTC 464**.

10. Per contra, the learned counsel for the claimants submitted that the amount awarded by the Tribunal under various heads are on lower side and considering the age of the deceased the compensation awarded by the Tribunal may be enhanced.

11. Heard the submissions made on either side and perused the materials available on record.

12. Perusal of the award passed by the Tribunal shows that no evidence is produced to show that the father of the deceased is the owner of the vehicle and before the Tribunal it has been stated that the deceased Jeyasingh Raja is the owner of the vehicle and therefore, pay and recovery cannot be ordered in this case.

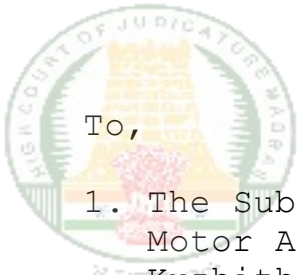
13. In respect of quantum also, this Court is of the view that the compensation arrived at by the Tribunal, is a just and proper compensation and therefore, the award passed by the Tribunal does not warrant interference.

14. In the result, these Civil Miscellaneous Appeals are dismissed and the award dated 09.06.2014 passed in M.C.O.P.No.78 of 2012 on the file of the Motor Accident claims Tribunal, (Subordinate Judge), Kuzhithurai, is hereby confirmed. The Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited, if any and on such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with proportionate interests and costs. No Costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/



To,

1. The Sub Judge
Motor Accident claims Tribunal,
Kuzhithurai.

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+1cc to Mr.N.Siva Kumar, Advocate Sr.No.68520

+1cc to Mr.S.Siva Kumar, Advocate Sr.No.68124

PM

VB/MR/KKR/SAR2/18/08/2017/4P/4C

**C.M.A (MD) No.1210 of 2012
and
C.M.AMD) No.362 of 2015**

26.07.2017