BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)Nos.1280 of 2016 and 305 of 2014

C.M.A.(MD) No.1280 of 2016

1.P.Annaraj
2.Valliyammal ... Appellants/Petitioners.

Vs.

1.The Managing Director,
Tamil Nadu State Express Transportation
Corporation, (Division -I),
Chennai Corporation,
Chennai.

2.The Branch Manager,
United India Insurance Company Limited,
Keela Avani Moola Street,
Tenkasi Municipality,
Tenkasi. ... Respondents/Respondents.

C.M.A.(MD) No.305 of 2014

United India Insurance Company Limited,
through its Branch Manager,
Office at East Avani Moola Street,
Tankasi Municipality,
Tenkasi Taluk. ... Appellant/2nd Respondent

Vs.

1.P.Annaraj
2.Valliammal ... Respondents 1 & 2/Petitioners.
3.Tamil Nadu State Express Transportation
Corporation, Chennai (Division -I),
through its Managing Director,
Pallavan Road, Chennai Corporation,
Chennai. ...3rd Respondent/1st Respondent.

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.09.2010 made in M.C.O.P.No.209 of 2005 on the file of the Motor Accident Claims Tribunal, (Additional Sub Court), Tenkasi.

C.M.A.(MD) No.1280 of 2016

For Appellants	:	Mr.T.Selvakumaran
For Respondents	:	Mr.P.Prabhakaran for R1 Mr.N.Sivakumar for R2

C.M.A.(MD) No.305 of 2014

For Appellant	:	Mr.N.Sivakumar
For Respondents	:	Mr.T.Selvakumaranfor RR1&2 Mr.P.Prabhakaran for R3

COMMON JUDGMENT

Rathinam, son of the claimants was riding the two wheeler belonging to his father. His vehicle collided with the bus belonging to the first respondent Transport Corporation on 27.03.2005 at about 5.15 a.m. Crime No.61 of 2005 was registered on the file of Nalattinputhur Police Station. The Tribunal after appreciation of all the evidence on record came to the conclusion that the deceased was equally at fault. Therefore, 50% contributory negligence was fastened on the deceased.

2.The deceased was a diploma holder. He was also a distinguished sports person at the District level. The Tribunal fixed his monthly income on a notional basis at Rs.4,500/-. Considering his age, future prospects must be added at 40%. Since he was a bachelor, 50% deduction must be made. Therefore, the monthly income available for the family would have been Rs.3,150/-. The pecuniary loss is therefore quantified at Rs.6,80,400/-. For loss of love and affection, a sum of Rs.80,000/- has to be awarded. For funeral expenses, a sum of Rs.15,000/- can be awarded. Thus the compensation amount will come to Rs.7,75,400/-. Since the deceased was equally at fault, the compensation payable to the claimants will therefore be Rs.3,87,700/-. This can be rounded off at Rs.4,00,000/-.

3.United India Insurance Company Limited is the insurer of the two wheeler ridden by the deceased. They have filed C.M.A.(MD) No.305 of 2015 contending that the claim petition is not maintainable as far as they are concerned. This was because the deceased has stepped into the shoes of the owner. In this case, the owner is the claimant himself. The insured cannot maintain a claim against the insurer under Section 166 A of the Motor Vehicles Act. Therefore, the insurer prays for total exoneration.

4.I find force in the said submission. Therefore, the Tribunal ought not to have fastened any liability on the insurer. However, the matter cannot rest there. The insurer has admitted that they have insured the two wheeler in question. But for reasons best known, the insurance policy has not been marked by the insurer. The insurance company cannot pass on the entire burden on the claimants. If the insurer had pleaded that they have not insured the vehicle in question, then, it would be a different matter. Having conceded that they are the insurer, they are bound to place all the materials before the Tribunal. In this cases, they had for reasons best known not done so. I therefore would draw adverse inference against the insurer.

5.The learned counsel for the claimants would plead that the insurance policy had a personal accident cover also. Therefore, the personal accident coverage would definitely be Rs.1,00,000/-.

6.Accordingly, the award dated 13.09.2010 made in M.C.O.P.No.209 of 2005 on the file of the Motor Accident Claims Tribunal, (Additional Sub Court), Tenkasi is modified.

C.M.A.(MD) No.1280 of 2016

7.The first respondent Transport Corporation is directed to deposit the entire compensation amount of Rs.4,00,000/- 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, less the amount already deposited, if any. On such deposit, the claimants are permitted to withdraw their share as apportioned by the Tribunal by filing proper application before the Tribunal by less the amount already withdrawn by them, if any.

C.M.A.(MD) No.305 of 2014 :

8.The appellant insurance company is directed to deposit the entire compensation amount of Rs.1,00,000/- 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, less the amount already deposited, if any. On such deposit, the claimants are permitted to withdraw their share as apportioned by the Tribunal by filing proper application before the Tribunal, less the amount already withdrawn by them, if any.

9.These Civil Miscellaneous Appeals are partly allowed. No costs.

Sd/-
Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge, Motor Accident Claims Tribunal, Tenkasi.

Copy to:
The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai(2 Copies)

+2CC to Mr.P.Prabhakaran, Advocate, SR.No. 91273, 91274
+1CC to Mr.N.Sivakumar, Advocate, SR.No. 91607
+1CC to Mr.T.Selvakumaran, Advocate, SR.No. 91641

C.M.A.(MD)Nos.1280 of 2016 and 305 of 2014
06.12.2017

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