



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 590 of 2017
and C.M.P. (MD)No.6210 of 2017

The Divisional Manager,
M/s. National Insurance Company Ltd.,
Madurai Division,
2nd Floor, having its Office at
Door No.3, North Veli Street,
Madurai - 625 001. ... Appellant / 2nd Respondent

Vs.

1.Tmt.Bainthamilselvi
2.S.Pandi ... Respondents 1 & 2/ Petitioners
3.Rajesekaran ... Respondent No.3/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Order and decreetal order dated 30.11.2015 made in M.C.O.P.No.1924 of 2014 on the file of the Motor Accidents Claims Tribunal, (V Additional District Judge), Madurai.

For Appellant :Mr.S.Srinivasa Raghavan
For R1 and R2 :Mr.N.Palanisamy
For R3 :No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company against the Order and decreetal order dated 30.11.2015 made in M.C.O.P.No.1924 of 2014 on the file of the Motor Accidents Claims Tribunal, (V Additional District Judge), Madurai.

2.On 16.06.2014 at about 02.15 p.m, when the deceased was walking Melur to Sivagangai North South road towards northern direction in the mud portion of the left side of the road near Government Higher Secondary School at Kottanathampatti, the vehicle bearing Registration No.TN-65-5676 dashed against the deceased, who was aged about 8 years and due to the impact, she died.

3.The claim petition in M.C.O.P.No.1924 of 2014 on the file of the Motor Accidents Claims Tribunal, (V Additional District Judge), Madurai., is filed claiming compensation.



4. Before the Tribunal, Claimants examined Two witnesses as P.W.1 to P.W.2 and marked nine documents as Ex.P.1 to Ex.P.9. On the side of the Insurance Company, they did not let in any oral and documentary evidence.

5. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of both sides and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the vehicle and directed the Insurance Company to pay a sum of Rs.7,03,500/- as compensation.

6. The learned counsel for the appellant/Insurance Company mainly questioned the quantum of compensation. He submitted that since the deceased was 8 years old at the time of accident, the Tribunal ought not to have fixed the monthly salary of the deceased at Rs.5,000/-.

7. On the other hand, the learned counsel for the claimants submitted that the Tribunal after analyzing all aspects granted just and reasonable compensation.

8. The learned counsel for the appellant would rely on the judgment of the Hon'ble Supreme Court in **Kishan Gopal and another Vs. Lala and others** reported in **2013(2) TN MAC 358 (SC)**, wherein the Supreme Court has granted Rs.5,00,000/- as total compensation for the death of 10 years old boy.

9. A perusal of the judgment of the Tribunal would show that the Tribunal has granted Rs.7,03,500/- for the death of 8 years old girl under various heads.

10. In view of the judgment cited supra, I do not have any other go except to follow the judgment of the Hon'ble Supreme Court. As per the judgment of the Hon'ble Supreme Court, the total compensation is modified to that of Rs.5,00,000/- (Rupees five lakhs only).

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed, reducing the award of the Tribunal from **Rs.7,03,500/-** (Rupees seven thousand three thousand and five hundred only) to a sum of **Rs.5,00,000/-** (Rupees five lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs; No costs.

(ii) The Insurance Company is directed to deposit the award amount with accrued interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the respective shares with



accrued interests and costs as apportioned by the Tribunal, without filing any formal application before the Tribunal. No Costs. Consequently, connected civil miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(RTI)
/True Copy/

Sub Assistant Registrar

To,

The V Additional District Judge,
Motor Accidents Claims Tribunal,
V Additional District court, Madurai.

Copy to : The Section Officer, V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.Srinivasa Raghavan Advocate in SR. No. 75212
CM
JS/SKN.RSK/SAR.1/23.10.2017/3P-4C

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