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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA (MD) No.352 of 2014

&

CMA (MD) No.260 of 2015

National Insurance Company Limited,
Branch Office, Mallappalli Buildings,
A.M.Road, Post Box No.683547,
Ernakulam District,
Kerala State.

... Appellant in CMA (MD) No.352 of 2014
& 3rd respondent in CMA (MD) No.260 of
2015

Vs.

1.Selvi
2.Shanmuga Priya
3.Sujitha
4.Senthil Kumar

... 1 to 4 respondents
in
CMA (MD) No.352 of 2014
& Appellants in
CMA (MD) No.260 of 2015

5.Sivakumar
6.Rafeek

... 5 and 6th Respondents in
CMA (MD) No.352 of 2014
& respondents 1 and 2 in
CMA (MD) No.260 of 2015

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25.04.2013 passed in MCOP.No.1080 of 2008 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Tirunelveli.

CMA (MD) No.352 of 2014 :

For Appellant	: Mr.D.Sivaraman
For Respondents	: Mr.T.Selvakumaran for R1 to R4 R6- No Appearance R5-No Jurisdiction

CMA (MD) No.260 of 2015 :

<https://hcservices.ecourts.gov.in/hcservices/>

For Appellants	: Mr.T.Selvakumaran
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For Respondents

: Mr.D.Sivaraman for R3
R1 and R2 dispensed with.

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JUDGMENT

The insurer has filed CMA(MD)No.352 of 2014 questioning the impugned award principally on the ground of negligence. The claimants have filed CMA(MD)No.260 of 2015 seeking enhancement of compensation.

2.One Kanagaraj was riding a two wheeler and hit a stationary lorry from behind on 23.02.2008 at about 09.00 pm. He fell down and was injured. He was taken to hospital. He died on 01.05.2008 after about two months. Crime No.8 of 2008 was registered on the file of Chinnakovilangulam police station and the lorry driver was the informant. The legal heirs of the deceased filed MCOP.No.1080 of 2008 on the file of Motor Accident Claims Tribunal / II Additional District Judge, Tirunelveli. The Tribunal awarded a sum of Rs.8,42,000/- as compensation.

3.The learned counsel appearing for the insurer contended that the deceased rider hit the lorry from behind and thus invited the accident himself. The claimants had examined PW.3 who deposed that he was following the deceased rider from behind. The lorry was carrying paddy bags. The paddy bags had spilled over on the road. The deceased had hit the paddy bags. That is why, the accident had took place. The two wheeler that was ridden by the deceased skidded when it was crossing the spilled over the paddy bags and the deceased lost his balance and that is how he met with this accident.

4.The testimony of the said PW.3 does not inspire the confidence of this Court. This is because PW.2 who was examined by the claimants had testified against the claimants. According to the said PW.2, the entire negligence was on the deceased. I am of the view that since the deceased hit the lorry from behind atleast 25% contributory negligence will have to be fastened on the deceased.

5.Coming to quantum of compensation, it is seen that the deceased was aged 47 years. Therefore, the multiplier will be 13. The accident took place in the year 2008. Therefore, the monthly income can be taken as Rs.5,500/-. Adding future prospects at the rate of 25%, the monthly income comes to Rs.6875/-. After deduction of one third, the monthly income would come to Rs.4583/-. The compensation payable to the claimants will have to be reworked as under :

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(i) Pecuniary loss will be quantified at



Rs.7,14,948/- . (4583x12x13)

(ii) The claimant had spent a sum of Rs.1,95,000/- towards medical treatment. It can be awarded as such.

(iii) A sum of Rs.1,60,000/- can be awarded towards loss of consortium for the wife and loss of love and affection for the children.

(iv) A sum of Rs.30,000/- can be awarded towards loss of estate and funeral expenses.

6.Thus, the total compensation payable to the claimants would come to Rs.10,99,948/-. It can be rounded off to Rs.11,00,000/-. Since 25% contributory negligence has been fastened on the deceased, the claimants will be entitled to a sum of Rs.8,25,000/-.

7.The award dated 25.04.2013 passed in MCOP.No.1080 of 2008 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Tirunelveli is modified.

8.The National Insurance Company Limited/appellant in CMA(MD) No.352 of 2014 is directed to deposit the sum of Rs.8,25,000/- 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 judgment, less the amount already deposited, if any. On such deposit, the claimants are entitled 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.In the result, CMA(MD)No.352 of 2014 is partly allowed and CMA(MD)No.260 of 2015 is dismissed. No costs.

Sd/

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The II Additional District Judge /

Motor Accident Claims Tribunal, Tirunelveli.

2.The Record Keeper, V.R.Section,

Madurai Bench of Madras High Court, Madurai. (2 Copies)

+2cc to Mr.D.SIVARAMAN, Advocate, SR.No.93090,93089

+1cc to Mr.T.SELVAKUMARAN, Advocate, SR.No.93461

CMA(MD)No.352 of 2014

&

CMA(MD)No.260 of 2015

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