



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.237 of 2016
and
C.M.P.(MD).No.3299 of 2016

National Insurance Company Limited,
First Floor, Jerome Building,
Fort Station Road, Trichy-2.

... Appellant/2nd Respondent

Vs.

1.Tmt.S.M.Padmavathy
2.Minor Kishore Kumar
(Minor represented mother &
natural guardian, 1st respondent
herein)
3.J.Ibrahimsha
4.Sornathammal

...Respondents/Petitioners

...Respondents/Respondent 1&2

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 23.02.2015 made in M.C.O.P.No.1292 of 2013 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Trichy.

For Appellant : Mrs.K.R.Sivasankari
for Mr.S.Srinivasa Raghavan

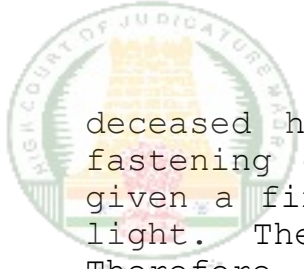
For Respondents : Mr.H.Arumugam for R1 & R2
No appearance for R3 and R4

JUDGMENT

Heard the learned counsel on either side.

2.The Insurance Company has filed this appeal questioning the impugned award on the ground of negligence as well as quantum. The lorry insured with the appellant insurance company has been parked on the right side of the road. The deceased was riding a two-wheeler. He had hit the vehicle from behind. In the resulting accident, he died.

3.The Tribunal fixed the negligence at 10% and awarded a sum of Rs.4,30,200/- with interest. Since the lorry was parked and the



deceased had hit the lorry from behind, I am of the view that fastening of negligence should be little more. The Tribunal has given a finding that the lorry was parked on the road without head light. The deceased has left behind his wife and young minor child. Therefore the interest of justice would be served by slightly enhancing the contributory negligence on the part of the deceased. The amount awarded by the Tribunal is reduced from Rs.4,30,200/- to Rs.4,00,000/-.

4.The award dated dated 23.02.2015 made in M.C.O.P.No.1292 of 2013 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Trichy is modified accordingly.

5.The appellant insurance company is directed to deposit the entire compensation amount of Rs.4,00,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, 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 entitled to withdraw the same, as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

6.This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To
The Motor Accident Claims Tribunal,
(Special District Judge), Trichy.

Copy to:-

- 1.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.
- 2.J.Ibrahimsha,
S/o.K.M.Jalal Mohideen, No.58, Kooni Bazaar, Beema Nagar,
Trichy-1
- 3.Sornathammal, W/o.Late.Nallamuthu Nadar,
Door No.3/28A, Thathanur, Sirumarudur,Valadi, Trichy District
+One cc to Mr.S.Srinivasa Raghavan, Advocate, SR.No.86471
+One cc to Mr.H.Arumugam, Advocate, SR.No.86390

tsg

RL/7C/2P/SKN/RSK/SAR3/27/12/2017

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and

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