



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.733 of 2017

National Insurance Company Limited,
Branch Office No.II,
Jerome Building, 1st Floor,
Fort Station Road,
Trichy -2.

... Appellant

Vs.

1.Pappa

2.Murugan

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 12.01.2011 made in MCOP.No.348 of 2008 on the file of the Motor Accidents Claims Tribunal, Kulithalai.

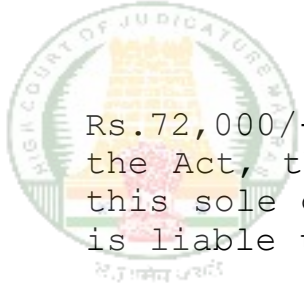
For Appellant	: Mr.D.Sivaraman
For Respondents	: Mr.N.Sudhagar Nagaraj for R1

JUDGMENT

The National Insurance Company has filed this appeal questioning the award dated 12.01.2011 made in MCOP.No.348 of 2008 on the file of the Motor Accidents Claims Tribunal, Kulithalai on the ground of liability as well as negligence.

2.The deceased was riding a two wheeler on 09.12.2007. In the two wheeler, three persons travelled. When the deceased attempted to overtake, the lorry insured with the appellant herein, the two wheeler in which he was riding dashed against the lorry and in the resulting accident the he died. Petition was filed under Section 166 r/w 163 A of the Motor Vehicles Act, 1988. The Hon'ble Supreme Court has categorically held that the claimant must opt for either one of the remedies. In the present case, the Tribunal obviously came to the conclusion that the deceased was at fault. Therefore, it chose to allow under Section 163 A of the M.V Act. Such an approach is impermissible in law.

3.This is for the simple reason that even in the claim petition it was mentioned that the deceased was earning a sum of Rs.6,000/- per month. Therefore, the annual income would come to



Rs.72,000/- . For maintaining the petition under Section 163 A of the Act, the annual income can only be Rs.40,000/- or less. On this sole ground, the award passed under Section 163 A of the Act is liable to set aside.

4. Since the petition was filed under Section 166 of the Act, I am inclined to consider the case on merits. It is obvious that the deceased was carrying two other persons in the pillion when riding the two wheeler. The accident had happened when he attempted to over take from the left side. But, the lorry driver could have avoided the accident if he had slowed down the vehicle. Therefore, I fix the contributory negligence on the deceased at 50%. The deceased was working in a hotel. His employer was examined. But, no income proof was furnished. Therefore, it can be taken that he was earning a sum of Rs.4,500/- The future prospects will have to be added. He was aged about 21 years. Therefore, the multiplier 18 will have to be adopted. He was a bachelor. 50% deduction will have to be made. Applying the usual formula, a sum of Rs.70,000/- can be awarded towards damages and other other conventional heads, the compensation payable to the claimant can be quantified at Rs.7,50,000/-.

5. Since 50% contributory negligence has been fastened on the deceased, the claimant will be entitled to a sum of Rs.3,75,000/- with interest. The award dated 12.01.2011 made in MCOP.No.348 of 2008 on the file of the Motor Accidents Claims Tribunal, Kulithalai is modified.

6. The appellant insurance company is directed to deposit the sum of Rs.3,75,000/- with interest at the rate of 7.5% per annum, from the date 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 being made, the claimant is permitted to withdraw the same, by filing proper application, before the Tribunal, less the amount already withdrawn by him, if any.

7. This Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To



2.The Record Keeper,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.D.Sivaraman, Advocate SR.No. 88084

+1cc to M/S.N.Sudhagar Nagaraj, Advocate SR.No. 88455

C.M.A. (MD) No.733 of 2017
20.11.2017

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JM/KK/SAR 1/20.12.2017/3P/5C