



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.38 of 2015

and

M.P.(MD).No.1 of 2015

The Branch Manager,
The New India Assurance Company Limited,
43-A/2, Jooman Centre,
Promenade Road,
Contonment, Trichy - 1.

... Appellant / Respondent No.2

Vs.

1.Rajamohammed @ Abdul Kani ... Respondent No.1 / Petitioner
2.D.Shanmugam ... Respondent No.2 / 1st Respondent

Prayer: Appeal filed under Section 173 of M.V.Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal [Special District Court], Tiruchirappalli in M.C.O.P.No.710 of 2013 dated 05.02.2014.

For Appellant : Mr.D.Sivaraman
For Respondents : Mr.C.Padmaraj for R1
Mr.A.Thiyagarajan for R2

JUDGMENT

Heard the learned counsel on either side.

2.The first respondent herein was the pillion rider in the motorcycle belonging to one Rahamathulla. An accident involving a tractor with trailer belonging to the second respondent occurred on 10.07.2007. The said Rahamathulla died. The first respondent herein suffered injuries. The first respondent herein filed M.C.O.P.No.710 of 2013 on the file of MACT/Special Court, Tiruchirappalli. The Tribunal awarded a sum of Rs.1,30,952/- by order dated 05.02.2014. Challenging the same, this appeal has been filed.

3.The legal heirs of the deceased Rahamathullah had also filed M.C.O.P.No.709 of 2013 and the award passed therein came to be challenged before the Hon'ble Division Bench in C.M.A.(MD) No.1105 of 2014 at the instance of the appellant herein. This Court had fixed the contributory negligence of 50% on the deceased Rahamuthalla by order dated 05.06.2017.

<https://hcservices.courts.gov.in/hcservices/>
The learned counsel appearing for the appellant brought to my notice the said order. However, the first respondent herein



happened to be the pillion rider. Therefore fixing of contributory negligence on the deceased Rahamathullah, who was the rider of the two wheeler could not have any bearing on the impugned award. The award is therefore sustained. However, the appellant is given liberty to proceed for recovery of 50% of the award amount with interest. In other words, the appellant is obliged to satisfy the impugned award in full as far as the first respondent is concerned. However, his liability has to be necessarily reduced by half. It is for this reason, the appellant is given liberty to proceed for recovery of 50% of award amount. The award dated 05.02.2014 made in M.C.O.P.No.710 of 2013 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli is modified on the terms set out above. The appellant corporation is directed to deposit the entire compensation amount 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. Thereafter, the appellant insurance company is at liberty to proceed to recover 50% of the award amount by filing execution petition. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

5.This civil miscellaneous appeal stands partly allowed with regard to the liability alone as indicated above. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.
 - 2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.
- +1cc to M/S.C.Padmaraj, Advocate SR.No. 84616
+1cc to M/S.D.Sivaraman, Advocate SR.No. 84448

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and
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