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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) .No.396 of 2015

- 1.Lakshmi
- 2.Santhi
- 3.Muthumari
- 4.Minor.Muthusankar
- 5.Minor.Manimala

(Minor Appellants 4 & 5 are represented by their
mother & next friend 1st Appellant herein)

... Appellants/Petitioners

Vs.

1. S.Loganathan ... 1st Respondent/ 1st Respondent
2. The Manager,
ICICI Lombard General Insurance Company Ltd.,
Loyala Technical Institute, No.7, AA Road,
Gnanavolivupuram, Madurai - 16.
... 2nd Respondent / 2nd Respondent

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, against the order and decree dated 17.02.2014 passed in M.A.C.O.P.No.244 of 2012 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Thoothukudi.

For Appellants : Mr.S.Ramachandran
For R-1 : Mr.S.Loganathan
For R-2 : Mr.K.K.Ramakrishnan

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**JUDGMENT**

The claimants have filed this appeal on two grounds. They seek enhancement of the quantum of compensation and also question the exoneration of the insurance company. The deceased was II year diploma student. The Tribunal fixed the monthly income on a notional basis at Rs.5,000/-. I am of the view that the monthly income can be fixed at Rs.10,000/-. Since he was a bachelor, there has to be 50% deduction that will leave a sum of Rs.5,000/- for his family. Since he was aged 19 years, multiplier 18 has to be adopted. The pecuniary loss can be quantified at Rs.10,80,000/-. Adding the conventional head of damages, further sum of Rs.30,000/- can be awarded. Therefore, the compensation payable to the claimants is enhanced to sum of Rs.11,10,000/-. The award dated 17.02.2014 made in M.A.C.O.P.No.244 of 2012 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Thoothukudi is accordingly modified.

2.It is seen that the appellants herein sought a sum of Rs.30,00,000/- before the Tribunal. Even before this Court, the claim has been restricted to sum of Rs.7,00,000/-. The compensation awarded by the Tribunal is enhanced from Rs.6,40,000/- to Rs.11,10,000/-.

3. The insurance policy in this case was issued on 04.01.2012 with effect from 02.01.2012. The accident had taken place on 31.12.2011. The Division Bench of this Court in the decision reported in **2017(1) TN MAC 168 (DB) in The Branch Manager, National Insurance Co. Ltd., vs. Vijayalakshmi and others** has held that coverage commences from the time and date mentioned in the Insurance Policy. In this case, the policy came to be issued after the accident. Therefore, the insurance company cannot be fastened with the liability to pay the compensation. The question of indemnifying the vehicle owner does not arise. In this case the claimants will have to necessarily proceed only against the vehicle owner for satisfying the award.

4.The vehicle owner/first respondent herein is liable to pay the said sum of Rs.11,10,000/- with the interest at 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 1 to 3 are entitled to withdraw the amount as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal. The share of the minor claimants shall be deposited in any one of the Nationalised Bank in an interest bearing account and the natural guardian/mother of the minor claimants is permitted to withdraw the accrued interest



once in three months directly from the Bank, till they attain majority.

5. The Civil Miscellaneous Appeal is partly allowed. No costs.
Sd/-

Assistant Registrar (RTI)

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/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Judge,
Motor Accidents Claims Tribunal,
Thoothukudi.
2. The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.K.Ramakrishnan, Advocate Sr.No.86210

+1cc to Mr.S.Ramachandran, Advocate Sr.No.85692

KMI

VB/RSK/SAR1/14/05/2018/3P/6C

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