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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) .No.72 of 2016

and

C.M.P. (MD) No.1379 of 2016

Royal Sundaram Alliance

Insurance Company Ltd.,

45, 46 Sundaram Towers,

Whites Road, Chennai

Represented by its Division Manager ... Appellant/ 2nd Respondent

Vs.

1.Rajiya Begam

2.Nilofar Begam

3.Sharmila

... Respondents 1&2/Claimants

.....Respondent No.3/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 10.10.2015 made in M.C.O.P.No.1517 of 2014 on the file of the Motor Vehicles Accident Claims Tribunal Additional District and Sessions Court/Special Court for Essential Commodities, Thanjavur.

For Appellant : Mr.M.E.Ilango

For R1 & R2 : Mr.N.Sudhagar Nagaraj

For R3 : No appearance

JUDGMENT

Heard the learned counsel on either side.

2.The insurer has filed this appeal questioning the impugned award both on the ground of negligence as well as quantum.

3.The deceased was a minor boy aged about 17 years. He was riding a two wheeler and the car insured with the appellant herein had dashed against the same. In the resulting accident, the minor boy Mohamad Ibrahim died. The accident took place on 06.07.2014 at about 01.30 p.m.. The mother and the sister of the deceased filed M.C.O.P.No.1517 of 2014, on the file of the Motor Vehicles Accident Claims Tribunal Additional District and Sessions Court/Special Court for Essential Commodities, Thanjavur.

4.The Tribunal awarded a sum of Rs.10,78,000/- as compensation. Contending that contributory negligence ought to have been fastened on the deceased, this appeal has been filed.



5.I am of the view that in this case the deceased was also at fault. Only a person who has attained majority can be allowed to use a motor vehicle on a public road. The specific case of the appellant is that since he was a minor, he did not ride the vehicle in a proper manner and by his conduct he had also contributed to the accident. I find force in the said submission. I would therefore fix 10% contributory negligence on the deceased.

6.However, as regards quantum, I am not inclined to interfere. In view of the fixing of 10% negligence on the deceased, the compensation payable to the claimant is reduced from Rs.10,78,000/- to 9,71,000/- rounded off to 9,75,000/- with 7.5% interest.

7.The award dated 10.10.2015, made in M.C.O.P.No.1517 of 2014, on the file of the Motor Vehicles Accident Claims Tribunal Additional District and Sessions Court/Special Court for Essential Commodities, Thanjavur, is modified accordingly.

8.The appellant is directed to deposit the compensation amount of Rs.9,75,000/- 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 judgment, less the amount already deposited, if any. On such deposit, the first respondent/claimant is entitled to withdraw the same, less the amount already withdrawn by her, if any, by filing proper application before the Tribunal.

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

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Special Court for Essential Commodities,
Motor Vehicles Accident Claims Tribunal,
Thanjavur.

2. Sharmila, W/o.Subramanian,
18787, Gnanam Nagar,
Mariamman Kovil Road, Thanjavur.

3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)



+1CC to Mr.M.E.Ilango, Advocate, SR.No.91369

+1CC to Mr.N.Sudhagar Nagaraj, Advocate, SR.No.91529

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