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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2017

CORAM :

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

C.M.A(MD)No.773 of 2016
and
C.M.P. (MD) No.7492 of 2016

National Insurance Company Limited
Divisional Office, Angu Vilas Building
North Car Street,
Nagercoil 629 001.

... Appellant/2nd respondent

Vs.

1.Haja Mohideen
2.Sybunisha

... Respondents 1 & 2/Petitioners

3.K.Manikandan

... 3rd Respondent/1st Respondent

4.Saravanan Raghavan

... 4th Respondent/3rd Respondent

Prayer: Civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree in M.C.O.P.No.462 of 2012, dated 11.09.2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Tirunelveli.

For Appellant	: Mr.J.S.Murali
For R1 & R2	: Mr.K.R.Singaravadivel
For R3	: Mr.S.Sivakumar
For R4	: No appearance

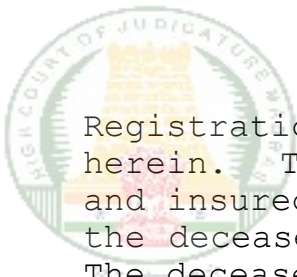
JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J)

National Insurance Company Limited is on appeal challenging the award dated 11.09.2015 made in M.C.O.P.No.462 of 2012, on the file of Motor Accidents Claims Tribunal, IV Additional District Court, Tirunelveli. The said claim petition was filed by the respondents 1 and 2 herein.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The case of the claimants is that on 28.02.2012 at about 17.00 hours, the deceased was riding Bajaj Pulsar Motor bike bearing



Registration No.TN-55-T-5897 belonging to the fourth respondent herein. The Taurus lorry belonging to the third respondent herein and insured with the appellant came from backside and dashed against the deceased. The lorry was driven in a rash and negligent manner. The deceased succumbed to the injuries on the way to hospital.

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3.The appellant/Insurance company filed counter affidavit controverting the allegations made in the petition. The first claimant examined himself as P.W.1 and marked Exs.P.1 to P.9. The insurance company examined two witnesses and marked Exs.R.1 to R.4. Ex.R.4 is a photocopy of the FIR registered in this regard. The Court below held that the accident was caused only on account of negligent and rash driving of the lorry. This was proved not only by the evidence of P.W.2 who witnessed the accident, but also from the manner in which the accident had taken place. We find no reason to interfere with the said finding or negligence fastened on the lorry.

4.The death of the Anwer Ali Ahamed, the son of the claimants herein was also established by Ex.P.2 postmortem certificate. He was aged 25 years. He was working in Saudi Arabia. To substantiate this claim, the claimants have marked the passport of the deceased as well as the salary certificate. According to the evidence of P.W.1, the deceased was earning around Rs.40,560/- per month. The Court below however fixed the monthly income of the deceased at Rs.25,000/-. It is beyond dispute that the deceased was working abroad. The Court below deducted half of the income towards personal expenses and compensation payable to the claimants was worked out accordingly. The total compensation was fixed at Rs.26,60,000/-. Appropriate apportionment was also made between the claimants, who are the father and mother respectively. Aggrieved by the same, this appeal has been filed.

5.Heard the learned counsel for the parties.

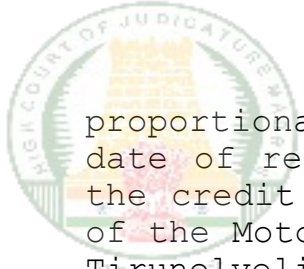
6.We are of the view that the income of the deceased could be fixed at Rs.23,000/-. The deceased would have spent half of it and remitted a sum of Rs.11,500/- to his parents. Since he was aged 25 years at the time of death, the multiplier can be taken as 17. The compensation has to be workedout as follows :

Loss of Income		
Rs.11,500 X 12 X 17=23,46,000/-	=	Rs.23,46,000.00
Funeral Expenses	=	Rs. 10,000.00
Loss of love and affection at		
Rs.50,000/- for each claimant.	=	Rs. 1,00,000.00
Total		Rs.24,56,000.00

7.In the result, the civil miscellaneous appeal is partly allowed in the following terms.

<https://hcservices.ecourts.gov.in/hcservices/>

(1) The National Insurance Company/appellant is directed to pay the compensation amount as modified by this Court along with



proportionate interest and costs from the date of petition till the date of realisation, less the amount already deposited, if any, to the credit of M.C.O.P.No.462 of 2012, dated 11.09.2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this judgment.

(ii)The Tribunal had awarded interest at 7.5% per annum from the date of filing of petition. The same is confirmed. The compensation amount has to be apportioned in the same ratio as directed by the Tribunal. Except the modification above, the award is confirmed in all other aspects.

(iii)The claimants are permitted to withdraw their share amount that would be deposited by the Insurance Company, less the amount already withdrawn, if any, with proportionate interest and costs, through RTGS by filing necessary Application before the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Judge,
Motor Accident Claims Tribunal,
(IV Additional District Court),
Tirunelveli.

Copy To:-

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 75839

RMK/SKM

TE/GT/SAR-IV : 27/10/2017 : 3P/4C

C.M.A(MD)No.773 of 2016 and
C.M.P. (MD) No.7492 of 2016
31.08.2017