



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.763 of 2015

1.Lekshmi
2.A.Murugan
3.A.Anbarasi
4.Indira
5.A.Nirmala
6.A.Jeyanthi
7.A.Chitra

...Appellants/Petitioners

Vs.

1.V.Viny
2.Daisy Bai
3.Bharathi AXA General Insurance
Company Ltd,
No.180, Sri Ram Center,
P.P.Chavadi, Madurai.

...Respondents/Respondents

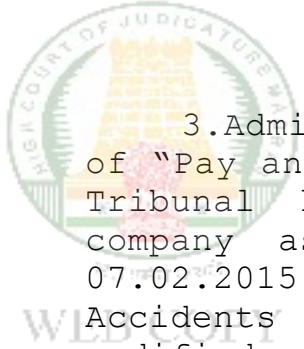
Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 07.02.2015 made in M.C.O.P No.20/2013 on the file of the Motor Accidents Claims Tribunal, CJM Court, Nagercoil.

For Appellants	: Mr.M.P.Senthil
For Respondents	: Mr.G.Maruthiah for R3
	No appearance for R1 & R2

JUDGMENT

The claimants have filed this Civil Miscellaneous Appeal questioning the exoneration of the insurance company by order dated 07.02.2015 made in M.C.O.P No.20/2013 on the file of the Motor Accidents Claims Tribunal, CJM Court, Nagercoil.

2.The deceased was riding the two wheeler when a Load Auto dashed against him and he died. Though the compensation of Rs.4,56,500/- awarded by the Tribunal, the vehicle owner was directed to pay the said amount. Since the driver of the Load auto did not produce the driving license, the insurance company was exonerated and liability was fixed on the owner alone. But this is incorrect.



3. Admittedly, the deceased was a third party. The principle of "Pay and Recovery" has to be ordered. The award passed by the Tribunal has to be modified. Liability is fixed on the insurance company as well as the vehicle owner. The award dated 07.02.2015 made in M.C.O.P No.20/2013 on the file of the Motor Accidents Claims Tribunal, CJM Court, Nagercoil is accordingly modified.

4. The third respondent insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum and cost 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 and thereafter recover the award amount from the vehicle owner in this very proceeding by filing an execution petition. On such deposit, the claimants are entitled to withdraw the same as apportioned by the Tribunal, by filing proper application.

5. The Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal, CJM Court, Nagercoil.

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

+1 CC to Mr.M.P.SENTHIL, Advocate SR.No.84632

+1 CC to Mr.G.MARUTHIAH, Advocate SR.No.85017

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31.10.2017

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