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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.12.2017
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)Nos.815 of 2015 and 1038 of 2017
and
M.P.(MD) No.1 of 2015

Bajaj Alliance General Insurance
Company Limited,
36/11-214, DDJ Centre, First Floor,
Opposite Vadasery Bus Stand,
Nagercoil. ... Appellant in CMA 815/2015

1.Mary Starlet
2.Star Sheela
3.Kishore Paul
4.Star Joy Princy ... Appellants in CMA 1038/2017

Vs.

1.Mary Starlet
2.M.Shaji
3.A.Sasitharan
4.Cholamandalam MS General
Insurance Company Limited,
having its Head Office at
Dare House, 2nd Floor, N.S.C.Bose Road,
Chennai - 600 001.
5.Ravichandran
6.M.Mohamed Afzal Fayas
7.Star Sheela
8.Kishore Paul
9.Star Joy Princy ... Respondents in CMA 815/2015

1.M.Shaji
2.A.Sasitharan
3.Cholamandalam MS General
Insurance Company Limited,
having its Head Office at
Dare House,
2nd Floor, N.S.C.Bose Road,
Chennai - 600 001.
4.Ravichandran
5.M.Mohamed Afzal Fayas
6.Bajaj Alliance General Insurance
Company Limited,
36/11-214, DDJ Centre, First Floor,
Opposite Vadasery Bus Stand,
Nagercoil. ... Respondents in
CMA 1038/2017

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Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 25.02.2015 made in M.C.O.P.No.96 of 2013 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Kanyakumari District at Nagercoil.

C.M.A.(MD) No.815 of 2015

For Appellant : Mr.J.S.Murali
For Respondents : Mr.K.Vamanan for R1
Mr.N.Kamesh for
Mr.R.Devaraj for R3
No Appearance
for RR2,5,6, 8 and 9
Mr.S.Srinivasa Raghavan
for R4
R7-unclaimed

C.M.A.(MD) No.1038 of 2017

For Appellants : Mr.K.Vamanan

For Respondents : No Appearance for RR1 & 4,5
Mr.N.Kamesh for
Mr.R.Devaraj for R2
Mr.S.Srinivasa Raghavan
for R3
Mr.J.S.Murali for R6

JUDGMENT

Heard the learned counsel on either side.

2.One Stalin Samadhanam was travelling in a load auto van on 21.09.2009 at about 5.30 p.m. When a lorry insured with third respondent herein coming from the opposite direction dashed against the auto, the said Stalin Samadhanam died in the resulting accident. His wife filed M.C.O.P.No.31 of 2013 before the Tribunal, Nagercoil. The Tribunal awarded a sum of Rs.6,88,000/- as compensation payable to the claimant wife and the children. Contending that the compensation awarded is not adequate, the claimant has filed C.M.A. (MD) No.1038 of 2017, seeking enhancement. On the other hand, C.M.A.(MD) No.815 of 2015 has been filed by the insurer contending that they are not liable and that in any event, the entire negligence must have been fixed on the driver of the lorry. The Tribunal came to the conclusion that since this one is a collision involving two vehicles, negligence must be apportioned equally between the driver of the load auto as well as the lorry

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3.It is seen that FIR was registered only against the driver of the auto. Ex.P1, FIR has been marked. Ex.P3 is rough sketch. A

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perusal of the rough sketch would show that the Tribunal was justified in coming to the conclusion that negligence must be equally apportioned between the drivers of both the vehicles. The said finding is based on relevant material and I find no reason to interfere with the same.

4.The learned counsel appearing for the appellant in C.M.A.(MD) No.815 of 2015 contended that the deceased had travelled as an unauthorised gratuitous passenger in a goods vehicle. He also contended that they must be completely exonerated from liability and even the question of pay and recover would not apply in this case. On the other hand, the learned counsel for the claimant contended that even though the deceased was only a Mason, he was also doubling as a loadman. In this case, vehicle was being driven to take marbles from the marble shop. The accident had happened when the load auto was going towards the marble shop for fetching the marbles. I am not in a position to agree with the submission made by the learned counsel for the appellant in C.M.A.(MD) No.815 of 2015 that the insurer must be totally exonerated from liability.

5.Coming to the quantum, it is seen that the deceased was aged about 55 years. Though there are three children, the family consisted or only himself and his wife. In this case, the claim petition came to be filed only by the wife and the children were shown as respondents. The children of the deceased are aged between 35 and 38 years. The accident had taken place in 2009. The Tribunal had awarded a sum of Rs.6,88,000/-. In my view, the same has been rightly quantified. I see no reason to interfere with the same or enhance the same. It is submitted that entire compensation amount has been deposited. Therefore, the claimant/wife of the deceased is at liberty to withdraw the same with accrued interest, less the amount already withdrawn by her, if any.

6.Both these Civil Miscellaneous Appeals stand dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Kanyakumari District at Nagercoil.

2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

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+2cc to M/S.J.S.Murali, Advocate SR.No. 91011, 91010
+1cc to M/S.K.Vamanan, Advocate SR.No. 90780
+1cc to M/S.R.Devaraj, Advocate SR.No. 90939
+1cc to M/S.S.Srinivasa Raghavan, Advocate SR.No. 91030

C.M.A.(MD)No.815of 2015 and 1038 of 2017
and
M.P.(MD) No.1 of 2015
04.12.2017

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JM/SV/SAR 4/31.07.2018/4P/9C

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