



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.850 of 2015 and
MP (MD) No.1 of 2015

M/s.Bajaj Alliance General Insurance
Company Limited,
108, TPK Road, Madurai.

... Appellant/Respondent No.2

Vs.

1.M.Ramu
2.Minor M.Nandhini
3.Minor M.Shanmugam @ Thirupathi
(Minors are rep.by their mother
guardian and next friend, the
first respondent herein)

... Respondents/Petitioners

4.M.Yoganath

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.01.2015 passed in MCOP.No.32 of 2013 on the file of the Special District Judge for MCOP cases, Madurai.

For Appellant	: Mr.V.Sakthivel
For Respondents	: Mr.K.Kumaravel for R1 to R3
	No appearance for R4

JUDGMENT

The insurance company has filed this appeal challenging the award dated 30.01.2015 passed in MCOP.No.32 of 2013 on the file of the Special District Judge for MCOP cases, Madurai on the ground of liability.

2.The deceased was aged about 46 years. He was a milk vendor. He was riding his two wheeler in Madurai - Trichy National Highway and he was crossing the Melur-Navinipatti junction. He was taking U turn when the accident involving the vehicle insured with the appellant occurred. The Tribunal after taking into account the rough sketch and other relevant materials, fixed the negligence on the part of the driver of the car as well as the rider of the two wheeler. The accident took place on 20.02.2010. He was admitted in Government Rajaji Hospital, Madurai and he ultimately died on 12.08.2010. The Tribunal held that the death was attributable to the accident. Challenging the said award, this appeal has been

filed by the insurance company.

3. The learned counsel for the appellant contended that the entire negligence must be fastened only on the deceased. It is relevant to note here that Crime No.161 of 2010 was registered on the file of B1 Melur Police Station only against the car driver. It is also relevant to note here that the accident spot is a crossing zone. In fact, the deceased was taking U turn for going to Navinipatti from Melur. If the car driver had not driven the car in a rash and negligent manner, the accident in question could not have occurred. In any event, taking into account of the conduct of the deceased, the Tribunal rightly fixed 50% negligence on him also. I confirm the said finding.

4. It is true that there is a gap of six months between the date of accident and the date of death. Merely because, there was a time lag one cannot come to the conclusion that the death is not attributable to the accident. The wife of the deceased was examined as PW.1. She has deposed that the deceased was an inpatient for more than two months. He was discharged only on 02.04.2010. She has specifically deposed that his husband was taking continuous treatment. Therefore, it is quite possible that the death occurred only on account of the accident in question. No grounds have been made out in this case to interfere with the said finding. The Tribunal awarded a sum of Rs.3,34,000/- with interest. By no stretch of imagination can this be said to be excessive. I find no merit in this appeal.

5. The award dated 30.01.2015 passed in MCOP.No.32 of 2013 on the file of the Special District Judge for MCOP cases Madurai is confirmed.

6. The appellant insurance company and the fourth respondent herein are directed to deposit the entire compensation amount jointly and severally as awarded by the Tribunal, with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, 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 are entitled to withdraw the same, as apportioned by the Tribunal, less the amount already withdrawn by them, if any.

7. This Civil Miscellaneous Appeal is dismissed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

The Special District Judge for MCOP Cases,
Madurai.

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Copy To:-

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

+ 1 CC TO Mr.V.SAKTHIVEL, ADVOCATE IN SR No. 86677
+ 1 CC TO Mr.K.KUMARAVEL, ADVOCATE IN SR No. 86781

SKM

TE/MR-KKR/SAR-2 : 07/12/2017 : 3P/5C

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