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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.12.2017
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.M.A(MD)Nos.962 of 2016 and 1144 of 2017
and
C.M.P (MD)No.8607 of 2016

C.M.A(MD)No.962 of 2016

The Royal Sundaram Alliance
Insurance Company Limited,
No.176, D & E Trivandrum Road,
Vannarpettai,
Tirunelveli,
Through its Branch Manager.

... Appellant/2nd Respondent

Vs.

1.Merlin BeulaBai

2.Minor Judith Olivia

3.Jacintha

(Minor 2nd Respondent through her
mother and next guardian the
1st Respondent herein)

... Respondents 1 to 3/
Claimants

4.Thangaiah

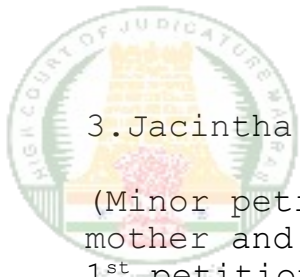
... 4th Respondent/
1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 01.12.2015 made in M.C.O.P.No.1189 of 2014 on the file of the Motor Vehicles Accident Claims Tribunal (Special Sub Judge), Tirunelveli.

For Appellant	: Mr.M.E.Ilango for M.Jerin Mathew
For R1 to R3	: Mr.T.Selvakumaran
For R4	: No Appearance

C.M.A(MD)No.1144 of 2017

1.Merlin BeulaBai



3.Jacintha

(Minor petitioner through her
mother and next guardian the
1st petitioner herein)

... Appellants/Petitioners

WEB COPY

Vs.

1.Thangaiah

2.The Royal Sundaram Alliance
Insurance Company Limited,
Through its Branch Manager,
No.176, D&E, Trivandrum Raod,
Vannarapettai,
Tirunelveli.

... Respondents/Respondents

(R1- ex parte before the trial
Court. Hence, notice dispensed with)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and Decretal order dated 01.12.2015 made in M.C.O.P.No.1189 of 2014 on the file of the Motor Vehicles Accident Claims Tribunal (Special Sub Judge), Tirunelveli.

For Appellants : Mr.T.Selvakumaran
For R-1 : ex parte
For R-2 : Mr.M.E.Ilango
for M.Jerin Mathew

JUDGMENT

The insurer has filed C.M.A(MD)No.962 of 2016, questioning the impugned award on the ground of quantum. The claimants has filed C.M.A.(MD).No.1144 of 2017, seeking enhancement of the compensation awarded to them.

2. One Shri.Joseph, pastor by avocation was travelling in his car on 19.09.2014 at about 2.30 a.m., on Tirunelveli-Nagercoil National Highway. The lorry insured with Royal Sundaram Alliance Insurance Company Limited got involved in an accident with the said car driven by the said Joseph. In the resultant accident, the said Joseph died. His legal heirs filed M.C.O.P.No.1189 of 2014 on the file of the Motor Vehicles Accident Claims Tribunal /Special Sub Judge, Tirunelveli. The Tribunal fixed the monthly income at Rs.6,000/- and awarded a sum of Rs.13,77,000/- as compensation.

3. The Insurer has filed this appeal contending that the Tribunal erred in not taking into account the testimony of the



driver of the lorry.

4. According to the learned counsel appearing for the insurer, the lorry was at a parked condition and that the deceased hit the lorry from behind. This was the categorical deposition of the lorry driver. Therefore, according to insurer negligence must be equally apportioned between the two .

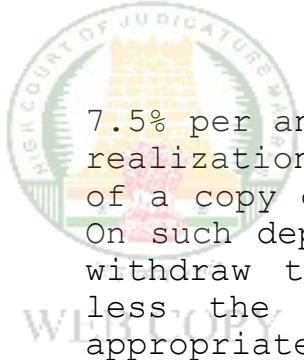
5. Per contra the learned Counsel appearing for the claimant pointed out that this was not the case set out in the counter affidavit filed by the insurer. The deposition of the lorry driver was completely at variance with what was expressly pleaded in the counter affidavit. Therefore, I am of the view that this testimony cannot even be looked into. It was pleaded in the counter affidavit that the car did not maintain sufficient safety measures and that is how the accident occurred.

6. I went through the Exhibit-R.4 Inspection Report of the Motor Vehicle Inspector and also the Exhibits R-1 and R-2, namely, Parvai Magazoor as well as rough sketch. It has been seen therefrom that the lorry as well as car were travelling North to South in the highway. It appears that the lorry took a turn towards left. In the resulting accident, the car hit the lorry on the rear side. From the manner of the accident, it can be seen that it was the lorry driver who was at fault. The Criminal case was also registered against the lorry driver. The finding of the tribunal that the accident occurred on account of the rash and negligent driving of the lorry driver is based on credible material and the same is confirmed.

7. Coming to quantum, it has been seen that the accident took place in the year 2014. There was no income proof that has been adduced on the side of the claimant. Therefore, I would fix the monthly income of the deceased at Rs.6,500/-. The dependants are three in number, therefore, one third deduction has to be made. Future prospects 40% will have to be added. Since he was aged 31 years, multiplier must be 16. Therefore the pecuniary loss to the family would be Rs.11,64,800/-. The claimants are the wife, child and mother of the deceased. Therefore, a sum of Rs.1,20,000/- has been awarded for loss of consortium and love and affection respectively. Towards loss of estate and funeral expenses a sum of Rs.30,000/- can be awarded. Therefore, the compensation payable to the claimants will be quantified as Rs.13,14,800/-.

8. The compensation awarded by the Tribunal is reduced from Rs.13,77,000/- to Rs.13,14,800/-. The award dated 01.12.2015 made in M.C.O.P.No.1189 of 2014 on the file of the Motor Vehicles Accident Claims Tribunal (Special Sub Judge), Tirunelveli, is modified, accordingly.

9. The said Insurance Company is directed to deposit the entire compensation amount of Rs.13,14,800/- with interest at the rate of



7.5% per annum and 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 order, less the amount already deposited, if any. On such deposit, the first and the third claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, less the amount already withdrawn by them, if any by filing appropriate petition before the Tribunal. The share of the minor claimant shall be deposited in any one of the Nationalised Bank in an interest bearing account and the natural guardian/mother of the minor claimant is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor claimant, till she attains majority.

10. C.M.A(MD)No.962 of 2016 is partly allowed. C.M.A. (MD). No.1144 of 2017 is dismissed. No costs. Consequently, C.M.P(MD) No.8607 of 2016 is closed.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

The Special Sub Judge,
Motor Vehicles Accident Claims Tribunal
Tirunelveli.

Copy to:

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1cc to Mr.M.E.ILANGO,Advocate,SR. 94131

+1cc to Mr.T.SELVAKUMARAN,Advocate,SR. 94524

C.M.A(MD)Nos.962 of 2016 and
1144 of 2017
21.12.2017

KMI

KK/JC/SAR 3/02.03.2018/ 4P- 6C/