



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.870 of 2015
and
Cros.Obj (MD) No.33 of 2016

C.Thaswin Charles ... Appellant /2nd Respondent in
CMA (MD) No.870 of 2015
... 1st respondent in Cross
Obj. (MD) No.33 of 2016/Appellant

Vs.

1.Raja Sulochana
2.R.Biju
3.R.Gini
4.R.Mini (Minor)
5.R.Rajan (Minor)
Respondents 4 and 5 rep.by
their mother,
1st respondent) ... Respondents 1 to 5 in CMA (MD) No.870 of 2015/
Petitioners

... Cross Appellants/Respondents 1 to 5
in Cros.Obj (MD) No.33 of 2016

6.Rathinadas ... 6th Respondent /1st Respondent

7.The Branch Manager,
The New India Insurance Company
Limited,
Having office at Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District. ... Respondent No.7 /3rd Respondent
in CMA (MD) No.870 of 2015

... 2nd and 3rd respondents
in Cross Obj. (MD) No.33 of 2016/6th & 7th Respondents

Prayer: CMA (MD) No.870 of 2015 is filed under Section 173 of Motor
Vehicles Act, 1988 and Cross Objection (MD) No.33 of 2016 is filed
under Order 41 Rule 22 r/w Section 96(1&2) of CPC, against the



judgment and degree dated 13.09.2012 made in M.C.O.P No.157 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Padmanabhapuram.

CMA(MD)No.870 of 2015 :

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For Appellant	: Mr.Brijesh Kishore
For Respondents	: Mr.K.P.Narayana Kumar for R1 to R5 Mr.J.S.Murali for R7 No appearance for R6

Cros.Obj(MD)No.33 of 2016 :

For Petitioner	: Mr.K.P.Narayana Kumar
For Respondents	: Mr.Brijesh Kishore for R1 No Appearance for R2 Mr.J.S.Murali for R3

JUDGMENT

Heard the learned counsel for the parties.

2.In the accident that took place on 31.09.1999 involving the capsizing of the vehicle belonging to C.Thaswin Charles and insured with the New India Insurance Company Limited, a number of persons were injured. Earlier, MCOP.No.6 of 2000 was filed by the legal heirs of the person who died in the said accident, wherein, the Tribunal by order dated 20.11.2001 granted compensation to the deceased and directed the insurance company to satisfy the award.

3.The learned counsel appearing for the vehicle owner contends that the said award has not been appealed against and that it has become final. This could not be controverted. While so, by an award dated 13.09.2012 in MCOP.No.157 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Padmanabhapuram, the vehicle owner was directed to pay a compensation and the insurance company has been exonerated. Aggrieved by the exoneration of the insurance company and fastening liability on him, the vehicle owner has preferred this appeal.

4.I am of the view that when arising out of one accident, 2 claim petitions were filed, the fastening of liability should be the same in both the claims. There cannot be exoneration of the insurance company in one and fastening liability on the other. The award made in MCOP.No.157 of 2007 ought to have been on the same lines as adopted in MCOP.No.6 of 2007. I am therefore of the view that the award dated 13.09.2012 in MCOP.No.157 of 2007 has to be modified and the liability should be fastened not only on the owner of the vehicle but also on the insurance company. The award dated 13.09.2012 made in M.C.O.P No.157 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Padmanabhapuram is accordingly modified.



5.The claimants have filed Cross Objection (MD)No.33 of 2016. They sought compensation of Rs.5.00 lakhs. The Tribunal awarded a sum of Rs.4,25,000/-. Thus, the substantial relief has been granted. The accident took place in the year 1999. There is no reason to take a different view. Cross Objection (MD)No.33 of 2016 is dismissed.

6.This Court directs the 7th respondent insurance company in CMA (MD)No.870 of 2015 to deposit the compensation amount as awarded by the Tribunal with interest at the rate of 7.5% per annum with costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the same as apportioned by the Tribunal, by filing proper application before the Tribunal. CMA(MD)No.870 of 2015 is allowed accordingly. No costs.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal (Subordinate Judge),
Padmanabhapuram.

+One cc to Mr.K.P.Narayanakumar, Advocate, SR.No.85426

+2 ccs to Mr.J.S.Murali, Advocate, SR.Nos.85216 and 85217

SKM

RL/5C/3P/SKN/RSK/SAR1/13/12/2017

C.M.A. (MD) No.870 of 2015
and
Cros.Obj (MD) No.33 of 2016