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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.589 of 2013
and
C.M.P(MD).No.1 of 2013

The Branch Manager,
National Insurance Company Limited,
Opp. To Head Post Office,
37-C, S.N.Highway Road,
Tirunelveli Junction,
Tamil Nadu ... Appellant / Respondent No.2

Vs

1.Vennila
2.Minor Packiaraj
3.Minor Abirami
4.Minor Aarthi
(Minors 2 to 4 are represented through
their mother and next friend first respondent)
5.Pushpam
6.Arulappan ... Respondent Nos.1 to 6 / Petitioner Nos.1 to 6
7.S.Muthuramalingam ... Respondent No.7 / Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and award made in M.C.O.P.No.44 of 2009, dated 05.10.2010 on the file of Motor Accident Claims Tribunal, Subordinate Court, Aruppukkottai.

For Appellant : Mr.D.Sivaraman
For Respondents : Mr.G.Marimuthu
for R.1 to R.6
:No appearance
for R.7

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the judgment and award made in M.C.O.P.No.44 of 2009, dated 05.10.2010 on the file of Motor Accident Claims Tribunal, Subordinate Court, Aruppukkottai.

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2. The brief facts of the case are as follows:

It is a case of fatal accident which took place on 28.02.2009

at about 08.30 p.m. When the deceased katturaja was riding his two wheeler bearing Registration No.TN-58-Q-7529 along with one Arumugam on pillion from Kariyapatti to Perungudi on South to North direction, a lorry belonging to the first respondent bearing Registration No.T.N.U-9700, which was insured with the second Insurance Company, was going in front of the two wheeler, suddenly stopped by its driver in a rash and negligent manner. Due to which, the two wheeler hit on the lorry and in that process, the deceased sustained several grievous injuries and died on the spot. At the time of accident, the deceased was aged about 40 years and it was stated that he was earning a sum of Rs.13,000/- per month by Centering Work in a building. Hence, the legal heirs of the deceased /claimants filed an application M.C.O.P.No.44 of 2009, dated 05.10.2010 on the file of Motor Accident Claims Tribunal, Subordinate Court, Aruppukkottai, seeking a sum of Rs.10,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, three witnesses viz., P.Ws.1 to 3 were examined and nine documents viz., Ex.P.1 to Ex.P.9 were marked and on the side of respondents, one witness viz., R.W.1 was examined and two documents viz., Ex.R.1 and Ex.R.2 were marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidences and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle and directed the appellant/Insurance Company to pay a sum of Rs.10,55,000/-, as compensation.

5. Against which, the appellant/Insurance Company has filed this present appeal. Though the present appeal has been filed on various grounds, at the time of arguments, the learned counsel for the appellant restricts his argument only on the ground of negligence. Hence, this Court deems it fit to deal with the negligence aspect only.

6. The learned Counsel for the appellant/Insurance Company would submit that the Tribunal has proceeded the trial as if the lorry had hit behind the two wheeler, whereas in the claim petition, it is specifically stated by the claimant that because of the lorry driver applied sudden break, the two wheeler hit behind the lorry and the accident had occurred. Hence, the learned Counsel for the appellant/Insurance Company prays for equal negligence to the rider of the two wheeler as well as the driver of the lorry.

7. The learned Counsel for the respondents/claimants would submit that based on the oral and documentary evidences, the Tribunal has rightly come to the conclusion and arrived at just and proper compensation. Hence, he prays for the dismissal of the appeal.

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8. Heard the learned counsel appearing on both sides and perused the materials available on record.

9. In the case on hand, there is no dispute as to the accident. The dispute arises regarding the manner in which the accident had occurred. As rightly pointed out by the Insurance Company, at Column No.10 in the claim petition, it has been stated that the accident had occurred due to the offending vehicle which was going ahead of the two wheeler. In other words, the deceased would have driven his two wheeler at the back side of the offending vehicle. When the offending vehicle suddenly applied the brake, the deceased would have lost his control and hit against the back side of the lorry. It cannot be denied that had the deceased been slowly driven the two wheeler, he could have averted the accident. The Court can presume that he had lost his control due to the speed and that is why, he hit the back side of the vehicle badly. But, the court below failed to note this aspect. Therefore, this Court finds some force in the argument of the insurance company. In other words, the deceased also contributed negligence towards the accident. However, considering the facts and circumstances of the case and the arguments made by both sides and also the averments stated in the claim petition, it is seen that the case is of the year 2009 and the matter has been pending before this Court for a long time. As the Motor Vehicles Act itself is a welfare legislation for the claimants, this Court feels that justice should be met, if apportionment is made by giving 30% of negligence to the driver of the two wheeler and 70% of negligence to the driver of the lorry. Accordingly 30% and 70% negligence is fixed on the driver of the two wheeler and the driver of the lorry respectively. Hence, after deducting 30% of negligence to the driver of the two wheeler, out of the amount of Rs.10,55,000/- granted by the Court below, the claimants would be entitled to a sum of Rs.7,38,500/- (Rupees Seven Lakhs thirty eight thousand and five hundred only).

10. In the result, this Civil Miscellaneous Appeal is partly allowed by reducing the compensation from Rs.10,55,000/- to a sum of Rs.7,38,500/-, in the award dated 05.10.2010, passed in M.A.C.O.P.No.44 of 2005, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Aruppukkottai. The appellant/Insurance Company is directed to deposit the remaining award amount alone with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and if there is excess amount deposited by the insurance company, they are at liberty to withdraw the same by filing petition before the Court below. On such deposit being made, the claimants are directed to pay the additional court fee, if any, and thereafter, the tribunal is directed to transfer the remaining amount, as per the apportionment made by the Court below along with accrued interest and costs, directly to the Personal Savings Bank Account Number of the Claimants, through RTGS/NEFT system, after getting their Account Details, within a period of two weeks thereafter;

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Accordingly, this civil miscellaneous appeal is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge, Motor Accident Claims Tribunal,
Aruppukkottai.

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+1CC to Mr.D.Sivaraman, Advocate, SR.No. 77416
+1CC to Mr.M.Jothi Basu, Advocate, SR.No. 77372

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and
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AM/SV MMS/SAR 1/13.02.2018/4P/6C

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