



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.282 of 2011
and M.P. (MD)No.1 of 2011
and CROS.OBJ(MD)No.17 of 2011

C.M.A(MD)No.282 of 2011:

The Oriental Insurance Co. Ltd.,
Kollam Branch,
represented by its Branch Manager,
D.D.J.Complex,
Opposite to Christopher Bus Stand,
Vadaseri, Nagercoil,
Vadaseri Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Appellant/2nd Respondent

Vs.

1.Pushparaj
2.Asuntha Mary
3.Singarajan
4.Richard Headweige Mercy ...Respondents 1 to 4/Petitioners 1 to 4

5.P.Mohanbabu ... 5th respondent/1st respondent
(5th Respondent remained exparte
before the Lower Court)

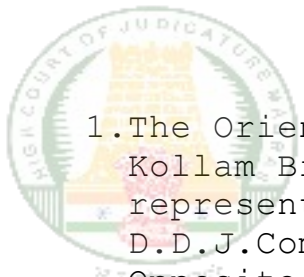
PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.315 of 2009 dated 05.10.2010, on the file of the Motor Accident Claims Tribunal-cum-Principal Subordinate Judge, Nagercoil .

For Appellant :Mr.K.Bhaskaran
For R-1 to R-4 :Mr.K.Vamanan
For R-5 :Bata due

CROS.OBJ(MD)No.17 of 2017

1.Pushparaj
2.Asuntha Mary
3.Singarajan
4.Richard Headweige Mercy ... Cross Objectors / Respondents 1 to 4

Vs.



1.The Oriental Insurance Co. Ltd.,
Kollam Branch,
represented by its Branch Manager,
D.D.J.Complex,
Opposite to Christopher Bus Stand,
Vadaseri, Nagercoil,
Vadaseri Village,
Agasteeswaram Taluk,
Kanyakumari District.

... 1st Respondent / Appellant

2.P.Mohanbabu ... 2nd Respondent / 5th Respondent
(5th Respondent remained ex-parte before the lower Court)

PRAYER:- Cross Objection is filed under Order 41 Rule 22 r/w Section 96(1) & (2) Civil Procedure Code, against the Judgment and Decree passed in M.C.O.P.No.315 of 2009 dated 05.10.2010, on the file of the learned Motor Accident Claims Tribunal (Principal Subordinate Court) at Nagercoil.

For Petitioners : Mr.K.Vamanan

For R1 : Mr.K.Bhaskaran

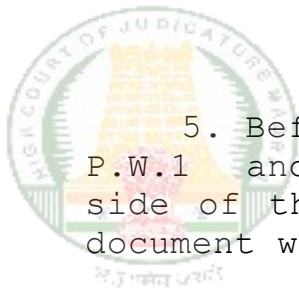
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award made in M.C.O.P.No.315 of 2009 dated 05.10.2010, on the file of the Motor Accident Claims Tribunal-cum-Principal Subordinate Judge, Nagercoil .

2. It is a case of fatal accident, which took place on 06.05.2006 at about 08.30 a.m., near Kazhakuttam Police Station.

3. It is the case of the claimants before the Tribunal that on the date of accident, the deceased was standing on the foot pathway on eastern side of the Attinkal to Kazhakootam Road. At that time, a motorcycle bearing Registration No. KL-02-X-2278 driven by the 1st respondent from north to south with rash and negligent manner dashed against her at 08.30 a.m. Due to the impact, she sustained grievous injuries on her head. Immediately she was taken to the Thiruvananthapuram Medical College Hospital for treatment. But she died during the period of treatment.

4. The claimants filed an application in M.C.O.P.No.315 of 2009 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Nagercoil, seeking compensation.



5. Before the Tribunal, the Claimants examined one witness as P.W.1 and marked Five documents as Exs.P.1 to Ex.P.5. On the side of the Insurance Company, no witness was examined and no document was marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the rider of the appellant/Insurance Company and held that the appellant, respondents 1 and 2 are jointly and severally liable to pay the compensation.

7. Against which, the appellant/Insurance Company has filed this present appeal mainly on the ground that the claimants are brothers and sisters of the deceased and they are not the dependants.

8. This Court heard the submissions made by the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the claimants and perused the materials available on record.

9. The learned counsel for the claimants would rely on the judgment of the Division Bench of this Court in **2016(1) TANMAC page No.453 (In ICICI Vs.Kaliyamoorthy)**, wherein the Division Bench of this Court held that brothers and sisters would also come under the category of legal representatives. This Court is of the view that the brothers and sisters born with the deceased have lost love and affection of the deceased. The compensation awarded by the Tribunal is a just compensation and therefore, there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court.

10. The learned counsel appearing for the claimants filed cross objection by stating that learned Judge has taken only Rs.3000/- as income of the deceased considering the age of the deceased was 64 years at the time of accident. This Court feels that amount taken as monthly income is reasonable.

11. In the result, this Civil Miscellaneous Appeal and the cross objections are dismissed and the award dated 05.10.2010 passed in M.C.O.P.No.315 of 2009 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Nagercoil, is hereby confirmed. The Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are permitted to withdraw their respective shares with proportionate interests and costs as apportioned by the



Tribunal without filing permission petition. No Costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

WEB COPY

/True Copy/

Sub Assistant Registrar

To,

1.The Principal Subordinate Judge, Motor Accident Claims Tribunal
Nagercoil .

2.The Record Keeper,Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.K.BHASKARAN, Advocate SR.No.76797

+1cc to M/S.K.VAMANAN, Advocate SR.No.76835

CM

MAS/JC/SAR2:11.10.2017:4P-5C

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