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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 19.07.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.550 of 2018
AND
C.M.P(MD).No.6391 of 2018

Rajalakshmi ... Appellant/
Petitioner/Claimant

Vs.

1.Balasubramanian

2.The Branch Manager,
Bajaj Alliance General Insurance Company
Limited, D.No.11, 3rd Floor,
Government Arts College Road,
Coimbatore – 18.

3.Selvaraj ... Respondents /
Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award, dated 23.03.2017, made in M.C.O.P.No.625 of 2015 on the file of the Motor Accident Claims Tribunal / Additional District and Special Court, Pudukkottai.

For appellant : Ms.A.Banumathy

For 2nd respondent : Ms.K.R.Shivashankari

JUDGMENT

Heard the learned counsel appearing for the appellant / claimant and the learned counsel appearing for the 2nd respondent / Insurance Company.

2. It is a case of fatal. The manner of the accident is not in dispute. The deceased was a child and aged about 8 years at the time of the accident. The appellant / claimant and the third respondent are mother and father respectively of the deceased. The Tribunal has awarded a sum of Rs.5 lakhs, out of which the appellant / claimant was directed to get Rs.3 lakhs and the third respondent was directed to get Rs.2 lakhs.

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3. The appellant / claimant has filed this appeal only questioning the apportionment made by the Tribunal in favour of the father of the child viz., third respondent on the ground that they have already separated themselves by entering into Breach of Marriage Deed, dated 17.09.2014 and that the appellant / claimant alone has been taking care of the deceased and though the said deed has been marked as Ex.P10, the Tribunal, without considering the same, has awarded a sum of Rs.2 lakhs in favour of the father of the deceased. Thus, she prayed to direct the second respondent to hand over the entire award amount to the appellant / claimant.

4. Admittedly, the third respondent / father of the deceased and the first respondent / owner of the vehicle did not appear before the Tribunal and they remained ex parte before the Tribunal. Even in the delay petition filed before this Court, though notice served to the third respondent, he did not appear before this Court either in person or through any counsel, which would go to show that he has no interest in prosecuting the matter and getting any amount as compensation.

5. A perusal of the Breach of Marriage Deed, dated 17.09.2014, would go to show that the marriage between the appellant / claimant and the third respondent took place on 10.06.2001 and they blessed with one male and two female children and they had broken their marriage even before the death of the deceased / 3rd child in the accident. As per the said deed, the deceased and another female child were in the custody of the appellant / claimant and the third respondent has given a sum of Rs.75,000/- to the appellant / claimant and Rs.2,37,500/- to the each female child as permanent alimony. Thus, the relationship between the appellant and the third respondent is broken by the said deed. As rightly stated by the appellant / claimant, the Tribunal, without even looking into the said deed marked on the side of the claimant, has apportioned the award.

6. Considering the fact that the relationship of the appellant and the third respondent was not in existence at the time of the accident; the deceased was only in the custody of the appellant / claimant; the third respondent has not made any claim by making his appearance before the Court; and the another female child is in the custody of the appellant / claimant, this Court is of the view that it would be appropriate to direct the second respondent to hand over the entire sum to the appellant / claimant.

7. In view of the above, the apportionment made by the Tribunal alone is hereby set aside and it is hereby declared that the appellant / claimant is entitled to receive the entire award amount ie., Rs.5 lakhs awarded by the Tribunal with accrued interest from the date of petition till the date of deposit and costs. The second respondent / Insurance Company is directed to deposit the entire award amount with accrued interest from the date of petition till the date of deposit and costs within a period of eight weeks from

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the date of receipt of a copy of this judgement. On such deposit, the appellant / claimant is entitled to receive the same by filing a petition before the Tribunal.

8. This Civil Miscellaneous Appeal is accordingly allowed. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-IV)

To
1.The Additional District and Special Judge,
Motor Accident Claims Tribunal,
Pudukkottai.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1CC TO Ms.A.BANUMATHY ADVOCATE IN SR.NO.74305.

+1CC TO Ms.K.R.SHIVASHANKARI ADVOCATE IN SR.NO.74015.

GCG
DS SKN SAR-4:14.09.2018: 3P/6C

Judgment in
C.M.A(MD).No.550 of 2018
19.07.2018

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