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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1389 of 2011 and
and
M.P.No.1 of 2011

M/s.National Insurance Co.,Ltd.,
Branch Office-II, Erode.

.. Appellant/6th Respondent

vs

1.R.Udaya Bala
2.R.Sivaguru
3.R.Jayasakthi

.. Respondent 1 to 3/Petitioners 1 to 3

4.Rejith
5.K.M.I.Mather
6.Bajaj Allianz General Insurance Co., Ltd.,
3rd Floor, Finance Tower,
Kalur, Ernakulam 682 017.

7.P.Dharmadass

8.D.Shanthi

(Respondents 4, 5, 7 & 8 exparte before the
Lower Court and hence notice may be dispensed with)

Respondents 4 to 8/Respondents 1 to 5

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and decree dated 03.09.2009 made in M.C.O.P.No.301 of 2006 on the file of the Motor Accident Claims Tribunal (Subordinate Court) Sankagiri

For Appellant : Ms.Harini for
Mr.N.Vijayaraghavan

For R1 to R3 : Mr.C.Kulanthaivel

For R6 : M/s.R.Sreevidhya
RR4,5,7&8 - Exparte



JUDGMENT

With consent of both the counsels, this Civil Miscellaneous Appeal is taken up for hearing. Heard the learned counsel for the appellant, 1st to 3rd respondents and 6th respondent.

2. This Civil Miscellaneous Appeal has been filed against the impugned Order and Decree dated 03.09.2009 passed by the Motor Accident Claims Tribunal (Sub Court) Sankagiri in M.C.O.P.No.301 of 2006.

3. By the impugned Order and Decree, the Tribunal has awarded a sum of Rs.9,85,528/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the 1st to 3rd respondents. The Tribunal has fixed the 2/3rd of liability on the 6th respondent viz., Bajaji Allianz Insurance Company and the 1/3rd of liability on the appellant-National Insurance Company.

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

- (i) On 15.04.2006 at about 5.00 p.m. the deceased Ramajayam was travelling in the Swaraj Mazta van bearing registration TN 09 F 3240 along with his office colleague.
- (ii) When the said van was proceeding from Perundurai to Coimbatore, a Toyota Car bearing Registration No.KL 07 AX.2137 driven by the first respondent-driver in a rash and negligent manner collided with the van, as a result of which, the deceased Ramajeyam suffered grievous injury and died on the spot.

5. The Tribunal, after considering the oral and documentary evidence on record, has awarded a sum of Rs.9,85,528/- as compensation with interest at the rate of 7.5% per annum, under the following heads:

Loss of income (Rs.10631x12x1/3x11)	Rs.9,35,528/-
Loss of love and affection to the father	Rs. 40,000/-
Funeral expenses	Rs. 10,000/-
Total	Rs.9,85,528/-



6. During hearing, the learned counsel for the 6th respondent submitted that a batch of cases came to be filed, wherein, the 6th respondent has accepted complete liability and has settled the amount to the claimants therein.

7. In this connection, the learned counsel for the appellant/Insurance company drew my attention to Ex.R2 to Ex.R10. Since the 6th respondent has owned the responsibility as an insurer, I am of view that there is no justification in the Tribunal apportioning the liability partly on the appellant Insurance Company and the 6th respondent Insurance Company.

8. Under theses circumstances, while upholding the quantum of compensation arrived by the Tribunal, I set aside the order fixing the liability on the appellant. The entire liability is therefore fixed on the 6th respondent.

9. The learned counsel for the appellant submits that the Appellant-Insurance Company has already deposited the award amount before the Tribunal together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit.

10. Under these Circumstances, the 1st to 3rd respondents/claimants are permitted to withdraw the amount already deposited by the appellant Insurance Company together with interest accrued thereon while liberty is given to the appellant to recover the aforesaid amount from the 6th respondent following the principle in Oriental Insurance Company Limited Vs. Nanjappan and Others, (2004) 13 SCC 224.

11 Accordingly, this Civil Miscellaneous Appeal is allowed with the above observations. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Vellore.

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Copy to:

The Section Officer,
V.R.Section,
High Court, Chennai-104.

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M.P.No.1 of 2011

PVS (CO)
SU(13/09/2021)