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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.928 of 2019

and

C.M.P. (MD) Nos. 12505 of 2019 & 7123 of 2021

The Branch Manager,
National Insurance Company Limited,
No.1754/56, Manojiyappa Street,
Thanjavur.

...Appellant/2nd Respondent

Vs.

1.Shanthi
2.Rajeshwari
3.Vignesh
4.Manikandan

...R-1 to R-3/Claimant Nos.1 to 3
...4th Respondent/1st Respondent

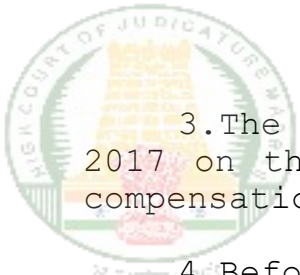
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and decree dated 19.07.2019 made in M.C.O.P.No.1152 of 2017 on the file of the learned Special Judge, Thanjavur.

For Appellant	:Mr.A.Elango
For R-1 to R-3	:Mr.S.Muthumalai Raja
For R-4	:Mr.G.Karnan

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the Judgment and decree, dated 19.07.2019 in M.C.O.P.No.1152 of 2017 passed by the learned Special Judge, Thanjavur.

2.It is a case of fatal accident, which took place on 08.01.2017 at about 06.00 p.m., when the deceased Dinesh was riding a motor cycle bearing Registration No.TN-68-H-1928 and one Kaviyarasan was a pillion rider in Thanjavur - Nagapattinam main road, from west to east, north side of Kovilur Anna nagar Thurukkachi kulam, a Hero Honda Splender motor cycle bearing Regn. No.TN-68-4077 with three persons came from opposite direction with rash and negligent manner and dashed against the deceased vehicle. Due to the said accident, Dinesh died.



3.The claimants have filed a petition in M.C.O.P. No.1152 of 2017 on the file of the learned Special Judge, Thanjavur, seeking compensation.

4.Before the Tribunal, on the side of the claimants two witnesses were examined as P.Ws.1 & 2 and marked thirteen documents as Exs.P.1 to P.13. No witness was examined and document marked on the side of the Insurance company or owner of the vehicle.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the insurance company and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the two wheeler of the 4th respondent herein and directed the appellant/insurance company to pay a sum of Rs.17,30,496/-as compensation.

6.Heard Mr.A.Elango, learned counsel appearing for the appellant and Mr.S.Muthumalai Raja, learned counsel appearing for the claimants and Mr.G.Karnan, learned counsel appearing for the 4th respondent. Perused the material documents available on record.

7.The appellant/insurance company has filed this Civil Miscellaneous Appeal on two grounds. One is sons of the deceased is a bachelor for personal expenses 50% to be deducted. However, personal expenses to be deducted at 50%. But, the tribunal has wrongly deducted 1/3 as personal expenses. The tribunal has fixed monthly income as Rs.12,000/- and 40% future prospectus. $\text{Rs.12,000} \times 40/100 = \text{Rs.16,800/-}$ for personal expenses 50% to be deducted. Hence, monthly income is $\text{Rs.8,400} \times 12 \times 18 = \text{Rs.18,14,400/-}$.

8.On hearing both sides, this Court is inclined to modify the award amount of compensation passed by the Tribunal.

9.Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	This Court	
1.	For Loss of income	Rs. 24,19,200/-	Rs.18,14,400/ -	modified
2.	For funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
3.	For loss of Estates	Rs. 15,000/-	Rs. 15,000/-	confirmed
	Total	Rs24,49,200 /-	Rs.18,44,400/ -	

4.	Deducted 10% for mistake of the deceased	Rs. 2,44,920/-	Rs.1,84,440/-	modified
	Total	Rs.22,04,280/-	Rs.16,59,960/-	modified
5.	Deducted for Income-tax	Rs. 4,73,784/-	Rs.1,65,996/-	
	Total	Rs.17,30,496/-	Rs.14,93,964/-	modified

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

10. In view of the said modification, this Civil Miscellaneous Appeal is partly allowed, and the award amount of Rs.17,30,496/- granted by the learned Special Judge, Thanjavur, is reduced to Rs.14,93,964/- with 7.5%. The appellant/insurance company is directed to deposit the entire award amount, within a period of Four weeks, from the date of receipt of copy of the order. After depositing, the 1st claimant (mother) is entitled for 70% and 2nd and 3rd claimants are entitled for 15% each. For other aspects, the order of the Tribunal is confirmed. After depositing the award amount, the claimants are entitled to withdraw the compensation on filing appropriate application before the tribunal. If the appellant/insurance company deposited the excess amount is to be refunded to the insurance company. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Special Judge,
Thanjavur.

Copy to

The Section Officer,
V.R. Section, (2C)
Madurai Bench of Madras High Court, Madurai

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.A. ILANGO, Advocate (SR-35495[F] dated 23/11/2021)

+1 CC to M/s.S. MUTHUMALAIRAJA, Advocate (SR-35615[F] dated 24/11/2021)

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SJ(CO)

KB(16.02.2022) 4P 6C