

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2015

C O R A M

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.No.1177 of 2011
and
M.P.Nos.1 & 2 of 2011

The Divisional Manager,
New India Assurance Company Ltd.,
No.69/70, Sheikpet Nadu Street,
Kancheepuram.Appellant/2nd Respondent

Vs.

1. B.Pattabai
2. B.Kalaiselvi
3. B.Rekha
4. M.IsmailRespondents/Petitioners 1 to 3/
1st Respondent

PRAYER:

Civil Miscellaneous Appeal filed under section 173 of the
M.V. Act against the award and decree, dated 27.09.2010, passed
in M.C.O.P.No.6 of 2008, on the file of the Motor Accident
Claims Tribunal (Sub Court), Kancheepuram.

For Appellant : Mrs.C.Sukumari

For Respondents 1 to 3 : Mr.C.Prabakaran

JUDGEMENT

The Insurance Company, who is the second respondent before
the Tribunal, is the appellant herein.

2. The present Appeal is filed against the award of
compensation of Rs.5,75,000/- to the claimants, who are the
widow and daughters of one Babu, who was the victim of the fatal
accident, involving the Vehicle insured with the appellant
herein.

3. Heard both sides.

4. The only contention raised by the appellant/insurance company is against the doctrine of pay and recovery theory adopted by the Tribunal by directing the insurance company to pay compensation to the claimants as determined by the Tribunal with right given to the insurer to recover the same from the owner of the vehicle.

5. The Tribunal, though found the claimants to be entitled to a reasonable compensation, and determined the quantum of compensation at Rs.5,75,000/-, simultaneously, found that the Insurance Company is not liable to indemnify the owner of the vehicle for certain violation of policy conditions. However, the Tribunal, by applying the principle laid down by the Hon'ble Supreme Court in the decision reported in (2001) 3 L.W.21 directed the Insurance Company first to answer the claim by paying the compensation, and then, to recover the same from the owner of the motor cycle. This Court finds no reason to interfere with such order of the Tribunal, and the same is dis-entitles the appellant to get any relief in this Appeal.

6. In the result, the Civil Miscellaneous Appeal is dismissed with direction issued to the insurer to deposit the entire compensation amount, if any, with interest and costs within four weeks from the date of receipt of copy of this judgment and on such deposit, the claimants are entitled to withdraw the compensation amount due to them with proportionate interest and costs in terms of the impugned award by filing due cheque petition. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sd

To

The Motor Accident Claims Tribunal
(Sub Judge),
Kancheepuram.

1 CC to Mr.C.Prabakaran, Advocate SR.No. 41830

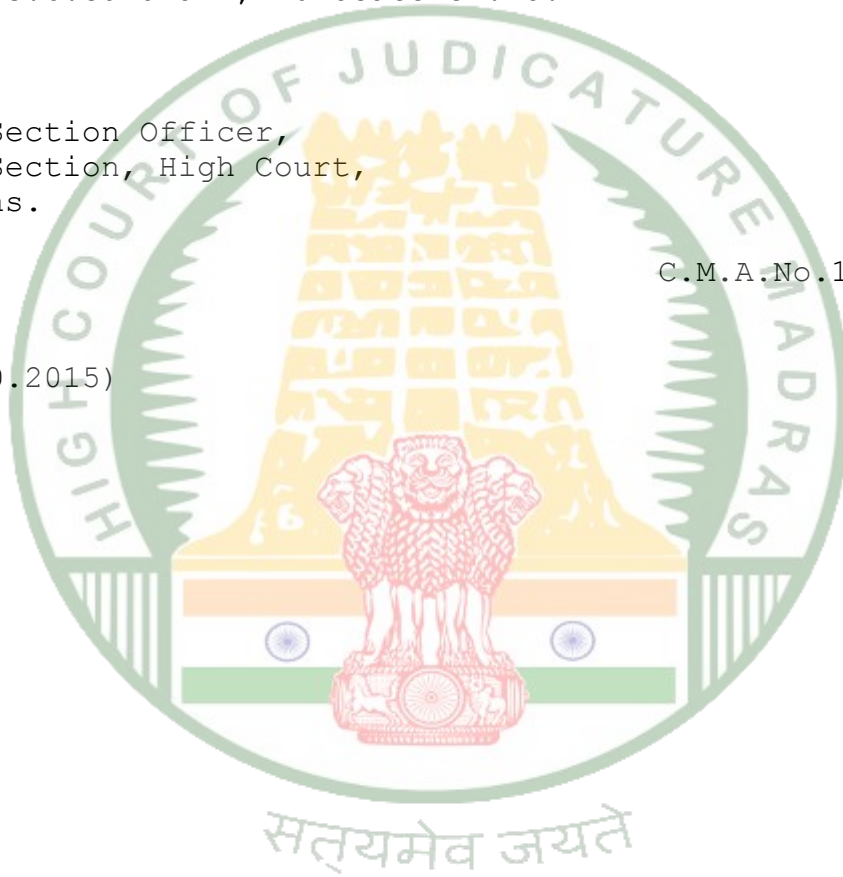
1 CC to Mrs.C.Sukumari, Advocate SR.No. 41717

Copy to

The Section Officer,
V.R.Section, High Court,
Madras.

C.M.A.No.1177 of 2011

AK (CO)
PSI (15.10.2015)



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