

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1539 of 2011 and
M.P.Nos.1 of 2011 and 1 of 2015

M/s United India Insurance Co.Ltd.,
13-A, Nethaji Road
Manjakuppam
Cuddalore

... Appellant/2nd Respondent

-Vs-

1. Thiru.Kaliaperumal
S/o Perumal

... 1st Respondent/Claimant.

2. Thiru.Radhakrishnan
S/o Duraikannu

... 2nd Respondents/1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 31.12.2008 made in M.C.O.P.No.540 of 2006 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Cuddalore.

For Appellant :: Mr.J.Chandran

For Respondents :: Mr.D.S.Thirumavalavan for R1
Not ready in notice reg.R2

JUDGMENT

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore in M.C.O.P.No.540 of 2006 dated 31.12.2008, M/s United India Insurance Company Limited has preferred this civil miscellaneous appeal.

2. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

3. A perusal of the impugned award shows that one Anjalai, W/o Kaliaperumal, the first respondent herein, while travelling as load woman in the second respondent's vehicle bearing Registration No.TN 31 C 2208 on 16.3.2004 at 7.30 hours on the Karukai-Meliruppu main road near Semmedu cross road, since the

driver of the offending vehicle drove the vehicle in a rash and negligent manner and hit the jeep bearing Registration No.TN 31 D 9209, due to the impact the first respondent's wife sustained grievous injuries and even though she was treated in the Government Hospital, Panruti and in the Government Hospital, Cuddalore, she succumbed to the injuries. Hence the first respondent filed the claim petition before the Tribunal claiming a compensation of Rs.15,00,000/- on the ground that she was aged about 35 years at the time of accident and was a cashew merchant and load woman and earning Rs.5,000/- per month.

4. Though the claim was resisted by both the owner of the vehicle and the insurance company that they are not liable to pay any compensation, the Tribunal, based on the evidence let in by the claimant through P.Ws.1 & 2 and Ex.P1-FIR copy and Ex.P3-post mortem certificate, held that the deceased was fatally injured in the road traffic accident only due to the rash and negligent driving of the driver of the second respondent's vehicle. The Tribunal, while deciding the reasonable compensation to be payable to the first respondent claimant, in the light of the ratio laid down by the Apex Court in The Divisional Controller, Karnataka State Road Transport Corporation v. Mahadeva Shetty and another, AIR 2003 SC 4172 as well as the judgment of this Court in Cholan Roadways Corporation v. Ahamed Thambi and others, 2006 (4) MLJ 362, fixed the notional income of the deceased at Rs.3,000/- per month, since no evidence was let in to prove that she was earning Rs.5,000/- per month. After taking the age of the deceased as 35 years based on Ex.P3-post mortem certificate, the Tribunal adopted the multiplier of 11 based on the age of the first respondent through Ex.P4-legal heir certificate. Accordingly, after deducting 1/3 towards her personal expenses, the Tribunal fixed the general compensation at Rs.2,64,000/- i.e., $\text{Rs.}2000 \times 12 \times 11 = \text{Rs.}2,64,000/-$. In addition thereto, the Tribunal awarded a sum of Rs.1,500/- towards transportation charges, Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection and Rs.2,500/- towards funeral expenses, totalling in all a sum of Rs.2,93,000/- along with interest at the rate of 6% per annum, due to the contributory negligence of the deceased. This Court does not find any ground to interfere with the just compensation arrived at by the Tribunal, as the same has been based on evidence let in by the parties. Accordingly, finding no merits, the civil miscellaneous appeal is dismissed. It is open to the first respondent claimant to withdraw the entire award amount along with accrued interest by

making necessary application before the Tribunal. Consequently, interim order stands vacated and the M.P.Nos.1 of 2011 & 1 of 2015 are also dismissed. No costs.

ss

-s/d-

Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

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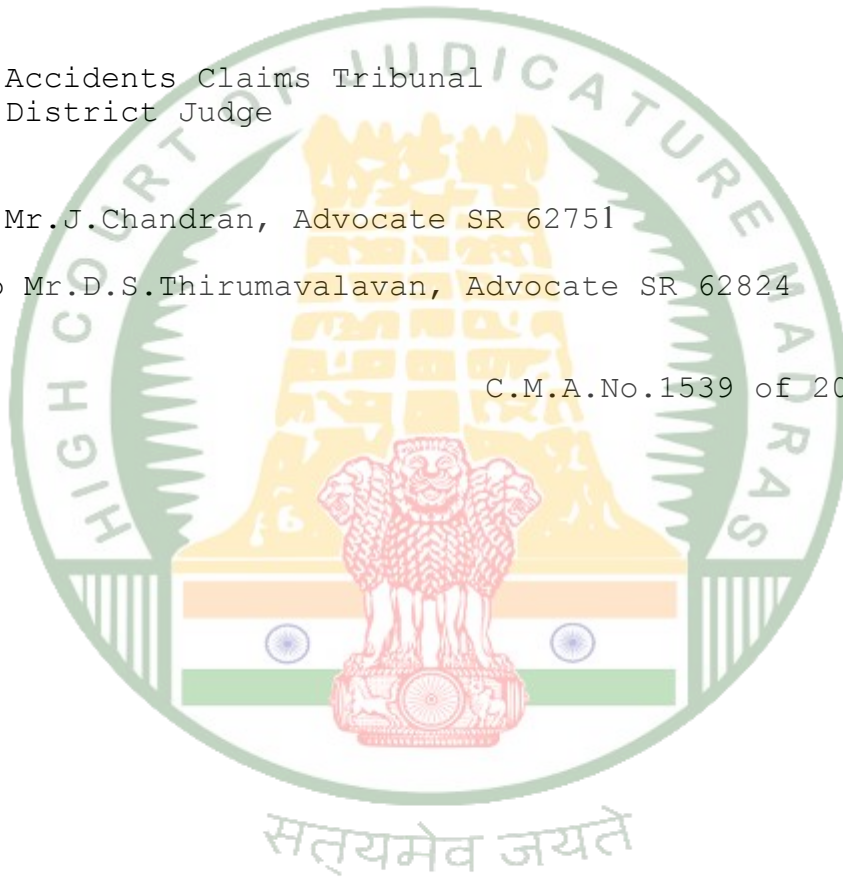
The Motor Accidents Claims Tribunal
Principal District Judge
Cuddalore

+ 1 cc to Mr.J.Chandran, Advocate SR 62751

+ 1 cc to Mr.D.S.Thirumavalavan, Advocate SR 62824

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