

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26/10/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1908 of 2015

and

M.P.Nos.1, 2 of 2015

United India Insurance Company Limited,
No.134, Greams Road,
Chennai - 600 006.

... Appellant/2nd Respondent

Vs.

1.Kanniyammal
2.Vasudevan
3.Murugan
4.Pargunan
5.Kotti
6.Pushpa
7.Sagadevan

(No amount has been awarded to the respondents
2 to 7 and no relief has been claimed against them
and hence given up)

... Respondents 1 to
7/claimants

8.M.R.P.Motors,
No.26 A, Thoppamudali Street,
Old Vandipalayam,
Cuddalore - 607 002.

...8th Respondents/1st
Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicle Act, 1988, against the Judgment and Degree
dated 17.09.2014 passed in M.A.C.T.O.P.No.6117 of 2012 on the
file of the Motor Accidents Claims Tribunal, V Small Causes
Court, Chennai.

For Appellant :Mr.S.Udhayabanu
for M/s.P.Sankaranarayanan

For Respondents : Mr.K.Suryanarayanan for R1 to R7

J U D G M E N T

The short facts of the case are as follows:-

On 29.08.2011 at about 08.30 a.m., the deceased had driven the Auto bearing registration No.TN-32M-9896 on the ECR Road and at that point of time the bus bearing registration No.TN-31AD-6688 coming from the opposite direction in a rash and negligent manner and dashed against him, as a result he succumbed to his injuries. Hence, the legal heirs of the deceased have filed a claim petition against the owner and insurer of the offending vehicle.

2. The Insurance Company had filed a counter statement and denied the accident that the same had been committed by the driver of the bus, actually the accident had been committed by the deceased. The respondent had denied the age, income and occupation. Further, the said bus had not been covered with valid documents.

3. On recording the averments of both sides, the Tribunal had framed three issues. On the side of the claimants two witnesses were examined and six documents were marked. On the side of the Insurance Company no witness and no documentary proof. After recording the evidence and on perusing the exhibits marked by the claimants, the Tribunal had awarded a sum of Rs.11,80,000/- with interest at the rate of 7.5% per annum against the Insurance Company. The Insurance Company has filed the above appeal and challenging the award and decree passed by the Tribunal.

4. The very competent counsel Mr.K.Suryanarayanan, appearing for the appellant submits that in order to prove the monthly income of the deceased there is no documentary proof. In the said accident two vehicles were involved, therefore contributory negligence had to be fashioned. Further, all the claimants have not been dependent on the income of the deceased. The claimant had claimed a sum of Rs.10,00,000/- but the Tribunal had awarded more than the claimed amount besides the Tribunal had granted compensation under the head of loss of expectancy of life and loss of estate which are not relevant in the instant case, hence the learned counsel entreats the Court to set aside the award.

5. The very competent counsel Mr.S.Udaya Banu, appearing for the claimants submit that the driver of the offending bus had committed the said accident in a rash and negligent manner, hence a F.I.R has been levelled against the driver of the bus. At the time of accident the vehicle has been covered with valid

documents namely RC, FC, Permit and Insurance Policy. Therefore, the liability and negligence have been proved against the appellant. At the time of accident the age of the deceased was 21 years and he was an auto rickshaw driver by profession and he was earning Rs.15,000/- per month. The claimants are eight in numbers and all the claimant were dependant on the income of the deceased. The claimants are entitled to receive more than the award amount but the claimants have been awarded inadequate compensation. The deceased was the bread winner of the family. Hence, the learned counsel entreats the Court to dismiss the above appeal.

6. At the time of admission this Court directed the appellant to deposit a sum of Rs.8,00,000/- with accrued interest thereon as per the rate of interest fixed by the Tribunal.

7. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsel on either side, this Court is of the view that the age of the deceased was 21 years and he was an earning member by way of operating autos and against hire basis. The claimants eight in numbers, therefore the quantum of compensation awarded by the Tribunal is not on the higher side. Further, the Tribunal had fixed the monthly income of the deceased for a sum of Rs.5,000/- after deducting his personal expenditure which is reasonable and the multiplier had been adopted as 18 which is also appropriate. Further, the Tribunal had not granted an adequate compensation under the head of love and affection is on the lower side. However, the award granted by the Tribunal which is suitable for execution, hence the above appeal is dismissed.

8. This Court directs the appellant herein to deposit the balance compensation amount with interest after deducting an earlier deposit made by the appellant within a period of six weeks from the date of receipt of a copy of this order before the Trial Court. After such a deposit being made it is open to the claimants to withdraw their apportioned share amount with accrued interest there on after filing a memo along with a copy of this order. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal,

V Small Causes Court, Chennai.

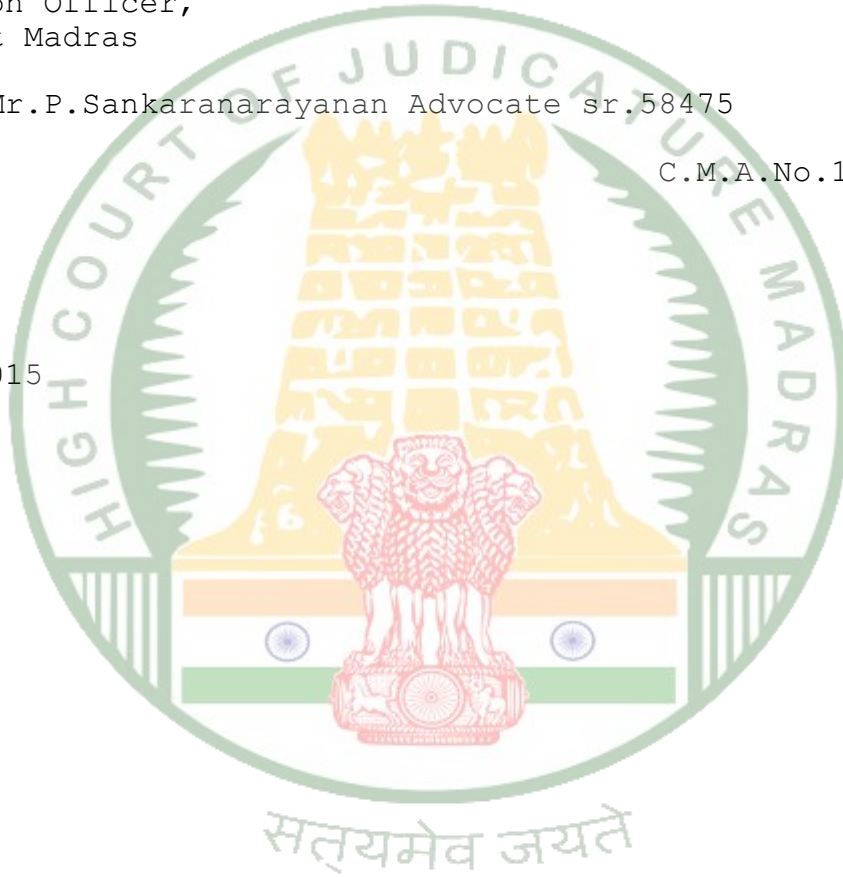
copy to:

The Section Officer,
High Court Madras

+1 cc to Mr.P.Sankaranarayanan Advocate sr.58475

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