

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. No. 3153 of 2007

United India Insurance Co. Ltd.,
Divisional Office No.2,
Peramanur Main Road,
Salem - 7.

...Appellant/2nd respondent

Vs.

1. A. Mallika Begum
2. Shajahan
3. Ashram Ali Khan
4. Minor Habibunisha
(Minor rep. By mother and NF
Mallika Begum) ... 1 to 4 Respondents/Petitioner
5. Salem District Co-op. Agricultural
Services Society Ltd.,
Salem Industrial Estate,
Five Roads, Salem - 4. ...5th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 30.03.2007 passed in M.C.O.P. No. 2148 of 2004 by the Motor Accidents Claims Tribunal (I Addl. District Court), Salem.

For Appellant :: Mrs. Harini for
Mr.M.B. Gopalan

For Respondents:: Mr.K. Kuppusamy for
R1 to R4
Ms. Manjumatha for
Mr.N. Anand for R5

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J U D G M E N T

This Civil Miscellaneous Appeal has been preferred as against the award of Rs.2,75,000/- granted in favour of the claimants and fastening the liability on the appellant Insurance Company, while contesting the claim petition filed by the legal heirs of one Amirullah Khan, aged about 65 years, who died in the accident that

occurred on 27.03.2004, when the two-wheeler driven by him was hit by a tractor-trailor belonging to the 5th respondent and insured with the appellant Insurance Company.

2. Heard the learned counsel for the appellant and the learned counsel for the respondents.

3. Though the learned counsel for the appellant would argue that the offending vehicle namely, Tractor-Trailor was insured only for agricultural purposes, it was used as a Tanker Lorry and therefore, it is violation of the policy condition, the said contention can be considered only for ordering pay and recovery. They cannot avoid paying the compensation to the claimants.

4. The second argument of the learned counsel for the appellant is that there was no valid permit and fitness certificate possessed by the 5th respondent for the insured vehicle at the time of accident.

5. Even the said contention is only with regard to violation of policy condition. Therefore, the 5th respondent, who drove the vehicle without proper registration, permit and fitness certificate should be necessarily held liable. However, as third parties, the claimants/respondents 1 to 4, cannot be left in the lurch without payment of compensation. Hence, the award of the Tribunal is modified to the extent that the compensation amount should be paid by the appellant Insurance Company and thereafter, they can recover the same from the 5th respondent/owner.

6. Though there is no appeal or cross-appeal by respondents 1 to 4, a perusal of the award would show that no amount was awarded towards "Loss of Consortium". Hence, following the judgment of the Honourable Apex Court rendered in Rajesh and others V. Rajbir Singh and others reported in 2013 (3) CTC 883, a sum of Rs. 50,000/- is awarded under the said head. The award of Rs.2,75,000/- granted by the Tribunal is enhanced to Rs.3,25,000/-, to be paid by the appellant Insurance Company and thereafter, to be recovered from the owner of the vehicle, the 5th respondent herein. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The Civil Miscellaneous Appeal is dismissed. No costs.

7. The appellant Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being

made, respondents 1 to 3 are entitled to withdraw their respective shares, as per the apportionment of the Tribunal, within a period of two weeks thereafter. As far as the minor's share is concerned, the same shall be deposited in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till she attains majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv

To

The Additional District Judge,
(Motor Accident Claims Tribunal, Salem.

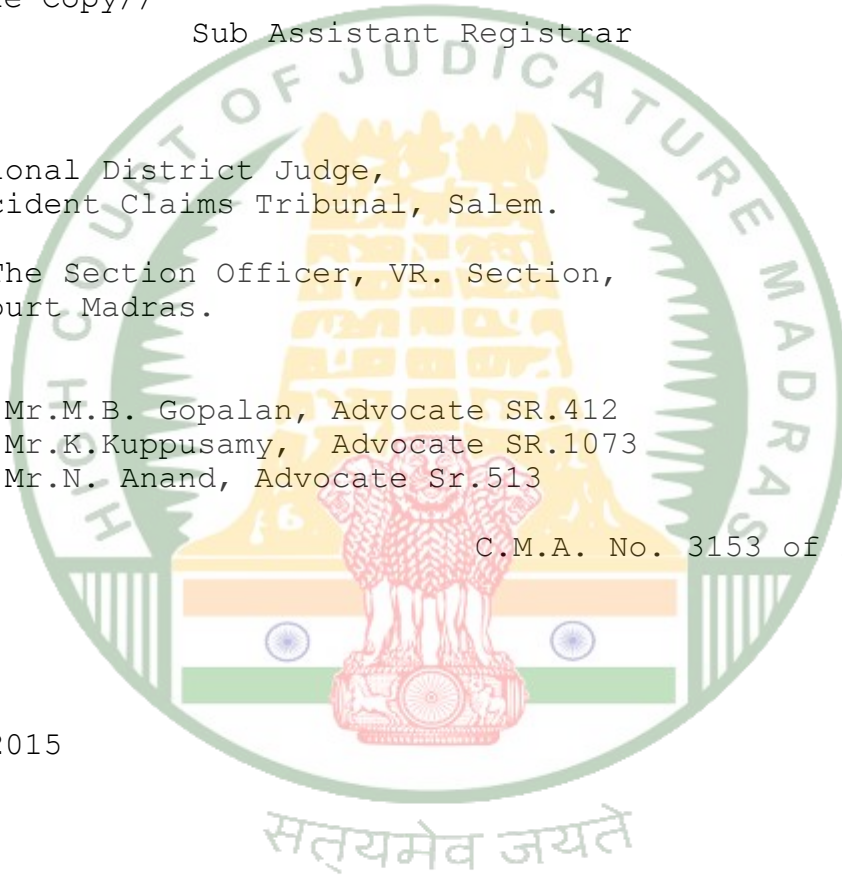
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High Court Madras.

+ 1 cc to Mr.M.B. Gopalan, Advocate SR.412
+ 1 cc to Mr.K.Kuppusamy, Advocate SR.1073
+ 1 cc to Mr.N. Anand, Advocate Sr.513

C.M.A. No. 3153 of 2007

KU(CO)

EU 12.03.2015



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