

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.3693 of 2013

and

M.P.No.1 of 2015

The Branch Manager,  
M/s.United India Insurance Co.Ltd.,  
The Branch Office,  
No.12/123/1, Javili Street,  
Palamaner - 517 408. .... Appellant/2nd Respondent

vs.

1.Mrs.Vimala,  
2.Jagadhamma (Minor)  
(Minor 2<sup>nd</sup> respondent is  
represented by mother and  
next friend, namely, 1<sup>st</sup> respondent)  
3.Lakshamma  
4.Chinna Biddappa  
5.R.Subramanian ... Respondents/Petitioner/  
(5<sup>th</sup> respondent set ex-parte in lower Court) 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 Motor  
Vehicles Act, 1988 against the Judgment and decree dated  
13.6.2013 in MCOP No.946 of 2013 on the file of the Motor  
Accident Claims Tribunal/Special Subordinate Court, Tirupattur.

For Appellant : Mrs.Harini  
for M/s.M.B.Gopalan

For respondents 1 to 3 : No appearance

JUDGMENT

This Appeal has been directed against the Judgment and  
Decree dated 13.6.2013 in MCOP No.946 of 2013 passed by the  
Motor Accident Claims Tribunal/Special Subordinate Court,  
Tirupattur awarding a sum of Rs.6,46,700/- along with interest  
at the rate of 7.5% per annum from the date of filing of the  
petition till the date of deposit and costs. M.P.No.1 of 2015

has been filed by the claimants/respondents 1 to 4 seeking to permit them to withdraw the award amount.

2. On 2.5.2004 at about 6.30 a.m., the victim Amarappa was travelling in a Tractor Reg.No.AP 03 d 9089 connected with Trailer with Reg.No.AP 03 D 9091 belonging to the fifth respondent. When the Tractor was going from Gandhi Nagar to Kenchanaballa Road, near Gandhinagaram Village at Ramakuppam Taluk, due to the rash and negligent driving of the Tractor by its driver, the said Amarappa fell down on the right side of the road and hit by the Tractor. He sustained grievous injuries and died on his way to hospital. The respondents/claimants have calculated their loss at Rs.37,47,000/-. However, they restricted their claim for a sum of Rs.7,00,000/-. On appreciation of pleadings and evidence, the Tribunal awarded a total sum of Rs.6,46,700/- as compensation for the death of Amarappa. Aggrieved over the direction in directing the appellant Insurance Company to satisfy the award amount and thereafter, recover the same from the owner of the vehicle, the present Appeal has been filed by appellant/United India Insurance Co.Ltd., Palamaner.

3. The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal has failed to appreciate that insurance coverage was not contemplated for such persons who travelled in a vehicle where there was no seating provision for them. The Tribunal has failed to appreciate that insurance coverage is statutorily contemplated only for persons permitted to travel in vehicles in the seats provided for such purpose and not for all passenger travelling in any manner on vehicles. Adding further, he submitted that the Tribunal erred in ordering Pay and Recover in respect of such passengers. Ultimately, he submitted that such portion of the award has to be set aside.

4. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

5. This Court is unable to find any infirmity or error in the award passed by the Tribunal. The deceased was employed as a coolie to load and unload the goods from the tractor, belonging to the fifth respondent herein, involved in the accident. When the Tractor was going from Gandhi Nagar to Kenchanaballa Road, near Gandhinagaram Village at Ramakuppam Taluk, the victim, Amarappa, who was sitting on the Tractor for the purpose of loading and unloading the goods from the Tractor, fell down on the right side of the road and was hit by the

tractor due to the rash and negligent driving of the Tractor by its driver. Resultantly, he had sustained grievous injuries and died on his way to hospital. Therefore, the Tribunal, after appreciation of the facts and evidence including the FIR Ex.P.1 registered in Crime No.164 of 20014 under Section 340-A of the IPC on the file of Ramakuppam Police Station, held that the driver of the Tractor was negligent in driving the vehicle involved in the accident. Hence, this Court is unable to find any infirmity in this finding. The other contention of the learned counsel appearing for the appellant that the driver of the vehicle involved in the accident did not possess valid driving licence at the relevant point of time is liable to be rejected as the driver of the vehicle involved in the accident had possessed valid driving licence as per Ex.P.4 and Ex.R.4. With regard to the aspect of notional monthly income, though the claimants claimed that the deceased was earning a sum of Rs.4,000/- per month, as no documentary evidence was produced to prove the same, the Tribunal finding that the deceased would have earned Rs.100/- per day, fixed Rs.3,000/- as notional monthly income and referring to the judgment of the Apex Court in Santhosh Devi vs. National Insurance Company Ltd., and others reported in 2012(3) LW 320, the Tribunal added 30% of Rs.3,000/- i.e. Rs.900/- as future income to Rs.3,000 (i.e. total Rs.3,900/-). Since the deceased has four dependants, the Tribunal deducted 1/4<sup>th</sup> out of Rs.3,900 (i.e. Rs.975), towards the personal and living expenses of the deceased and as a result, the monthly income of the deceased is fixed as Rs. 2,925 (Rs.3,900 - 975) and rightly applied the multiplier 17 and determined the loss of dependency as Rs.5,96,700/- (Rs.2,925 x 12 x 17). The Tribunal awarded a sum of Rs.5,000/- towards loss of estate, Rs.10,000/- towards loss of consortium to the first claimant and Rs.15,000 each to claimants 2 and 3 towards loss of love and affection, and Rs.5,000/- towards funeral expenses and transportation charges, which this Court finds not excessive nor exorbitant. In toto, the Tribunal awarded a sum of Rs.6,46,700/- for the loss of life of the deceased. Eventually, after following the ratio laid down in the case of Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others reported in 2004 (2) CTC 464, the Tribunal directed the appellant Insurance Company to satisfy the award amount and thereafter, recover from the fifth respondent, who is owner of the vehicle.

6. For the reasons stated above, this Court finds no reason to interfere with the impugned award. The award of the Tribunal is sustained. The Appeal fails and the same is dismissed. No costs.

7. As the learned counsel appearing for the appellant

submitted that the entire award amount has been deposited, the claimants except minor claimant are permitted to withdraw their entire share amount. Accordingly, M.P.No.1 of 2015 filed by the claimants is disposed of. As far as minor share of the award amount is concerned, the order of the Tribunal is sustained.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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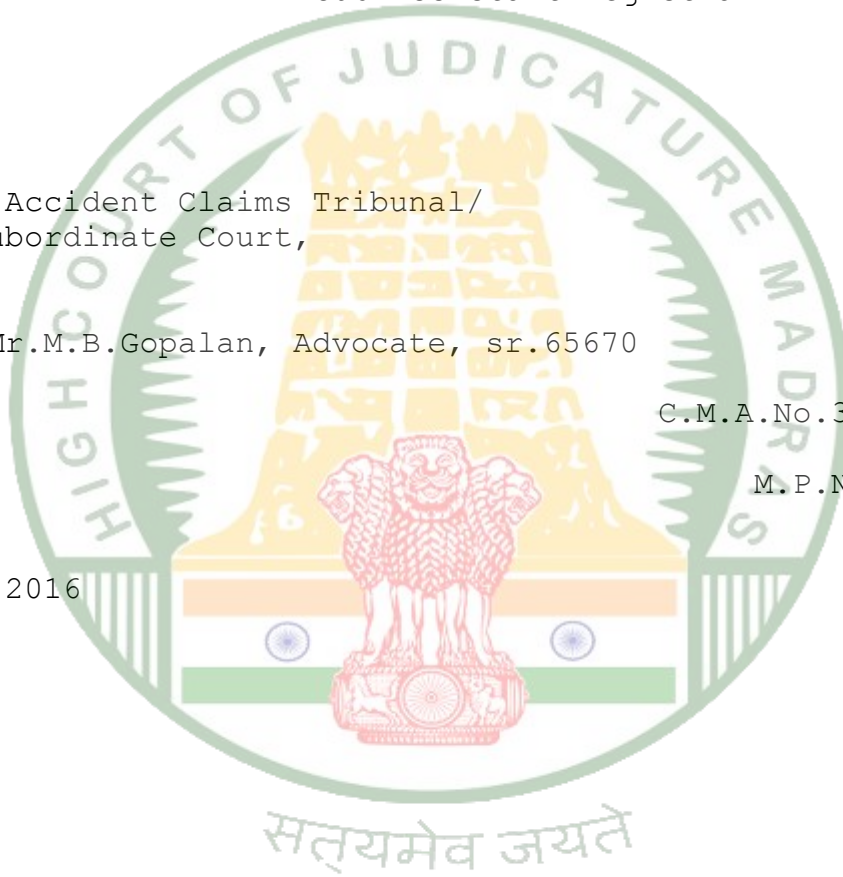
To

The Motor Accident Claims Tribunal/  
Special Subordinate Court,  
Tirupptur.

+1 cc to Mr.M.B.Gopalan, Advocate, sr.65670

C.M.A.No.3693 of 2013  
and  
M.P.No.1 of 2015

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