

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2015

CORAM :

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. No.2651 of 2006

and

C.M.P. No. 9651 of 2006

The United India Insurance Co. Ltd.,
Katpadi Road,
Vellore.

... Appellant/2nd Respondent

vs.

1.Jayapriya ...1st Respondent/Petitioner I
2.Munirathinam ...2nd Respondent/Petitioner II
3.Vasantha ...3rd Respondent/Petitioner III
4.Kanniyakumari ...4th Respondent/Petitioner IV
5.Kannan ...5th Respondent/Respondent I

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment made in M.C.O.P No.613 of 2003 dated 12.08.2004 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Vellore.

For appellant : Mr. J.Chandran
For respondents : Mr.D.Rajagopal for R1
R2 to R5 - No appearance

JUDGMENT

The second respondent Insurance Company is the appellant herein. For the sake of convenience the parties are referred to as per their rank in the Tribunal.

2. The appeal is filed against the compensation of Rs.2,97,500/- awarded to the legal representatives of the fatal accident victim. In this appeal, the Insurance Company has challenged the correctness of the impugned award mainly on the ground that the driver of the car insured with them is not responsible for the accident, as such, the Insurer is not liable to indemnify the loss, if any sustained by the injured in the accident.

3. It is not in dispute that the two vehicles involved in the accident are TVS 50 ridden by the deceased by name Raja and the car belonging to the first respondent, insured with the second

respondent. The Tribunal found that the deceased is not responsible for the accident and the driver of the car has caused the accident, due to negligent driving, on the basis of Ex.P1 - F.I.R, Ex.P3 - charge sheet and Ex.P4 - Judgment of the criminal court in and by which, the driver of the car belonging to the first respondent was charge sheeted for the offence of negligent driving and he was tried before the concerned Judicial Magistrate Court and on the basis of his admission, found guilty and convicted for the offence charged against him. As against such evidence adduced on the side of the petitioners, the second respondent Insurance Company relied on the oral evidence of RW-1, their own Investigator and his Ex.R1 - Investigation Report. As far as Ex.R1 is concerned the investigation was privately entrusted to RW1 by the Insurance Company, much after the accident and Ex.R1 Investigation Report was filed saying, TVS 50 dashed against the electric post but such report is not supported by any statement or record and RW-1 was also unable to explain the manner in which the investigation was done and the materials based on which such a conclusion is arrived at. Under such circumstances, the Tribunal on the basis of the other material evidence adduced, negatived the same and found the car driver as solely responsible for the accident. This Court does not hence, find any reason to disagree with such a finding of the Tribunal. The learned counsel for the appellant Insurance company has not raised any other ground questioning the quantum of compensation. The argument advanced regarding liability having been rejected, the impugned award has to be necessarily confirmed.

4. In the result, the Civil Miscellaneous Appeal is dismissed. The Insurance Company is directed to deposit the balance award amount, with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw their share in the compensation with proportionate interest and costs, by filing separate cheque application before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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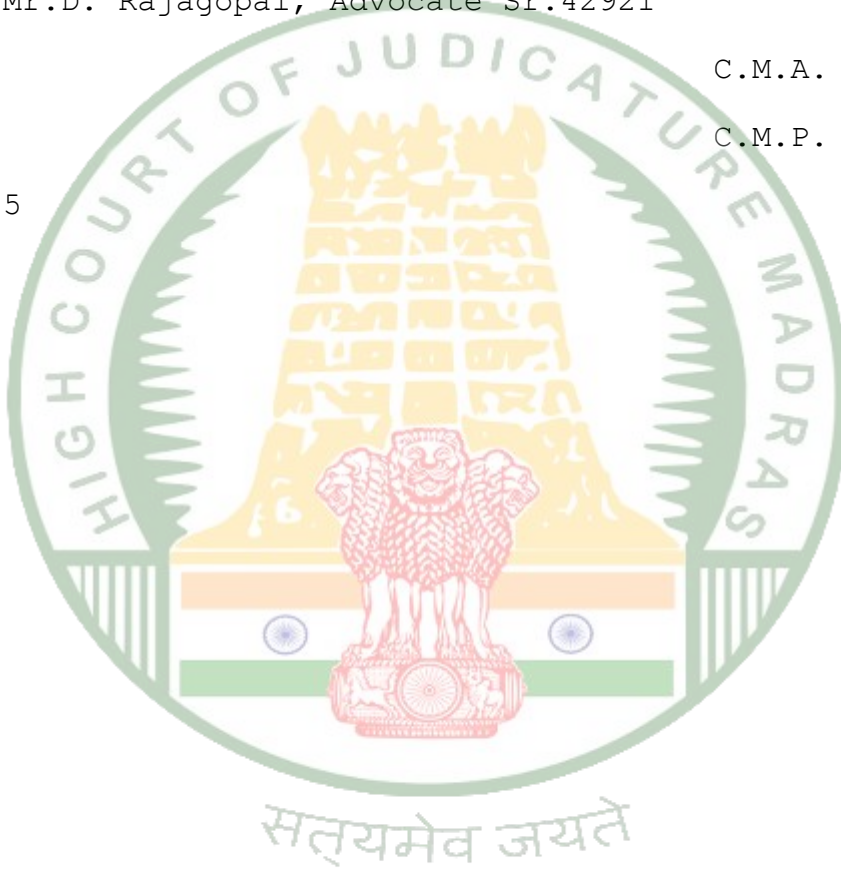
1. The Motor Accident Claims Tribunal
Principal District Judge,
Vellore.

2. The Record Keeper, VR Section,
High Court, Madras-104.

+ 1 cc to Mr.D. Rajagopal, Advocate Sr.42921

C.M.A. No. 2651 of 2006
and
C.M.P. No. 9651 of 2006

SVI(CO)
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