

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2908 of 2015

and

M.P.No.1 of 2015

Royal Sundaram Alliance Insurance Company
Limited, Sundaram Towers,
45 & 46, Whites Road,
Chennai-14.

... Appellant/Respondent No.2

Versus

1.M.Sampathkumar
2.M.Ravikumar
3.M.Sakthikumar
4.K.R.Rangasamy

... Respondents/Petitioners

... Respondent/Respondent 1

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.06.2014 made in M.C.O.P.No.527 of 2009 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tiruvallur.

For Appellant :: Mr.S.Manohar

J U D G M E N T

Aggrieved by the impugned judgment and decree passed by the learned Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tiruvallur in MCOP No.527 of 2009 dated 06.06.2014 awarding a sum of Rs.3,15,000/-, the Royal Sundaram Alliance Insurance Company Limited has filed this appeal.

2.Learned counsel appearing for the appellant would submit that the original claimants, who are parents of the deceased passed away during the pendency of the trial and only the legal representatives were brought on record. As they are neither legal heirs nor dependents of the deceased, the learned Tribunal failed to appreciate that the legal representatives who were brought on record are grown up brothers of the deceased. Accordingly, the learned Tribunal has wrongly assessed the compensation and awarded Rs.3,15,000/- as against the claim of Rs.5,00,000/-. Therefore, awarding huge amount of Rs.3,15,000/- to the brothers of the deceased is liable to be interfered by this court.

3.This court is unable to agree with the abovesaid contention of the appellant. On 26.10.2005 at about 7.45p.m., while the deceased late M.Gunasekaran was driving his motor cycle bearing Registration No.TN 38 Y 6637 along with his friend Suresh, the offending lorry bearing Registration No.TN 38 V 2578 driven by its driver in a rash and negligent manner, came from western to eastern side, dashed against the victim's vehicle, as a result, the deceased M.Gunasekaran died on the spot and S.Suresh, the pillion rider also suffered injuries. In the meanwhile, F.I.R. was also filed against the driver of the offending vehicle on the file of the Traffic Wing, West Police Station, Coimbatore in crime No.197/2005 under sections 279, 337 and 304 (A) IPC. A chargesheet was also subsequently filed against the driver of the offending lorry bearing Registration No.TN 38 V 2578. Subsequently, he was acquitted by the learned Judicial Magistrate No.VIII, Coimbatore in C.C.No.6/2006 on 26.2.2007.

4.The learned Tribunal, by considering the evidence of Ravikumar P.W.1, the brother of the deceased, who was brought on record as legal heir, on the demise of deceased parents during trial, came to the conclusion that the deceased died on the spot only due to the negligence of the driver of the offending lorry. After coming to the conclusion that there was negligence on the part of the driver of the offending vehicle, the learned Tribunal, by considering the ruling of the Apex Court in the case of Sarala verma vs. Delhi Transport Corporation reported in 2009(2) TNMAC (SC) 1, adopted '17' as multiplier and thereby it has notionally fixed Rs.3000/- p.m. as monthly income of the deceased and after deducting 50% towards his personal expenses, the Tribunal has awarded a sum of RS.3,06,000/- (Rs.1500X12X17) towards loss of income of the deceased. Thereafter, a sum of Rs.5000 was awarded towards funeral expenses and only a sum of Rs.4,000/- has been awarded towards loss of love and affection. Thus, this court is not able to see any infirmity in arriving at the aforementioned compensation of Rs.3,15,000/- for the loss of life of the deceased, aged about 29 years at the time of accident.

5.Another contention of the learned counsel for the appellant is that the brother of the deceased cannot be construed as the dependents on the income of the deceased. The said contention cannot be sustained for, when the claim petition was filed by the parents of the deceased, unfortunately, both of them passed away during the pendency, therefore, the brothers of the deceased, being legal heirs, are entitled to pursue the matter. Therefore, this court finds no infirmity in the award passed by the Tribunal and accordingly, confirms the award of

the learned Tribunal. Consequently, the civil miscellaneous appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

6.Learned counsel for the appellant submitted that the entire award amount has already been deposited. Therefore, it is open to the claimants to withdraw the award amount by moving appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

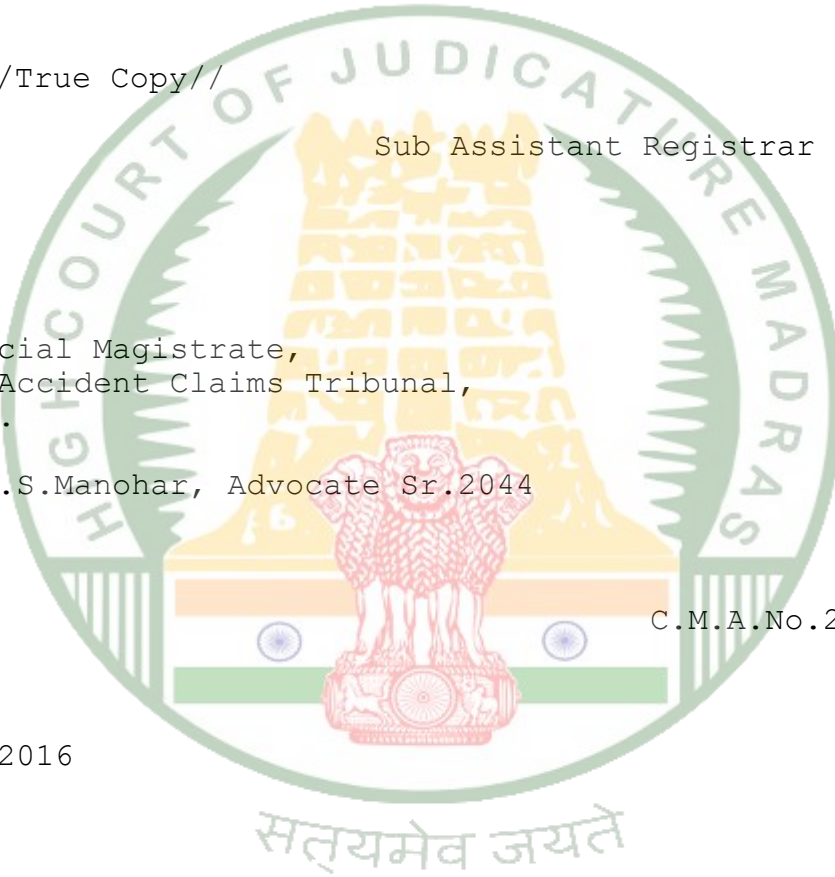
To

Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Tiruvallur.

+1cc to Mr.S.Manohar, Advocate Sr.2044

C.M.A.No.2908 of 2015

pvs[col]
srg 25/10/2016



WEB COPY