

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No.1653 of 2014

The Divisional Manager,
Divisional Office,
United India Insurance Co.Ltd.,
Vellore. ... Appellant

Vs

1.N.Shoba
2.NGeetha
3.A.Nagammal
4.A.Nandhan
5.A.Thirunavukarasu
6.Minor A.Nanthini
7.Minor A.Thirugnanam
8.Minor A.Arulprakasam
minors 6 to 8 are represented by
their mother third respondent
9.P.Vellakarachi
10.K.N.Mohanakrishnan
(10th Respondent/1st Respondent
exparte in Lower Court) ... Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 04.01.2014 made in MACTOP No.765 of 2013 on the file of the Special Sub-Judge (MACT), Tirupattur, (previously numbered as MCOP No.522/2011, Sub-Court, Tirupattur).

For appellant : Mr.Srinivasan Ramalingam

For R1 to R3 & R5 to R9 : Ms.M.Malar

For R4 : No Appearance

JUDGMENT

Aggrieved by the award dated 04.01.2014 made in MACTOP No.765 of 2013 on the file of the Special Sub-Judge (MACT), Tirupattur, in awarding a sum of Rs.10,89,200/- for the death of

the sole breadwinner of the claimants' family, the appellant - Insurance Company has preferred the present appeal seeking modification of the award.

2. On 24.03.2011 at about 3.30 a.m., while the deceased proceeding in the Car bearing Registration No.TN-25-P-4646 on the extreme left side of the Trichy-Chennai National Highways, near V.Kalathur junction road, one unknown vehicle driven by its driver in a rash and negligent manner, dashed against the Car, due to which, the deceased could not control the Car and he suddenly hit the vehicle proceeding before the Car, which ultimately lead to the fatal injury and the deceased died on the spot. Now, the claimants being the legal heirs of the deceased have filed a claim petition claiming a sum of Rs.25,00,000/- as compensation. After considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs.10,89,200/- with interest at 7.5% per annum. Aggrieved by that award, the appellant Insurance Company has filed the present appeal seeking modification of the compensation so awarded by the Tribunal.

3. The only contention of the learned counsel for the appellant Insurance Company is that the limit of liability of the Insurance Company as the insurer of the Car (Taxi) driven by the deceased cannot exceed the limits arising under the Employee's Compensation (Amendment) Act, 2016, for, the deceased driver himself had invited the accident which resulted in fatal. It is also his further contention that the Tribunal has fixed Rs.8500/- as the monthly income of the deceased, which is on the higher side as he was working only as taxi driver and was earning Rs.200/- per day, therefore, the Tribunal ought to have fixed Rs.6000/- as the monthly income of the deceased.

4. Learned counsel for the respondents/claimants has also fairly agreed with the above said contention of the appellant. However, she requested to fix the notional monthly income of the deceased at Rs.7,000, instead of Rs.6000/-. She has also filed a Memo on behalf of the respondents/claimants agreeing for the award under the Employee's Compensation (Amendment) Act, 2016. Relevant portion of the Memo is extracted below:

a. Age of the deceased driver	: 26 years
b. Factor	: 215.28
c. Monthly wages	: Rs.7000/-
d. Compensation under W.C. Act	: $7000 \times 50 / 100 \times 215.28$
	= Rs.7,53,480/-
e. Funeral Expenditure	: Rs.5000/-
Total	: Rs.7,58,480/-

f. Interest at the rate of 12% p.a.,
(from the date of accident, 25.03.2011,
till the date of payment i.e. 07.08.2014) Rs.3,00,000/-

Total : Rs.10,58,480/-

Learned counsel for the appellant Insurance Company has also agreed to pay the compensation as per the above stated breakups.

5. Considering the fact that the deceased was 26 years old at the time of accident and considering the fact that since the deceased was a taxi driver, given the present state of economy and the raising prices, the deceased would have earned Rs.7000/- per month, this Court also agrees with the proposal of the claimants to fix the monthly salary of the deceased at Rs.7000/- per month. Apart from this, since the claimants sought for Rs.5000/- towards funeral expenses and interest at 12% per annum as per the provisions of the Employee's Compensation (Amendment) Act, 2016, the same are hereby confirmed.

6. In fine, for the reasons stated above, the Civil Miscellaneous Appeal is disposed of. It is seen from the memo filed by the claimants that the appellant Insurance Company has already deposited a sum of Rs.9,44,163/- on 07.08.2014 as per the direction of this Court on 15.07.2014. Therefore, the appellant Insurance Company is directed to deposit the balance amount of Rs.1,14,320/- (round off figure) along with interest at 12% per annum from the date of accident till the date of realization within a period of two weeks from the date of receipt of a copy of this order. On such deposit, the claimants 1 to 5 and 9 are entitled to withdraw their respective shares as apportioned by the tribunal by moving necessary application before the Tribunal. In respect of the minors' shares i.e. claimants 6 to 8, it is made clear that the same shall continue to be in the deposit in any nationalised bank till they attain the majority. The third claimant/mother is also permitted to withdraw the interest accrued in the deposit of the minors' shares once in three months on making proper application. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

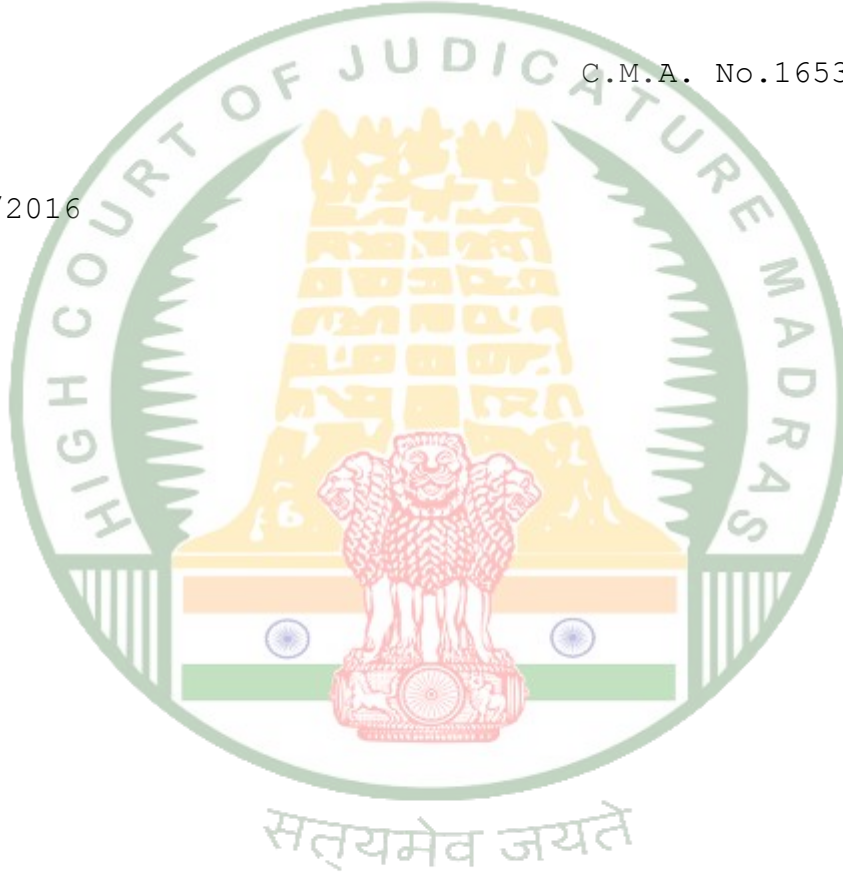
Special Sub-Judge (MACT),
Tirupattur.

+lcc to Ms.M.Malar, Advocate SR.60281

+lcc to Mr.Srinivasan Ramalingam, Advocate Sr.60013

C.M.A. No.1653 of 2014

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