

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2016

CORAM

THE HONOURABLE JUSTICE T.MATHIVANAN

C.M.A.NO:328 OF 2011

- ICICI Lombard General Insurance Co. Ltd

Branch office at Swarnamigai

Plaza, SF 6/5,Block No.7,Ward C

Omalar Main Road, Salem Town & Dist. : Appellant/3rd
Respondent

Vs

1. Mari

W/o.Ranganathan

2.Madhammal

W/o.Ranganathan

3. Minor Chandramathi

D/o Ranganathan

... Respondents /
Claimants 1 to 5

4. Minor Devika

D/o.Ranganathan

5.Minor.Rajkumar

S/o.Ranganathan

(Minor petitioners 3 to 5 are rep.by
mother guardian N.F.Mother Mari.)

All are residing at No.New-2-142,
Gundalpatti Village, Jaggupatti Village
Kadhanaikkampatti Post, Harur Taluk,
Dharmapuri.)

6.Velumani

S/o.Annamalai

No.4/397,Vadivel Street

Dharmapuri Town & Taluk

Dharmapuri District

... 6th Respondent/1st
Respondent

Rajini

S/o.Krishnan, Hindu

Alrapatti Village, Kambainallur

Post, Harur Taluk, Dharmapuri

Dist.

... 7th Respondent/2nd
Respondent

Prayer : This Memorandum of Civil Miscellaneous Appeal is filed under section 173 OF M.V.Act 1988 to set aside the Award dt:12.01.2010 and made in MCOP No.771 of 2008 on the file of the Motor Accident claims Tribunal (Principal District Judge) at Dharmapuri.

For Petitioner: Mrs.R.Sree Vidhya
for Mr.K.S.Narasimhan
For Respondent: Mr.C.Prabhakaran for
RR1 to 5 RR6 & R7
set exparte

ORDER

Questioning the liability, the Appellant Insurance company viz ICICI Lombard General Insurance Company, has preferred this appeal against the award dt.12.01.2010 and made in the claim petition in MCOP No.771 of 2008 on the file of the Motor Accident claims Tribunal (Principal District Judge) at Dharmapuri.

2. The appellant here in is the 3rd respondent in the claim petition whereas the respondents 1 to 5 are the claimants and the respondents 6 & 7 are the respondents 1 & 2 in the claim petition.

3. The respondent 1 to 5 had moved the Claims Tribunal with a claim petition in MCOP No.771 of 2008 claiming totally a sum of Rs.10 lakhs for the death of one Mr.Ranganathan, who is none other than the husband of 1st respondent and the father of the respondents 2 to 5 in a road traffic accident, said to have been taken place in involving a mini door van bearing registration No.TN 29 H 2629 belonging to the 2nd respondent which was insured with the appellant at the material time.

4. It is alleged that on 5.9.2007, the deceased Mr.Ranganathan was returning to his native place in a mini door tempo van bearing registration No.TN 29 H 2629. On account of the rash and negligent driving of the driver of the vehicle, the van was turned turtle, and as a result of which the deceased had sustained severe injuries and thereafter removed to Government Head Quarters Hospital at Dharmapuri, from where he was advised to take to the Government Medical College Hospital at Salem (Government Mohan Kumaramangalam Medical College Hospital, Salem). However he had succumbed to injuries on the way to hospital. In accordance with the claimant the deceased was aged about 50 years at the time of occurrence and he was a flower merchant by profession and there by earned a sum of Rs.6000/- per month. However the Tribunal had fixed his monthly income at

Rs.4000/-, and therefore his annual income was calculated at Rs.48,000/-. The Appellant Insurance Company alone had contested the claim on all grounds.

5. Out of Rs.48,000/- (Annual income of the deceased), $\frac{1}{4}$ amount was deducted towards the living and personal expenses of the deceased and the $\frac{3}{4}$ th reminder would be Rs.36,000/-. Since the deceased was aged about 50 years at the time of occurrence as per the II schedule to section 163A of MV Act "13" was selected as the multiplier. Based on this the pecuniary loss of the family was determined at Rs.4,68,000/-. Besides this, the Tribunal had also awarded compensation on the following heads :

- | | | |
|-------------------------------|---|-----------------|
| 2. Towards love and affection | - | Rs.5,000/- each |
| (5x5000=25,000/-) | | |
| 3. Transport Expenses | - | Rs.5,000/- |
| 4. Funeral Expenses | - | Rs.5,000/- |

6. Totally the Tribunal had awarded a sum of Rs.5,03,000/- fixing the liability on 2nd respondent to pay this amount with interest at Rs.7.5/- per annum from the date of petition. However the Appellant Insurance Company was directed to pay this amount along with accrued interest to the claimants and recover the same from the 2nd respondent without actually filing any suit for recovery of money. The Appellant Insurance Company was directed to deposit this amount along with the accrued interest within the period of 2 months from the date of order.

7. On such deposit being made the Tribunal has ordered that the claimants 1 to 5 are each entitled to get Rs.1,00,600/- with proportionate interest and cost.

8. The order of pay and recovery has been challenged by the Appellant Insurance Company in this appeal. Taking in to consideration of the relevant facts and circumstances, this court finds that the award passed by the Tribunal is just and reasonable and therefore it does not require any disturbance.

9. The result appeal is dismissed; the award of the Tribunal is confirmed. However there shall be no order as to cost.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Principal District Judge,
The Motor Accidents Claims Tribunal
Dharmapuri

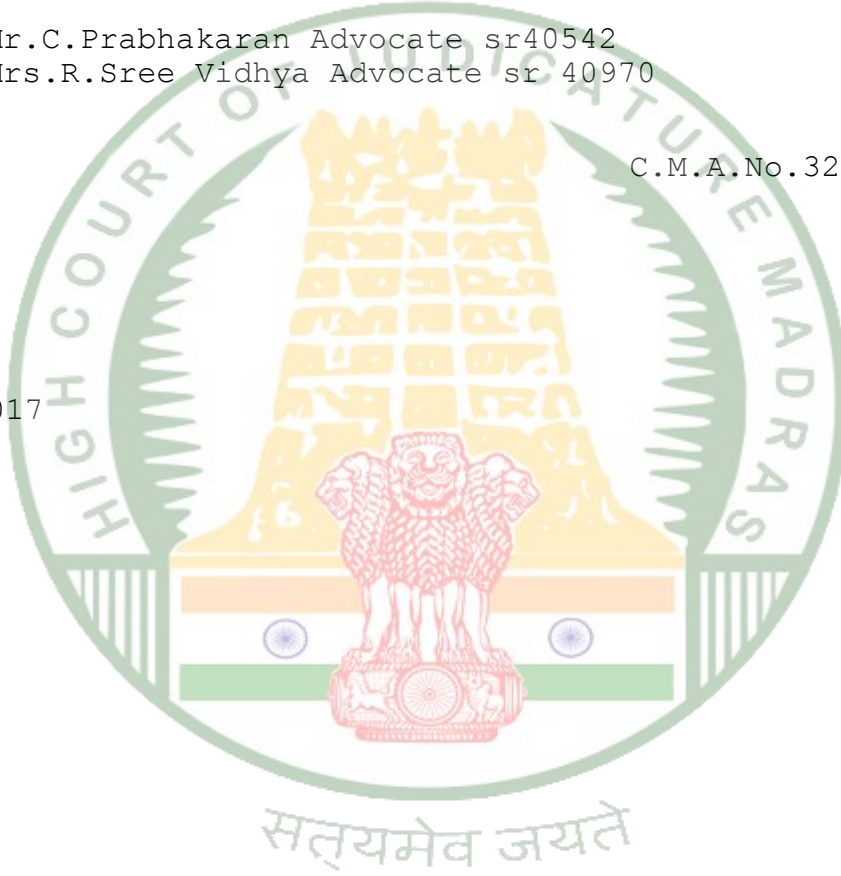
copy to
The Section Officer
VR Section High Court Madras

+1 cc to Mr.C.Prabhakaran Advocate sr40542
+1 cc to Mrs.R.Sree Vidhya Advocate sr 40970

C.M.A.No.328 of 2011

pvs (co)

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