

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1513 of 2009
and M.P.No.1 of 2009
and M.P.No.1 of 2012

The United India Insurance Company Ltd.,
Motor 3rd Party Claims,
No.38, Anna Salai,
Chennai - 600 002. Appellant/2nd Respondent

Vs.

1.T.Karthikeyan
2.Lotus Prabhu ... Respondents/Petitioner/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 23.12.2008 made in O.P.No.3587 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.T.G.Balachandran [for R1]
R2 [Ex parte]

JUDGMENT

The award passed in MCOP.No.3587 of 2006 on the file of the Chief Court, Court of Small Causes, Chennai, is challenged by the second respondent-Insurance company before it, in this Civil Miscellaneous Appeal.

2. In a road accident that took place on 26.06.2006, one Neelavathy died and her son has filed the claim petition before the Tribunal, seeking a total compensation of Rs.6,14,000/-. As against the amount claimed, the Tribunal has passed an award for Rs.4,65,000/- with interest @ 9% per annum.

3. The only point argued by the learned counsel for the appellant is that the Tribunal has wrongly fixed the monthly earning of the deceased Neelavathy at Rs.4,500/-. He added that even according to the claimant, his mother Neelavathy was

temporarily working in the postal department and was earning a gross salary of only Rs.2,909/- and that she was making another Rs.1,500/- as additional income, for providing which claimants have produced no evidence. The Tribunal, therefore, had gone wrong in fixing the total monthly income of the deceased at Rs.4,500/- and arriving at her monthly contribution to her family at Rs.3,000/- after providing for 1/3 of income for her personal expenses. Consequently adopting the multiplier 11 on this multiplicand and arriving at a total loss of earning as Rs.3,96,000/- per annum is also faulty.

4. The learned counsel for the first respondent submitted that as per the Pay Commission recommendations, the salary of the deceased was revised and he has produced relevant record vide MP.No.1 of 2012 in CMA.No.1513 of 2009.

5. This Court finds that there is no error in fixing the income of the deceased at Rs.4,500/- and the march of law in this branch is to be reckoned, even her future loss of income has to be added, and if so done, it would more or less bring the income to Rs.4,500/-. Therefore, this Court cannot hold that the income of the deceased was arbitrarily fixed. On the choice of multiplier, if Sarala Varma & Other Vs. Delhi Transport Coporation & another [2009(2) TNMAC 1]: [2009 ACJ 1298] principle is to be applied, then multiplier would be 13, whereas the Tribunal has preferred to apply only 11. The argument of the learned counsel for the first respondent is considered, inasmuch as the deceased was temporarily employed in postal department with uncertainty of continuing in service hanging in suspense, it will be an unreasonable expectation to hold that Pay Commission recommendation should be reckoned.

6. To conclude, this Court does not find any merit in the appeal. Both the appeal filed by the appellant and the petition in MP.No.1 of 2012 filed by the respondent are dismissed. The learned counsel for the appellant added that the entire award amount has been deposited before the Tribunal, and the claimant is permitted to withdraw the amount forthwith. No costs. Consequently, connected miscellaneous petition in MP.No.1 of 2009 is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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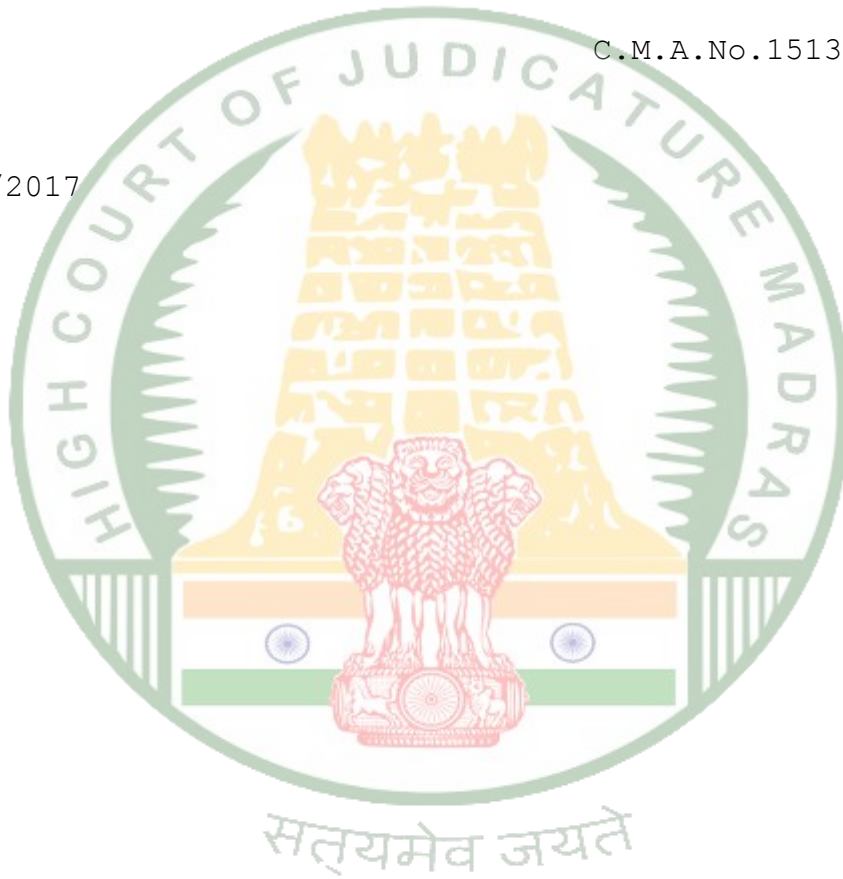
To:

(Chief Judge), Court of Small Causes),
The Motor Accident Claims Tribunal
Chennai.

+lcc to Mr.T.G.Balachandran, Advocate Sr.66817
+lcc to Mr.D.Bhaskaran, Advocate Sr.67274

C.M.A.No.1513 of 2009

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