

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.11.2016

Judgment Pronounced on : 21.12.2016

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.2207 of 2008
and MP.No.1 of 2008

The Branch Manager
United India Insurance Co. Ltd,
Tiruppur. .. Appellant/2nd Respondent
Vs.

1.Muthuvel
2.Rathinambal
3.Minor Chandran
4.Minor Vignesh
(Minors 3 & 4 are represented by father
and next friend Muthuvel) .. Respondents 1 to 4/Petitioners
1 to 4
5.Venkatapathy
6.Bakthavatchalam
7.Sekar
8.The Branch Manager
The Oriental Insurance Co. Ltd.,
Salem. .. Respondents 5 to 8/
Respondents 1,3,4 & 5
(Respondents 5 & 6 ex parte before the lower Court
Respondents 7 & 8 given up in the appeal)

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.140 of 2005 dated 29.10.2007 on the file of the Motor Accidents Claims Tribunal, Sub Court, Attur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mrs.Zeenath Begum
for Mr.T.Murugamanickam
[for R1 & R2]
R5 & R6 - Ex parte
R7 & R8 - Given up

JUDGMENT

The second respondent in MCOP.No.140 of 2005 on the file of the Motor Accident Claims Tribunal (Sub Court), Attur has come forward with this appeal.

2. In a road accident that took place on 26.09.2005, Manivel while riding his motor cycle bearing Registration No.TN30-W-6617 was fatally injured when a lorry bearing Registration No.TN39-J-9060 belonging to the fifth respondent (first respondent in MCOP.No.140 of 2005) dashed on him. The rider was 22 years at the time of accident and was stated to be a driver by avocation. He had no parents and was residing only with his brother and his family and they were mutually supporting each other. For the loss of his brother, the first respondent herein and his family members preferred a claim for Rs.5,00,000/- before the Tribunal, as against which, the Tribunal has awarded Rs.3,05,000/- as compensation.

3. Before this Court, the only contention of the Insurance Company was that the brother of the deceased Manivel, i.e., the first respondent herein and his family members cannot be termed as dependents and hence they are not entitled to claim any compensation.

4. I find the aforesaid contention of the appellant untenable. It may be that the first claimant and his family members may not be a dependent on his brother but that must not be let to discount his brother's contribution to his estate. What is not provided as support and what is not spent by the victim must necessarily be required to be counted as his saving. There is no presumption that one who is not in a necessity or compulsion to support another will spent all his income. And it is also human experience that while one is likely to improve ones life style propotionate to one's increase in income yet beyond a point there may not be any increase in expenditure. People generally find a comfortable level commensurate to their level of affordability and prefer to stay at that level. Where would the rest of the income go? If not for charity it would only go towards savings. That which is lost to the estate is inheritable and hence a brother can maintain a claim. Refer: A. Manavalagan Vs A. Krishnamurthy & Others [2005 ACJ 992 : I (2005) ACC 304], NIC Vs Prembai Patel [AIR 2005 SC 2337], Hafizun Begum Vs Md. Ikram Heque & Others [2007(2) TNMAC 143 : 2007(4) CTC 335] and Manjuri Vs Oriental Insurance Co., [2007(1) TNMAC 385 : (2007)10 SCC 643]

5. In the result, I find no merit in this appeal and the same is dismissed, however, without costs. The appellant is directed to deposit the sum awarded, less any sum already

deposited within four weeks from the date of receipt of the copy of this order whereupon the claimants are permitted withdraw the said amount forthwith. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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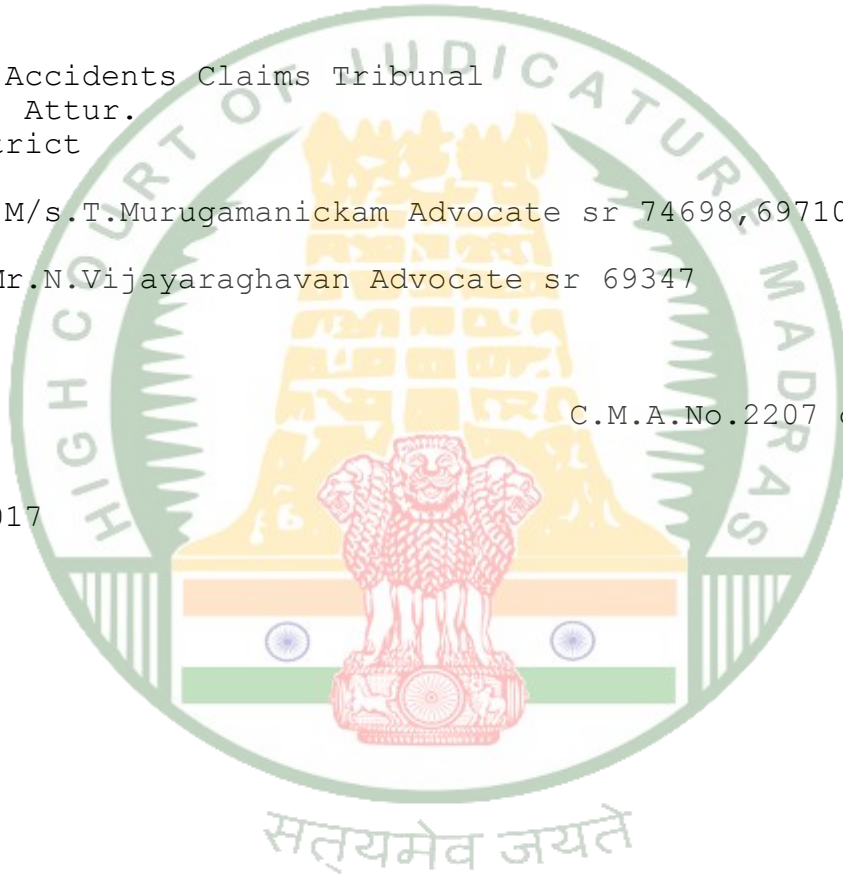
The Motor Accidents Claims Tribunal
Sub Court, Attur.
Salem District

+2 ccs to M/s.T.Murugamanickam Advocate sr 74698,69710

+1 cc ot Mr.N.Vijayaraghavan Advocate sr 69347

C.M.A.No.2207 of 2008

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