

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HON'BLE MR.JUSTICE N. SESHASAYEE

C.M.A.No.493 of 2008
and M.P.No.1 of 2008 & MP.No.2 of 2010

The New India Assurance Co. Ltd.,
Branch Office,
No.1, Bharathi Road, II Floor,
Arcot Woodlands Complex,
Cuddalore -1. ... Appellant/4th Respondent

Vs

1.J.Madhavi
2.S.M.Fakkirudeen

3.The United India Insurance Co. Ltd.,
Branch Office,
Post Box No.172,
261, J.N.Street, Pondicherry.

4.Dr.V.Sathishkumar
Prop. Sri Ganesan Transport,
No.10, Main Road,
Pudupalayam, Cuddalore. ... Respondents/Petitioner
/Respondents 1 to 3
(Respondents 2 & 4 ex parte before lower Court)

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.624 of 2004 dated 16.03.2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Cuddalore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: No appearance [for R1 and R3]

JUDGMENT

The appeal is filed by the New India Assurance Co. Ltd., as insurer of the Bus TA P 1971 against 50% liability imposed on them in favour of a 12 year old school girl studying sixth

standard, who suffered amputation of her right thumb. The balance 50% was imposed on United India Insurance Company, the third respondent in the appeal as insurer of the lorry bearing registration No.PYT 1357 in accident dated 08.3.2000.

2. The New India Assurance Co. Ltd., has filed appeal on the ground that in connected MCOP.No.97 of 2004, entire liability was fastened on United India Insurance Company alone, and that the award of Rs.3,80,000/- in all - at 50% each between the New India Assurance Co., and the United India Insurance Co., was on the higher side.

3. Upon careful consideration, considering that the accident happened on 08.3.2000, this Court is of the view that this appeal can be disposed of without prejudice to the rights of the insurers in any connected appeal, if any.

4. Basically, the finding on negligence at 50:50 is based on the pleading that bus and lorry drivers both were negligent and the evidence was also to that effect. There was no contra evidence and so called finding in connected claim in MCOP.No.97 of 2004 was not marked on record. If so, there is no room to interfere with the finding on negligence at 50:50. The finding is hereby confirmed.

5. Coming to quantum, basically, the injured is young school girl. She lost her right thumb. It is a critical loss for a girl and it may impact on marriageable prospects also, if at all, her use of the hand as home maker or even for economic pursuit would surely be impacted. The Tribunal has taken note of these aspects and assessed reasonable sums under permissible heads and awarded Rs.3,80,000/- and made it payable at 50:50 by the two insurers.

6. The appellant was unable to make out a reasonable case for interference on the evidence before the Court. If so, there is no difficulty for this Court to confirm the award and dismiss the appeal. This order would not prejudice the right of any party from urging on negligence in any connected claim as this order is confined to the merits of this case alone.

7. Accordingly, this appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Cuddalore.

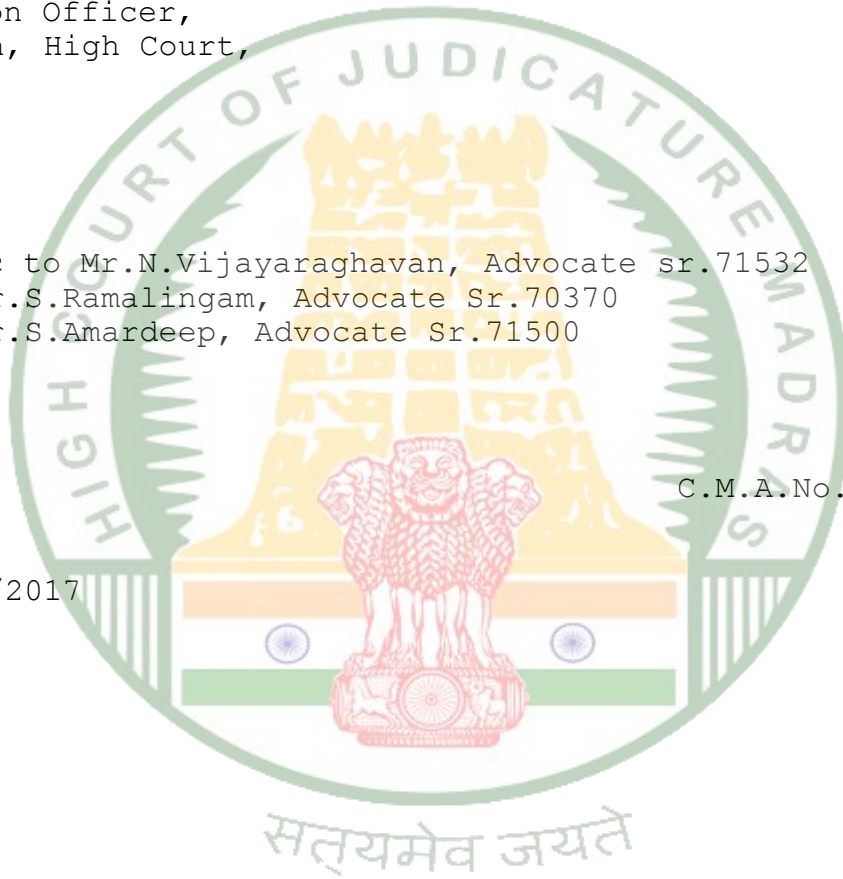
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The Section Officer,
VR Section, High Court,
Madras.

+1cc to cc to Mr.N.Vijayaraghavan, Advocate sr.71532
+1cc to Mr.S.Ramalingam, Advocate Sr.70370
+1cc to Mr.S.Amardeep, Advocate Sr.71500

C.M.A.No.493 of 2008

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