

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2017

C O R A M

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.M.A.No.107 of 2017 and
CMP.No.786 of 2017

United India Insurance Company Limited,
No.171/E, R.K.S. Complex,
Nehruji Road, Villupuram. ... Appellant/2nd Respondent

/vs/

1. Sellammal
2. Minor Prasanna
3. Minor Priyadharshani
Minors 2 and 3 respondents are rep. By
Guardian and Mother 1st Respondent
Sellammal
4. Ramalingam ...1to4 Respondents/Petitioners
5. Veeramani ...5th Respondent/1st Respondent
6. Managing Director,
Tamil Nadu State Transport Corporation,
Trichy, Trichy District. ...6th Respondent/3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.09.2013 made in O.P.No.1 of 2012 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Ariyalur.

For Appellant ... Mr.D.Bhaskaran
For Respondents ... Mr.Kaithamalai Kumaran
1 to 4
For 6th respondent... Mr.D.Venkatachalam
For 5th respondent ... Ex-parte
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J U D G M E N T

The appeal is preferred by the Insurance Company challenging the award passed by the Principal District Judge, Motor Accidents Claims Tribunal, Ariyalur in MCOP.No.1 of 2012.

2. The mother, children and the father of the deceased have made a claim for Rs.20,00,000/-. On 11.04.2011, the Tamil Nadu State Transport Corporation bus, which was driven by the deceased Subramanian, dashed against a lorry, which was parked

on the left side of the road, which had earlier involved in an accident. Due to the said accident, along with the driver Subramanian, several other persons also died. As the 1st respondent Transport Corporation is vicariously liable for the negligent of the driver, several Original Petitions were filed and awards have been passed against them. The said awards had not been challenged by the Transport Corporation, who is the 6th respondent in the appeal.

3. The Tribunal, while considering the award of compensation, found that the driver of the lorry was negligent, which had caused the death of the son of the 1st claimant. The Tribunal had also specifically held that there was no contributory negligence on the part of the deceased. After discussions, a sum of Rs.10,06,250/- was fixed as compensation, payable to the claimants, with interest at 6% p.a. from the date of the petition and fixed the liability at the appellant Insurance Company. Aggrieved by the said award, the Insurance Company has preferred the above appeal.

4. The question that arises for determination is as to whether either the appellant Insurance Company or the 6th respondent Transport Corporation is liable to pay the compensation to the claimants.

5. The learned Counsel appearing for the appellant contended that the insured vehicle-in-question, namely, the lorry was a stationed vehicle, at the time of accident, due to an earlier accident. The driver of the bus belonging to the 6th respondent Transport Corporation hit the stationed vehicle from the behind and therefore, he was negligent. It is pointed out by the learned Counsel for the petitioner that Ex.P.1 is a copy of the First Information Report dated 11.04.2011 as per which the death was due to the fault of the driver of the 6th respondent. As stated earlier, in other Original Petitions filed by the other victims, Ex.P.1 F.I.R. had been accepted and compensation was awarded against the Transport Corporation, exonerating the Insurance Company/appellant.

6. So far as the deceased in the present claim is concerned, he was an employee of the Transport Corporation. Hence, it is argued by the learned Counsel for the appellant that the claim petition itself is not maintainable under the provisions of the Motor Vehicles Act, 1988, as the deceased was a tortfeasor. The deceased having caused the accident, the claimants are estopped from making a claim. When the insured is not at fault, the Insurance Company cannot be made responsible.

7. The learned Counsel for the 6th respondent Transport Corporation contended that the deceased, being an employee of

their Transport Corporation, cannot maintain a claim under the Motor Vehicles Act and only the course open to the claimants is under the Workmen's Compensation Act, 1923.

8. Considering the plight of the claimants, who have now lost the sole bread winner of the family, the compensation has to be paid either by the Insurance Company or by the Transport Corporation. Though, the claim is not maintainable under the provisions of the Motor Vehicles Act, it is admitted by the Transport Corporation that they can pay compensation as per the Workmen's Compensation Act, 1923. Though the claim is made under Section 166 of the Motor Vehicles Act, the same is converted to a claim under Workmen's Compensation Act, 1923. For this, the learned Counsel for the Transport Corporation has also got no serious objection.

9. A calculation is also furnished to award compensation as per the Workmen's Compensation Act, 1923. The deceased was 33 years old on the date of death and the age factor as per the Act is 201.66 and the maximum income that can be taken into consideration is Rs.8,000/-. Accordingly, the compensation payable would be $\text{Rs.8,000} \times 201.66 \times 50/100 = \text{Rs.8,06,640/-}$. The other head added to the compensation is only the funeral expenses of Rs.5,000/-. Therefore, the total compensation payable comes to Rs.8,11,640/- and as per the statute, the claimants are entitled to an interest of 12% p.a. from the date of petition till the date of payment. Accordingly, the compensation of Rs.8,11,640/- is payable with interest at 12% p.a. by the 6th respondent Transport Corporation and the liability of the appellant Insurance Company is exonerated.

10. In the result, the appeal is allowed. The Transport Corporation is directed to deposit Rs.8,11,640/- (Rupees Eight Lakhs Eleven Thousand Six Hundred and Forty Only) with interest at 12% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is closed.

11. At this stage, it is stated that the before preferring the appeal, a sum of Rs.25,000/- has been deposited by the Appellant Insurance Company towards Statutory Deposit. The appellant Insurance Company is entitled for the refund of the same.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

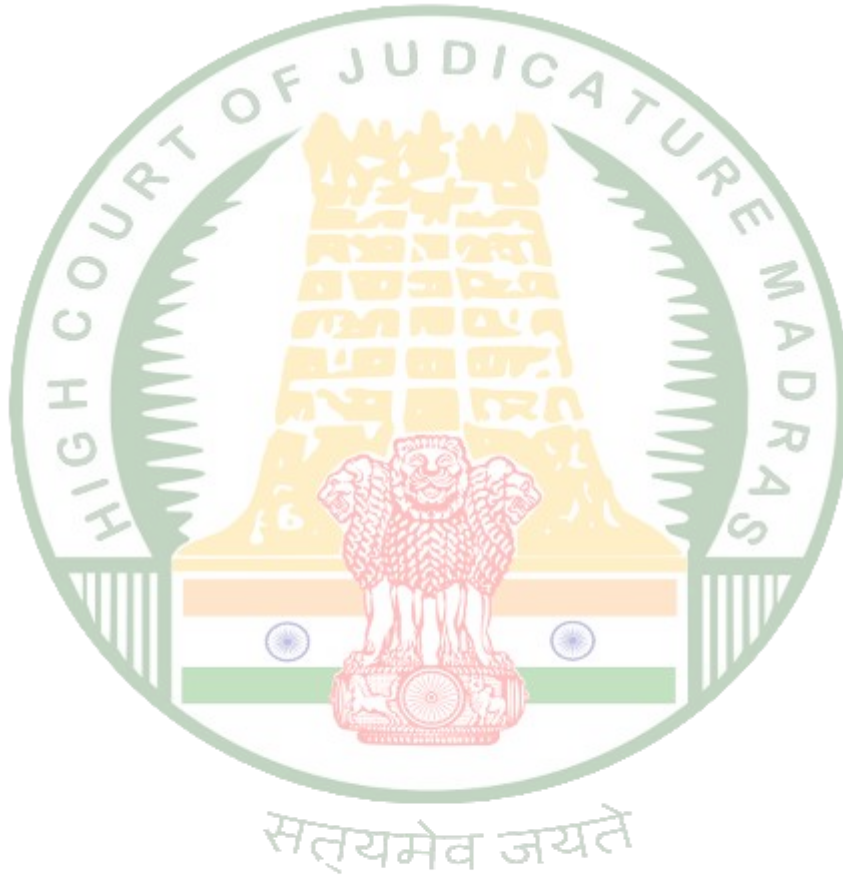
To
The Motor Accidents Claims Tribunal (Principal District Judge),
Ariyalur.

+1 cc to Mr.S.Kaithamalai kumaran,advocate,sr.15764

+1 cc to Mr.D.Venkatachalam,advocate,sr.15579.

vgi(co)
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