

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 1239 of 2017

&

C.M.P. No. 6287 of 2017

The Branch Manager,
Iffco Tokio General Insurance Company Limited,
OKS Building, Near IT Office,
5, College Road, 2nd Cross,
Tirupur - 641 602. ...Appellant/2nd Respondent

Vs.

1. Deepa
2. Minor Devadarshini
3. Vadivel ... Respondents 1 to 4/
Claimants 1 to 4
4. Chellammal
(minor represented by guardian/mother
1st respondent herein)
5. P. Manoharan ... 5th respondent/
1st respondent

(5th respondent ex parte in Lower Court and
hence, notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal as against the judgment and
decree in M.C.O.P. No. 1702 of 2013 dated 02.04.2016 on the file
of Motor Accidents Claims Tribunal, I Additional District Judge,
Tirupur.

For Appellant :: Mr.N. Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by
the Insurance Company as against the award of Rs.8,73,500/-,
being 50% of the total compensation of Rs.17,47,000/-, awarded
in favour of the legal heirs of one Moorthi, aged about 29
years, employed as Centering Worker and alleged to be earning
Rs.450/- per day, who died in the accident, which occurred on
29.09.2013, when the two-wheeler driven by him, was hit by
another vehicle bearing Registration No. TN 39 BH 7270, insured
with the appellant Insurance Company.

2. Heard the learned counsel for the appellant.

3. The Tribunal, based on the evidence of P.W.2, an eye-witness to the occurrence and filing of Ex-P1, FIR, as against the rider of the motor vehicle insured with the appellant Insurance Company, came to the conclusion that the rider of the motor vehicle bearing Registration No. TN 39 BH 7270, was responsible for the accident. However, the Tribunal also observed that the deceased had also contributed 50% to the accident, based on the evidence of Insurance Officer, examined as R.W.1, who stated that the deceased was under the influence of alcohol, at the time of accident, as revealed by Ex-P5, postmortem report. The Tribunal was justified in fixing 50% contributory negligence on the deceased because of drunken driving. The fastening of 50% contributory negligence on the deceased cannot be found fault with and the same is confirmed.

4. The Tribunal took Rs.7000/- as the monthly income of the deceased and added 50% of the monthly income towards "Future Prospects" as per the judgments of the Honourable Apex Court rendered in Sarla Verma V. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, Santosh Devi V. National Insurance Company Ltd. and others reported in 2012 6 SCC 421 and Rajesh and others V. Rajbir Singh and others, reported in 2013 2 CTC 883, arrived at "Rs.10,750/- [(Rs.7000/- (+) 50% (Rs.7000/-)] as "monthly income". Since the size of the family of the deceased is four, one-fourth deduction was made towards "Personal Expenses" of the deceased as per Sarla Verma's case (cited supra) and "Monthly Contribution of the deceased to his family" was calculated as Rs. 8062.50/- and the "Annual Contribution" as Rs.96,750/-. The Tribunal took the age of the deceased as 31 years, based on Exs-P2 and P5 and took multiplier 16 as per the guidelines of the Honourable Apex Court in Sarla Verma V. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 and arrived at Rs.15,12,000/- towards "Loss of Dependency". Along with other amounts, totally, a sum of Rs.17,47,000/- was determined as compensation payable to the claimants. The approach of the Tribunal in arriving at the compensation cannot be found fault with. Since 50% contributory negligence was fixed on the deceased, due to drunken driving, out of Rs.17,47,000/-, only a sum of Rs. 8,73,500/- along with interest @ 7.5% per annum was awarded as compensation to the claimants. The award passed by the Tribunal is very just and reasonable and the same is confirmed.

5. The appellant Insurance Company is directed to deposit the entire award amount along with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of

respondents 1, 3 & 4, as per the apportionment of the Tribunal, through RTGS, within a period of two weeks thereafter. As far as the share of the 2nd respondent/minor is concerned, the same shall be deposited by the Tribunal, in interest bearing Fixed Deposit, in any one of the Nationalised Banks, till she attains majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months.

6. In the result, the Civil Miscellaneous Appeal fails and the same is dismissed confirming the award passed by the Tribunal. No costs. Connected C.M.P. is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nv

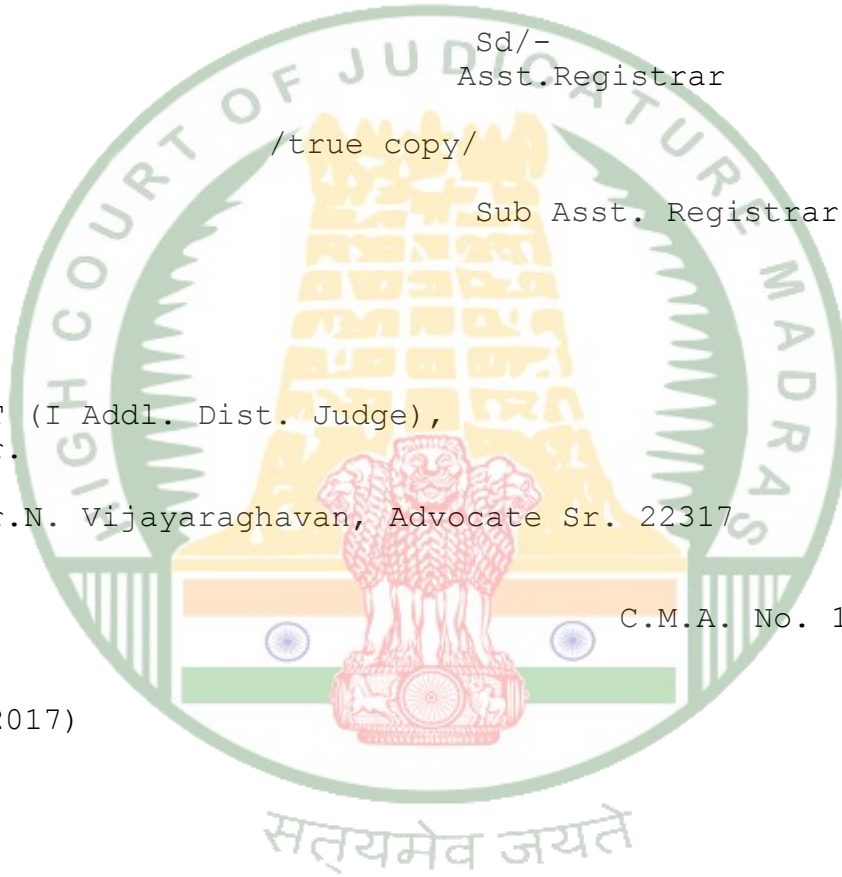
To

The MACT (I Addl. Dist. Judge),
Tiruppur.

+1cc to Mr.N. Vijayaraghavan, Advocate Sr. 22317

C.M.A. No. 1239 of 2017

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