

In the High Court of Judicature at Madras

Reserved on : 06.4.2017 & Pronounced on : **04/8/2017**

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOohana RAO

And

The Honourable Mr.Justice S.M.SUBRAMANIAN

Civil Miscellaneous Appeal No.3027 of 2012 & MP.No.1 of 2012

The United India Insurance
Company Limited, Villupuram.

...Appellant

Vs

1.P.Nagalakshmi (minor)
2.P.Karthic (minor)

Minors are represented by their guardian
P.G.Venugopal

3.P.G.Venugopal
4.Jagadeeswari
5.S.Ravichandran
6.Chinnaraj

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the
order dated 12.3.2012 made in MCOP.No.690 of 2005 on the file of the Motor
Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant :
For Respondents 1 to 4 :

Mr.S.Arunkumar
Mr.V.Bhiman for
M/s.Rugan & Arya

JUDGMENT

NOOTY.RAMAMOHANA RAO,J

This appeal is preferred by the United India Insurance Company Limited calling in question the correctness of the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Chennai in MCOP.No.690 of 2005.

2. Respondents 1 and 2 herein are the daughter and son of the deceased Premkumar whereas respondents 3 and 4 are the parents.

3. On 29.1.2004, the deceased Premkumar was proceeding from Myladuthurai to Chennai on Cuddalore-Chidambaram Main Road. At about 7.15 AM, when he reached near about the Primary Health Centre, Puduchatram, Cuddalore District, a tipper lorry bearing Regn.No.TN-32-X-6207, which was coming in the opposite direction, caused the accident, in which, the deceased Premkumar and his wife died. The owner, the driver and the insurer of the tipper lorry bearing Regn.No.TN-32-X-6027 have been impleaded as respondents to the original petition. Since the deceased was earning Rs.18.72 lakhs per annum from his business and more than 10.5 lakhs from other sources per annum, a claim for Rs.6 Crores has been laid.

4. The Insurance Company moved an application under Section 170 of the Motor Vehicles Act, 1988 to contest the claim petition, which was allowed on 13.10.2011. The case of the Insurance Company is that it has not received the claim form or intimation from the first respondent in the claim petition – the owner, regarding the accident. Therefore, the claimants have

to prove that the tipper lorry was insured with the Insurance Company, that the driver, who drove the vehicle, was having valid licence and that the accident has been caused all due to rash and negligent manner of driving of the tipper lorry by its driver. It was also urged by the Insurance Company that the deceased has contributed to the accident.

5. On the side of the claimants, three witnesses were examined as P.Ws.1 to 3 and Ex.P.1 to Ex.P.31 were marked while none was examined on behalf of the Insurance Company and no documents were also filed on the side of the respondents in the original petition.

6. The Sub-Inspector of Police, Puduchatram Police Station, who registered the case against the driver of the tipper lorry bearing Regn.No.TN-32-X-6027 had taken up the investigation and visited the scene of accident and prepared a rough sketch. The First Information Report (FIR) was marked as Ex.P.3 while the rough sketch prepared by the Sub-Inspector at the scene of accident was marked as Ex.P.31. After completing the investigation, the final report was filed pointing out that the driver of the tipper lorry is solely responsible for causing the accident. The final report was marked as Ex.P.30.

7. P.W.3 is an independent witness, who witnessed the accident. His house was situate on the other side of Chidambaram Cuddalore Road. He had seen the car bearing Regn.No.TN-09-AP-9999 coming from Chidambaram to Cuddalore and at the same time, the tipper lorry bearing Regn.No.TN-32-X-6207 came from the opposite direction on the wrong side of the road and dashed against the car. P.W.3 has clearly brought out that

the car was proceeding from north to south and in Ex.P.31, the tyre marks were noticed towards eastern half of the road. Thus, from Ex.P.31 – the rough sketch prepared upon inspection of the scene of accident, it would be clear that the car driven by Premkumar was on the left side of the road whereas the tipper lorry was found traveling on the same side of the road whereas the tipper lorry should have confined itself to the other half of the road. The tyre marks of the car clearly indicate that an effort was made by the driver of the car to avoid the collision. If only the truck driver had taken minimum precautions and followed the rules of the road by driving on the left side of the road in south to north direction, the accident would not have occurred. The vehicles are required to be driven on the left side of the road. While the car was on the left side of the road, while from north to south direction, the tipper lorry also came on to the same half of the road, thus causing the zone of conflict.

8. Thus, the Tribunal had rendered a finding that the accident has been caused all due to the rash and negligent driving by the driver of the truck bearing Regn.No. TN-32-X-6027. This finding of fact is a fair and reasonable one, which does not call for any interference.

9. Ex.P.4 is the death certificate of Premkumar, who died on the spot. The post mortem report was marked as Ex.P.29, which revealed that the cause of death of Premkumar was shock and hemorrhage due to the injuries sustained in the accident. Hence, the Tribunal rendered a finding of fact that Premkumar died all due to the injuries sustained in the motor accident and

that all the four claimants, who are the children of the deceased and his parents, are, therefore, entitled to maintain the claim.

10. A copy of the insurance policy of the vehicle bearing Regn.No.TN-32-X-6207 was marked as Ex.P.9. It is also subsisting as on the date of the accident. Hence, the liability to make good the loss sustained by the claimants is rightly fastened on to the appellant. Further, except taking a plea that the deceased has also contributed to the accident, the appellant has not led any evidence to sustain such a plea. In the absence of any material, it is reasonable to infer that there is no contributory negligence on the part of the deceased for causing the accident, particularly in the face of Ex.P.31.

11. The date of birth of the deceased Premkumar was mentioned as 13.2.1965 in the PAN Card issued by the Income Tax Department, which was marked as Ex.P.8. Thus, by 29.1.2004, the deceased had completed 38 years of age and he would have completed 39 years in a couple of weeks thereafter. Hence, the age of the deceased Premkumar was taken as 39 years. But however, multiplier 15 has been chosen by the Tribunal to be applied.

12. The deceased Premkumar was a partner of four firms, which are carrying on business. However, the copies of partnership deeds of only three firms, were marked as Ex.P.10 to Ex.P.12. Ex.P.13 to Ex.P.15 were the copies of the income tax returns filed for the firm M/s.Dev Apartments for the assessment years 2001-2002 to 2003-2004. Ex.P.16 to Ex.P.18 were the

copies of the income tax returns filed for the firm M/s.Hotel Shelter for the assessment years 2001-2002 to 2003-2004. Ex.P.19 to Ex.P.21 were the copies of the income tax returns for the firm M/s.Eswari Finance for the assessment years 2001-2002 to 2003-2004. Ex.P.22 to Ex.P.24 were the copies of the income tax returns for the firm M/s.Lakshmi Motors for the assessment years 2001-2002 to 2003-2004. Ex.P.25 to Ex.P.27 were the copies of the income tax returns of the deceased for the assessment years 2001-2002 to 2003-2004.

13. The auditor of the firms M/s.Dev Apartments, M/s.Lakshmi Motors, M/s.Hotel Shelter and M/s.Eswari Finance, filed a report of analysis of the returns filed by all the firms and the individual – the deceased Premkumar. The said report was marked as Ex.P.28. The average profit earned by the deceased Premkumar for these three assessment years has worked out to Rs.19,01,743/-.

14. P.W.1 is none other than the father of the deceased Premkumar. He filed a petition under the Guardian and Wards Act in O.P.No.262 of 2004 on the file of the Original Side of this Court for appointing him as the guardian for the minor children of the deceased Premkumar – i.e. claimants 1 and 2. He was appointed by this Court as the guardian for the two minor children of the deceased Premkumar. The order passed therein was marked as Ex.P.1 while the legal heirship certificate of the deceased Premkumar was marked as Ex.P.2. P.W.1, in clear and categorical terms, stated that the two minor children of the deceased Premkumar are not made partners in any of

the partnership firms mentioned above. As per the partnership deed, the death of any of the partners need not result in dissolution of the partnership firm automatically and the surviving other partners can carry on the business activity. There is no doubt that there is a provision for admitting new partners in the firm. But however, it was stated that the two minor children of the deceased Premkumar have not been taken as partners of the firms. This apart, it was asserted that two firms have, in fact, been closed down, as the deceased was actually looking after them exclusively. No effort is made to discredit this statement of P.W.1.

15. The auditor of the firms, who had given his report Ex.P.28, was examined as P.W.2. P.W.2, in categorical terms, stated that the personal income of a little more than Rs.10 lakhs shown and reflected in the income tax returns of the deceased Premkumar was his rental income. The Tribunal arrived at a finding that since the properties, to which the two minor children of the deceased Premkumar are entitled to succeed, were mentioned in Ex.P.1 – the order passed in the guardian original petition by this Court and since those properties continue to fetch rental income even after the death of Premkumar, there is no loss of personal income to the family of Premkumar due to his accidental death. In other words, since the assets remain as it is and yield rental income, there is no loss sustained to the estate of the deceased. Though the assets are required to be supervised and should be taken care and maintained duly attending to their upkeep, for which purpose, experience and knowledge is required and the death of Premkumar would

have created a void requiring hiring the services of some one or the other, the Tribunal completely ignored to take any such component while working out the compensation payable.

16. But however, while determining the pecuniary loss, the Tribunal had taken the average income of the deceased derived from his business firms as Rs.19,01,743/- and after deducting 1/3rd thereof, worked out the possible contribution of the deceased to the family as Rs.12,67,829/- per annum and after multiplying it with 15, arrived at the pecuniary loss as Rs.1,90,17,435/-. Apart from determining the pecuniary loss, the two minor children of the deceased Premkumar were awarded a paltry sum of Rs.25,000/- each towards loss of love and affection. The parents of the deceased were awarded a sum of Rs.10,000/- each under the same head of loss of love and affection. A sum of Rs.20,000/- is awarded towards funeral expenses. Thus, the total amount of compensation has been arrived at Rs.1,91,07,435/-. Out of this amount, the two minor children were declared as entitled to a sum of Rs.94 lakhs each and the mother of the deceased was declared to be entitled to a sum of Rs.2 lakhs while the father of the deceased was entitled for the balance amount of Rs.1,07,435/-. As was pointed out, the Insurance Company has mainly objected to the computation of pecuniary loss.

17. The Insurance Company has mainly attacked the computation of the pecuniary loss of income of the deceased and would not object seriously to the paltry sums of money awarded on the other counts that the principle

that applies to 'rental income' should also apply to the business income.

18. The learned counsel for the Insurance Company would strenuously submit that the Tribunal has fallen into a grave error of judgment, as it has decided the case by following one principle while dealing with the personal income of the deceased and at the same time, not following the same principle when it came to computation of the pecuniary loss. The learned counsel would urge that the deceased was carrying on the business as a partner of four different firms. The capital invested by him remained intact, as there was no material on record to demonstrate that the firms had returned the capital as well. Therefore, for the capital invested by the deceased Premkumar, which remained intact in the four firms, the estate of the deceased would continue to receive its return/dividend and hence, the claimants have not suffered any pecuniary loss due to the accidental death of the deceased Premkumar.

19. He also places reliance on the judgments of the Supreme Court in

(i) ***State of Haryana Vs. Jasbir Kaur* [reported in AIR 2003 SCW 4198];**

(ii) ***Rani Gupta Vs. United India Insurance Co. Limited* [reported in 2009 ACJ 1605];** and

(iii) ***New India Assurance Co. Limited Vs. Yogesh Devi* [reported in 2012 ACJ 702].**

20. In ***Jasbir Kaur***, the claim was laid on the basis that the deceased was working on four acres of agricultural land and he was also rearing milk

yielding animals. He was also rearing other animals and deriving income from the sale of milk and cattle. On that basis, compensation of Rs.6.5 lakhs was awarded by the High Court of Punjab and Haryana. In the appeal preferred there against, the Supreme Court observed in paragraph 8 as under :

"The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered."

21. In **Jasbir Kaur**, while determining the just compensation payable, it was ruled that income cannot be estimated without any material to justify the estimation. The legal principle to be followed in arriving at just compensation has been set out in paragraph 7 of the said judgment, which is to the following effect :

"It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can

hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. [See *Helen C. Rebello Vs. Maharashtra State Road Transport Corporation* (AIR 1998 SC 3191)]."

22. In **Rani Gupta**, the Supreme Court, while dealing with a case of death of a businessman in a motor accident, held in paragraph 24 as under :

"In this case, however, the deceased was a businessman. What was the actual loss of dependency to the family was his contribution to run the business. The assets of the business remained. The amount of compensation, therefore, was required to be determined keeping in view that factor in mind."

23. Following the principle enunciated in **Jasbir Kaur**, the Supreme Court, in **Yogesh Devi**, held that the assets would still continue with the family of the deceased fetching it income and the only difference would be that during the life time, the deceased was managing those assets. But, the claimants, perhaps, have to engage some competent persons to manage the assets, which would require payment to be made to such a manager, compensation has to be worked out on that basis. The principle has been set out in the following words :

"Coming to the case on hand, the claim is based on the assertion that the deceased owned agricultural land apart from the above mentioned three mini-buses. The High Court rejected the claim in so far as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family. Unfortunately, the High Court failed to see that the same logic would be applicable even to the income from the above mentioned three buses. The asset

(three mini-buses) would still continue with the family and fetch income. The only difference, perhaps, would be that during his life time the deceased was managing the buses, but now, the claimants may have to engage some competent person to manage the asset, which, in turn, would require some payment to be made to such a manager. To the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset. Therefore, the amount required for engaging the service of a manager and the salary payable to a driver - as it is asserted that the deceased himself used to drive one of the three buses - would be the loss to the claimants. In the normal course the claimants are expected to adduce evidence as to what would be the quantum of depletion in the income from the above mentioned asset on account of the above mentioned factors."

24. It is, therefore, contended by the learned counsel for the appellant - Insurance Company that the capital invested by the deceased Premkumar in the partnership firms continued and there being no other material on record to demonstrate that the minor children of the deceased Premkumar have not been made partners of the firms, awarding pecuniary loss in a huge sum of Rs.1.9 Crores is wholly unjust.

25. It is important to notice that P.W.1 - the father of the deceased Premkumar, in his cross examination, admitted that he is keeping the income derived from the property of the deceased separately and is maintaining a

separate account for that money and spending the said money for the welfare of the two minor children of the deceased Premkumar. He also admitted that the deceased Premkumar had 1/3rd share in M/s.Dev Apartments, M/s.Lakshmi Motors and M/s.Hotel Shelter. He also had 1/6th share in M/s.Eswari Finance. He also admitted that apart from himself, his other son Devakumar are the remaining two shareholders of the first mentioned three firms. Only in M/s.Eswari Finance, some other family members are also partners.

26. Most importantly, P.W.1 deposed that the minor children of the deceased Premkumar are not made partners of the partnership firms. But, the partnership firms are continuing in spite of the death of one of the partners. P.W.2 - the auditor, who gave certificate under Ex.P.28, deposed that the personal income reflected in the income tax returns of the deceased Premkumar was the rental income from his house properties.

27. When this case was heard earlier, this Court directed a sworn affidavit to be filed by the father of the deceased - the third respondent herein. Accordingly, Sri.P.G.Venugopal, aged about 75 years, had sworn to an affidavit and filed it into the Court on 28.8.2014 duly serving a copy thereof on the opposite side. In paragraph 3 of the said affidavit, it has been stated that after the death of Premkumar, M/s.Lakshmi Motors and M/s.Eswari Finance closed their business immediately, as the deceased Premkumar was exclusively managing the affairs of the said two firms.

28. In paragraph 4 of the affidavit filed by the father of the deceased Premkumar, it has been further stated that after the death of Premkumar, another son of the deponent - Devakumar and the deponent are continuing to run the other two firms namely M/s.Dev Apartments and M/s.Hotel Shelter. It was categorically stated that the minor children of the deceased Premkumar were not made partners of these firms and that no monies from the profits of these two firms were paid to the two minors. However, in paragraph 5, the following statement has been made :

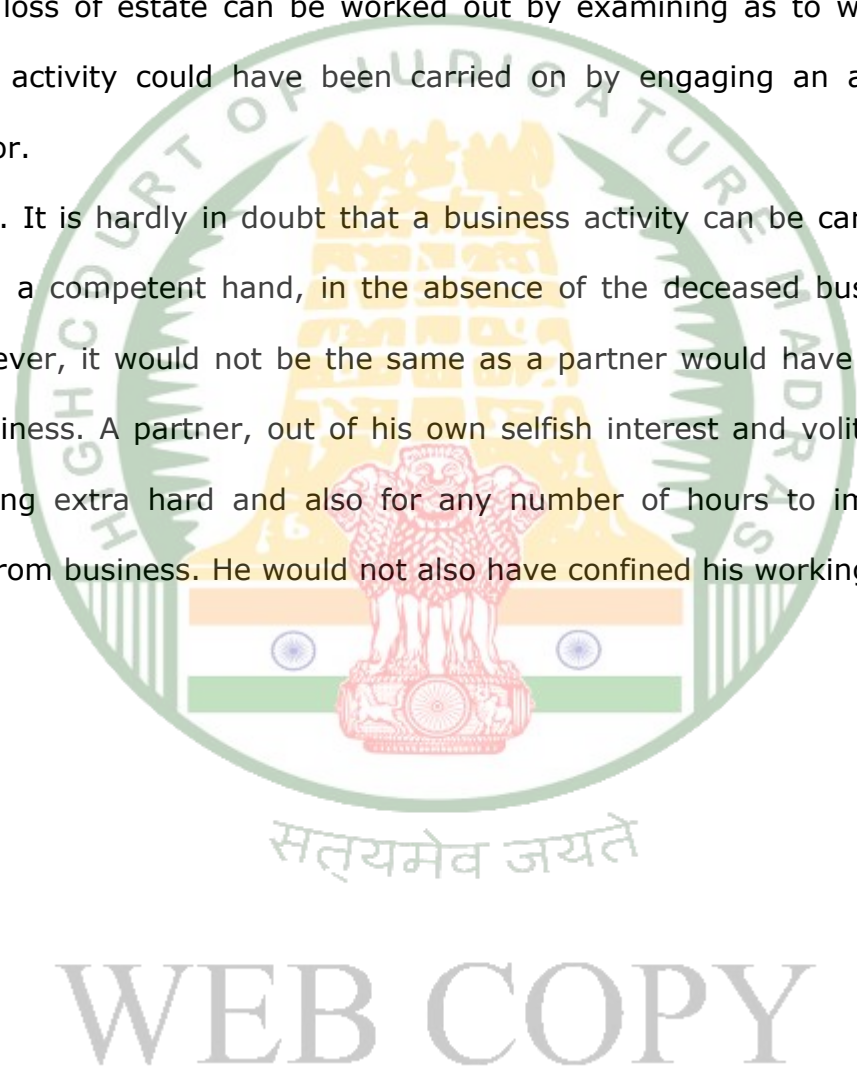
"Internally, we have made provision to pay a substantial sum to the 2 children of the deceased Premkumar in the remote event of compensation in this case being declined or substantially reduced, by keeping in reserve a portion of the profits. No sum is paid to the children of the deceased Premkumar from that."

29. Though this affidavit of the father of the deceased was made available, nearly three years back, the appellant - Insurance Company has not taken any steps to either summon the income tax returns of the remaining two firms namely M/s.Dev Apartments and M/s.Hotel Shelter or any steps have been taken to draw information from the Registrar of Firms with regard to change of constitution of these firms subsequent to the death of Premkumar to demonstrate that the children of the deceased Premkumar were made partners of the two firms. Without taking any such steps, no argument on a speculative basis, can be permitted to be raised that the two

minor children may have been made partners of the firms and that they may have been sharing the profits of the firms.

30. However, from the principles laid down in the judgments rendered by the Supreme Court in **Jasbir Kaur** and **Yogesh Devi**, it clearly emerges that the loss of estate can be worked out by examining as to whether the business activity could have been carried on by engaging an appropriate supervisor.

31. It is hardly in doubt that a business activity can be carried on by engaging a competent hand, in the absence of the deceased businessman. But however, it would not be the same as a partner would have carried on such business. A partner, out of his own selfish interest and volition, would be working extra hard and also for any number of hours to improve the returns from business. He would not also have confined his working to a



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specific number of hours per day nor would he be interested in taking it easy invariably on all holidays. A businessman would hardly drive away a customer who visits just about the time he is winding up the show for the day, unless time restrictions are imposed like in regulatory trades (Excise Act) or by the compulsion of any provisions of the Shops and Establishments Act. Whereas a paid employee may turn away any such customer, politely through. Therefore, certain amount of loss due to the absence of the partner is bound to be caused. Further, when two firms, which the deceased was managing exclusively, have been said to have been closed down, it is reasonable to assume that 1/4th of the income reported from business by the deceased may not have been accruing due to the death of the said partner. Further, for engaging a competent hand to carry on the business activity effectively, no person of competence and necessary degree of skill will be available without being reasonably remunerated. Therefore, on a monthly basis, the compensation payable to such a person can easily be worked out to Rs.50,000/- per month, going by the business activity, which fetches returns to the magnitude of Rs.19 lakhs to one partner alone. Further, going by the income tax returns, there is steady growth that could be noticed. Hence, the death of Premkumar would have left a certain amount of impact even on the growth of the business of the firm. We are, therefore, of the opinion that the pecuniary loss due to the death of Premkumar has to be worked out on the above lines. Out of Rs.19 lakhs, it is reasonable to assume that 1/4th of the income would be amiss due to the untimely death

of young Premkumar, who was in prime of his life. Added to that, the compensation required for a substitute to be engaged, which works out to Rs.6 lakhs per annum. Hence, the pecuniary loss caused due to the death of Premkumar will be recalculated.

32. Accordingly, we allow this civil miscellaneous appeal partly by confirming the award in all other respects otherwise. No costs. Consequently, the above MP is closed.

33. It is seen that at the time of admission of the appeal on 12.10.2012 and while granting stay, this Court directed the appellant to deposit a sum of Rs.40 lakhs. It is not known as to whether the said sum was deposited into the Tribunal below or not. However, the appellant - Insurance Company is directed to deposit the entire compensation amount to the extent modified in this appeal before the Tribunal below together with accrued interest and costs, within four weeks from the date of receipt of a copy of this order.

सत्यमेव जयते

(N.R.R.J.) (S.M.S.J.)

04/8/2017

Speaking Order

Index : Yes

Internet : Yes

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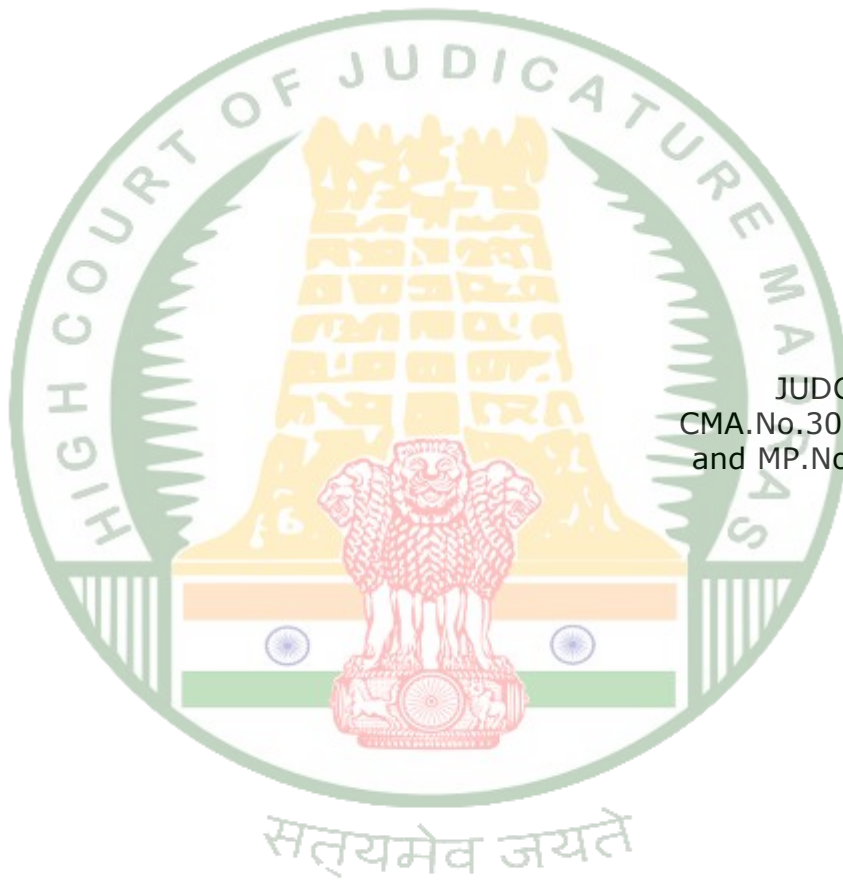
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