

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1687 of 2016

and

CMP No.12812 of 2016

M/s.United India Insurance Co.Ltd.,
Rep. by its Divn. Manager,
No.66-68, Gandhi Road,
Kanchipuram - 631 501 ... Appellant/1st Respondent

vs.

1. M.Karpagam ... Respondents 1 and 2/Petitioner
2. Kasthuri ... 3rd Respondant/1st Respondant
3. R.C.Govindarajan ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decretal Order in MCOP No.364 of 2012 dated 29.02.2016 on the file of Motor Accidents Claims Tribunal (District Judge-II), Kanchipuram

For Appellant : Mrs.R.Rathna Thara

For Respondents: Mr.M.Sivakumaran
for Mr.C.Prabakaran

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

In the light of the decision of the Hon'ble Supreme Court in National Insurance Co. Vs. Prembai Patel and others [Appeal (Civil) 6476 of 1998 dated 18.04.2005], this Court is of the view that claim for compensation in MCOP No.364 of 2012 on the file of Motor Accidents Claims Tribunal (District Judge-II), Kanchipuram, ought to have been filed under the Workmen's Compensation Act, 1923.

2. Though, on evaluation of pleadings and evidence, the tribunal, has awarded compensation of Rs.14,16,000/- under various heads by invoking Section 166 of the Motor Vehicles Act, 1988, having regard to the fact that the deceased himself was a

tortfeasor, but at the same time, since he was an employee, we deem it fit to convert the claim, as one under Section 3 of the Workmen's Compensation Act and accordingly, compute the quantum of compensation, by applying the schedule provided, under the Workmen's Compensation Act, 1923, as hereunder.

Income Fixed is : Rs.4,000/-

Loss of Dependency : (Rs.4,000/- x 221.37 x 50/100)=Rs.4,42,740/-

Funeral expenses =Rs. 5,000/-

Total =Rs.4,47,740/-

3. In the result, quantum of compensation of Rs.14,16,000/- awarded by the tribunal is reduced to Rs.4,47,740/-. There is a reduction of compensation of Rs.9,68,260/-.

4. In view of the above, respondents are entitled to compensation of Rs.4,47,740/-, with interest, after one month from the date of accident till the date of deposit of compensation amount at 12% as per Section 4(A) of the Workmen's Compensation Act, 1923.

5. Amount now directed by this Court, is apportioned, in the ratio of 70:30 between wife and mother of the deceased, respectively.

6. Award amount is stated to be deposited. Respondents are permitted to seek for disbursement of Rs.4,47,740/-, with interest, as stated supra. Insurance company, is entitled to seek for refund of the balance amount, with interest.

7. Civil Miscellaneous Appeal is allowed, as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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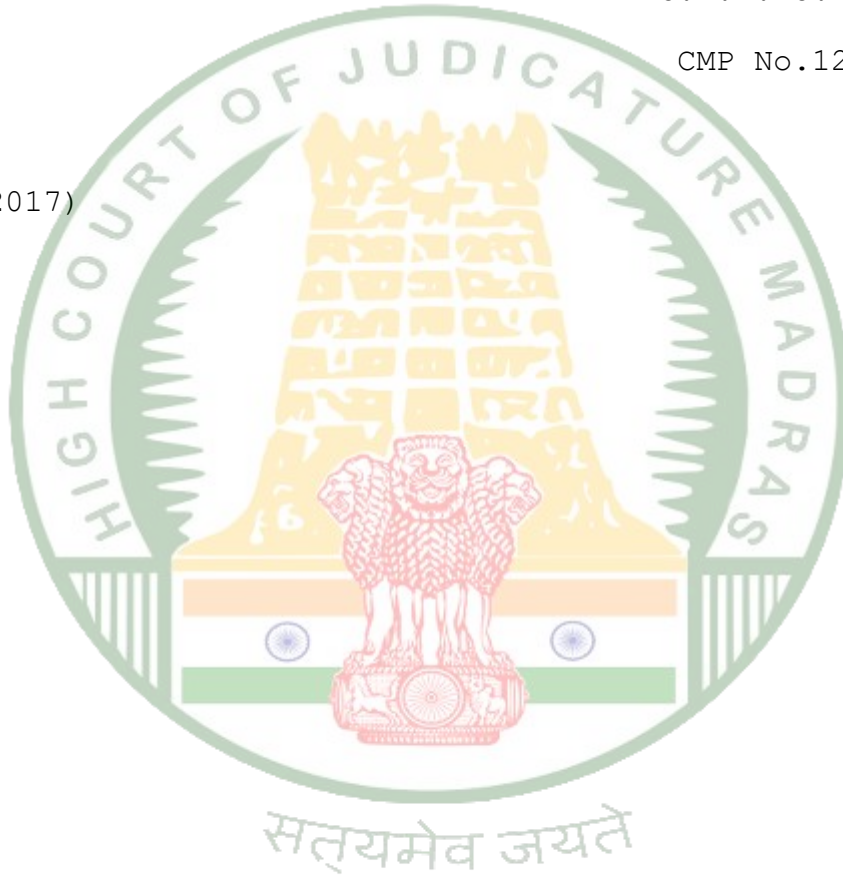
The Motor Accident Claims Tribunal,
(District Court No.II), Kanchipuram.

+1cc to Mr.Prabakaran, Advocate, S.R.No.16774

+1cc to Mr.Rathna Thara, Advocate, S.R.No.16903

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