

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.246 of 2017 &
CMP.No.1574 of 2017

The Managing Director
Metropolitan Transport Corporation Ltd.,
Chennai-600 002. ... Appellant/1st Respondent

Versus

1. S.Selvi
 2. S.Ashvini (Minor)
 - 3.S.Ajith Kumar (Minor)
 - 4.M.Sakunthala ... Respondents 1 to 4/Claimants 1 to 4
 - 5.E.Iyyappan
 6. The New India Assurance Co.Ltd.,
Motor Third Party Cell
No.45, Moore Street,
Chennai-600 001. ... Respondents 5 & 6/
Respondents 2 and 3
- (R2 & R3 minors rep by mother
and next friend 1st respondent herein)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 06.11.2012 made in M.C.O.P.No.1914 of 2006 on the file of the Motor Accident Claims Tribunal (In the II Court of Small Causes), Chennai .

For appellant : Mr.K.S.Suresh

J U D G M E N T

Challenging the finding on negligence as well as quantum of compensation awarded by the Tribunal, the Transport Corporation has filed this Civil Miscellaneous Appeal.

2.The respondents/claimants 1 to 4 have filed a Claim Petition in M.C.O.P.No.1914 of 2006, in respect of death of one Sekar, who was 38 years old, doing Masonary work earning a sum of Rs.3,00/- per day, who died in an accident on 07.03.2006. The tribunal quantified the compensation taking into account the monthly income of the deceased @ Rs.5,000/- and after deducting 1/4th salary, fixed his take home salary at Rs.3,750/- per month and by adopting multiplier of 16, loss of dependency was awarded at Rs.7,25,000/- (3,750x12x16= Rs.7,20,000/-), The Tribunal has also awarded a sum of

Rs.5,000/- towards Funeral Expenses, a sum of Rs.20,000/- towards Loss of Consortium to the first claimant and a sum of Rs.10,000/- each to the claimants 2 to 4 towards loss of love and affection. In total a sum of Rs.7,30,000/- was awarded as compensation. This award is under challenge.

3. The learned counsel for the appellant would submit that there is no evidence to show that the deceased was earning a sum of Rs.5,000/- per month. It is his further submission that the deceased was travelling as a Pillion rider along with two other persons in the same motorbike and as such the driver of the motor bike was at fault and therefore the Insurance Company is liable to pay the compensation.

4. A perusal of the award would go to show that the Claims Tribunal has on consideration of oral and documentary evidence has rightly fixed the negligence on the Transport Corporation. The tribunal has relied upon Ex.P1-F.I.R., Ex.P2-Final Report and Ex.P5-sketch along with the evidence of eyewitness. The driver of the offending vehicle has been examined and not the conductor and therefore there was no sufficient evidence on the part of the appellant. Violation of the provisions of the Motor Vehicle Act, itself i.e. triple driving would not amount to contributory negligence in the absence of evidence to show that accident occurred only because of three persons travelling in the motor vehicle (Kattaboman Transport Corporation Vs., Vellai Duraichi and others reported in 2004 1 TNMAC 180). Therefore the finding of negligence cannot be interfered with.

5. With regard to another contention of the learned counsel for the appellant that there is no evidence to show that the deceased was earning a sum of Rs.5,000/- per month, it is not acceptable for two reasons (1) The deceased had been maintaining the family consisting of four members, that included young children aged mother and his wife. It is not possible to maintain such family without the meager income of Rs.5,000/- per month. (2) The tribunal has not taken into account the income as stated by the claimants, but has taken only the minimum and not the maximum. Moreover, the claims tribunal has not taken into account the future prospective increase in the income and if it is taken the amount of compensation would be on the higher side.

6. Therefore, this appeal is devoid of merits. Hence, the same is dismissed, confirming the Judgment and decree of the Claims tribunal in M.C.O.P.No.1914 of 2006 dated 06.11.2012. The Transport Corporation is directed to deposit the entire compensation awarded by the Tribunal, less the amount already deposited, if any along with interest @ 7.5% per annum 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 Judgment. On such deposit being made, the major claimants are permitted to withdraw the compensation amount, as per the apportionment made by the Tribunal and the shares of the minor claimants shall be deposited in a Nationalised Bank in fixed deposit till they attain majority and the mother of the minor petitioners in

entitled to withdraw the accrued interest once in three months.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

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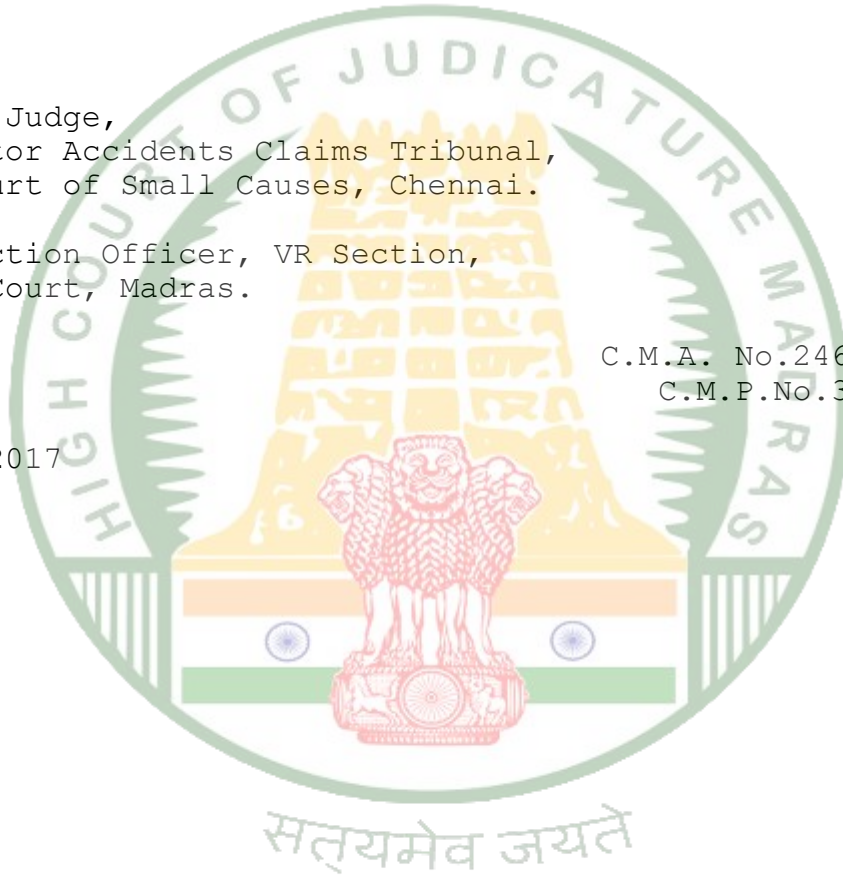
Sub Assistant Registrar

To

1. The II Judge,
The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.
2. The Section Officer, VR Section,
High Court, Madras.

KJI (CO)
SM:27.11.2017

C.M.A. No.246 of 2017 &
C.M.P.No.394 of 2017



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