

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND**

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Civil Miscellaneous Appeal No.14 of 2013
and
M.P.No.1 of 2013**

The Divisional Manager,
The Divisional Office,
The Oriental Insurance Co. Ltd.,
3rd Floor, Bangur Dharmasala Building,
No.6-A, West Veli Street,
Madurai-625 001.

.. Appellant

Vs

1.Mrs.Amirtham,
2.Subramani
3.Susendir
4.Vijayalakshmi
5.Sathish
6.S.Kaja Mohideen

[R6 Ex-parte before Trial Court]

.. Respondents

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgement and decree in M.C.O.P.No.191 of 2010 dated 24.04.2012 on the file of Motor Accident Claims Tribunal, Tindivanam.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.S.Muthaiah
for RR1 to 5
R6-Ex-parte before Tribunal

J U D G M E N T

[Judgement of the Court was made by **C.T.SELVAM, J.**]

This Civil Miscellaneous Appeal arises against the judgement and decree made in M.C.O.P.No.191 of 2010 dated 24.04.2012 on the file of Motor Accident Claims Tribunal, Tindivanam.

2. Appellant is the Insurance Company. Respondents 1 to 5 are legal heirs of one Saravanan, who died owing to an accident involving a bus bearing registration No.TN-59-AJ-0996 and the motor cycle driven by deceased on 13.1.2010 at about 3.00 p.m. Sixth respondent is the owner of the bus.

3. Before the Tribunal, on the side of respondents 1 to 5/claimants, 3 witnesses were examined and 12 exhibits were marked. None were examined on the side of appellant/Insurance Company nor any exhibits marked.

4. On appreciation of materials before it, Tribunal has held that the accident was caused due to rash and negligent driving of the bus. It held, both owner of the bus as well as the Insurance Company jointly and severally liable to pay compensation. As regards the quantum of compensation, before Tribunal, the claimants have filed Ex.P12, Salary certificate, to claim that deceased was earning a sum of

Rs.70,000/- per month as a Lorry Contractor engaged in sand quarrying. Tribunal disbelieved Ex.P12. Tribunal found, on averments in the claim petition that the deceased Saravanan had earned Rs.30,000/-. Tribunal arrived at a sum of Rs. 3,60,000/- as the annual income of the deceased and of this amount, 1/3 was deducted towards personal expenses. Tribunal arrived at a sum of Rs.2,40,000/- and adopted multiplier 15. Tribunal awarded a sum of Rs.36,00,000/- towards loss of earning capacity and a sum of Rs.25,000/- for claimants 1 to 3, who are the mother, father and unmarried sister of the deceased, towards loss of love and affection. Tribunal, however, refused to grant any amount in compensation to the claimants 4 and 5 as they were married and residing along with their spouses even before the death of the deceased. Tribunal further awarded a sum of Rs.5,000/- towards transportation and another sum of Rs.5,000/- towards funeral expenses. Tribunal awarded a total compensation of Rs.36,85,000/-.

5. Learned counsel for Insurance Company mainly contended that Tribunal, in the absence of documentary evidence, has erred in fixing monthly income of the deceased at Rs.30,000/- per month. According to the learned counsel for appellant, the amount awarded by the Tribunal is excessive.

6. Learned counsel for respondents/claimants submitted that the compensation awarded by the Tribunal is fair and reasonable and

prayed for dismissal of the appeal.

7. Though, insurance company disputed the monthly earning of the deceased at Rs.30,000/-, they did not produce any documentary evidence to dispute it. It did not examine any witness to substantiate their defence. In the absence of evidence, we do not find any reason to interfere with the findings of the Tribunal.

8. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accident Claims Tribunal, Tindivanam, passed in M.C.O.P.No.191 of 2010 dated 24.04.2012, is confirmed. Appellant/Insurance Company is directed to deposit the entire amount awarded, less already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. Respondents 1 to 5/Claimants are at liberty to withdraw the amount on due application. No costs. Connected miscellaneous petition is closed.

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[C.T.S., J] [M.V.M., J]

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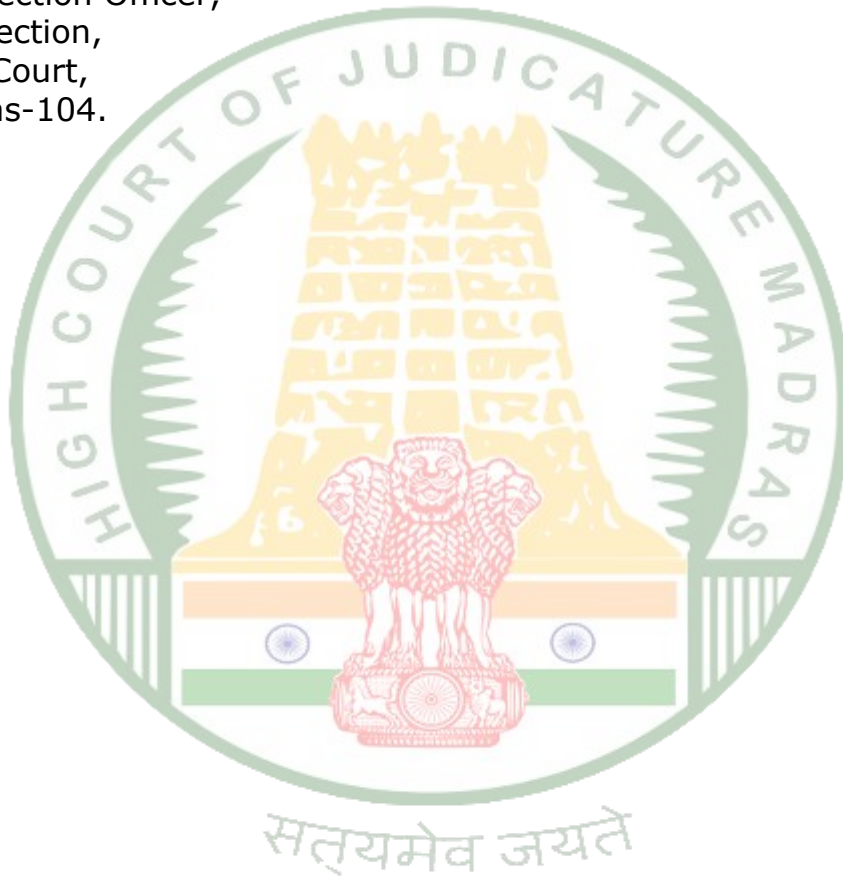
Index:yes/no

Speaking/Non-speaking Order

kmi

To

1. The Presiding Officer,
Motor Accident Claims Tribunal,
Tindivanam.
2. The Section Officer,
V.R.Section,
High Court,
Madras-104.



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C.T.SELVAM, J
and
M.V.MURALIDARAN, J

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