

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 09.03.2017

Coram

The Hon'ble Mr.Justice Nooty Ramamohana Rao
and
The Hon'ble Mr.Justice S.M.Subramaniam

C.M.A.Nos.2491 and 2492 of 2013
and
M.P.Nos.1 and 1 of 2013

United India Insurance Co.Ltd.,
Trichy

...Appellant in both Appeals
Respondents

Vs.

1. Ponnuraj ...R-1 in C.M.A.No.2491 of 2013/Petitioners
2. Rajaprasanna ...R-2 in C.M.A.No.2491 of 2013
3. Minor Rajkumkar ...R-3 in C.M.A.No.2491 of 2013
(minor Rajkumar is rep. & Sole Respondent in by
father and next friend, R-1) C.M.A.No.2492 of 2013

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgments and decrees in M.C.O.P.Nos.306 and 307 of 2009, dated 05.01.2011, respectively, on the file of the Motor Accident Claims Tribunal (Subordinate Court) Udumalpet.

In both C.M.As.

For Appellant : M/s.Harini for M/s.M.B.Gopalan
For Respondents : Mr.R.Babu

COMMON JUDGEMENT

(Judgement of the Court was made by S.M.Subramaniam, J.,)

These Civil Miscellaneous Appeals arouse out of the common award passed by the learned Subordinate Judge, Motor Accident Claims Tribunal, Udumalpet, (hereinafter, referred to as 'the Claims Tribunal') in M.C.O.P.No.306 of 2009 and M.C.O.P.No.307 of 2009 dated 05.01.2011.

2. On 19.05.2009, at about 6.20 a.m. when the deceased P.Angulakshmi was traveling in a Car, viz., Tata Sumo, along

with her family, driven by one Alagesan, due to rash and negligent driving, the said Vehicle went out of control and proceeded towards the left hand side of the road and fell into a road side ditch, and as a result of which, the deceased P.Angulakshmi died on the spot, and her minor son, by name Rajkumar, sustained multiple injuries all over the body.

3. The legal heirs of the deceased P.Angulakshmi, viz., the husband and her two children, (who are respondents 1 to 3 in C.M.A.No.2491 of 2013) filed a claim petition in M.C.O.P.No.306 of 2009, claiming a total compensation of Rs.30,00,000/-. The injured, minor Rajkumar, (who is the sole respondent in C.M.A.No.2492 of 2013) filed claim petition, in M.C.O.P.No.307 of 2009, claiming a sum of Rs.10,00,000/- as compensation.

4. The Insurance Company filed individual counter statement, resisting the claims.

5. The Claims Tribunal heard both the Claim Petitions together and common evidence was let in by both parties. On evaluation of both oral and documentary evidence, the Claims Tribunal held that the accident occurred solely due to the rash and negligent driving of the Car driver, and directed the Insurance Company, the insurer, to pay a sum of Rs.14,80,000/- to the claimants in MCOP.No.306 of 2009 and a sum of Rs. 3,35,050/- to the claimant, in M.C.O.P. No.307 of 2009.

6. Questioning the quantum of compensation awarded, the Insurance Company has filed the present two Civil Miscellaneous Appeals, contending that the compensation fixed by the Claims Tribunal is high and excessive.

7. M/s.Harini, learned counsel appearing for the appellant/Insurance Company vehemently contended that the quantum of compensation fixed by the Claims Tribunal is very excessive, as the deceased P.Angulakshmi was not earning Rs.12,000/- as mentioned in the Income Tax Returns. She also questioned the sanctity of the balance sheet and the Income Tax acknowledgment adduced by the claimants before the Claims Tribunal, which were marked as Exs.P.7 and P.8. Further, she raised a plea that the income tax payable by P.Angulakshmi, was paid subsequent to the date of the accident of the deceased, in order to secure more compensation and therefore, she would submit that the Claims Tribunal ought not to have relied upon those documents. Finally, she contended that huge, unreasonable and exorbitant amount of compensation is awarded, and therefore, the same is liable to be modified.

8. Repelling/refuting the above contentions of the learned counsel for Mr.R.Babu, learned counsel for the respondents/claimants contended that the claimants have produced

all necessary documents to prove the income, and age of the deceased, and the Claims Tribunal, on proper appreciation of the documentary adduced before it, awarded a sum of Rs.14,80,000/- as compensation to the claimants, in MCOP.No.306 of 2009, which is just and reasonable, and the same requires no interference. Similarly, the Claims Tribunal, by taking into account the fact that the injured Rajkumar, who is a minor, has suffered injuries, which were grievous in nature, which resulted in 20% of permanent disability, and also based on the documents, viz., the Medical Bills, Disability Certificate, etc., marked as Exs.P.12, P.18 and P.16, rightly awarded a sum of Rs. 3,35,050/- as compensation to him, in connection with M.C.O.P. No.307 of 2009 and the same is also just and proper.

9. The appellant/Insurance Company has not disputed the factum regarding the existence of the insurance policy in force, more specifically, at the time of the accident, and the driving licence possessed by the driver of the vehicle at the time of the accident. Therefore, the only question that falls for consideration in these Appeals is as to whether the quantum of compensation fixed by the Claims Tribunal is high and excessive, as contended by the appellant/Insurance Company?

10. To appreciate the contention of Ms.Harini, the learned counsel for the appellant/Insurance Company that ExS.P.7 and P.8. ought not to have been relied upon by the Tribunal, we have gone through the contents of Exs.P.7 and P.8, and on a perusal of those documents, it is seen that, Ex.P.7 is the acknowledgment duly signed by the Income Tax Officer, and it bears the Office seal, signed by the Income Tax Department in the month of March. Ex.P.8 is the Income Tax Returns filed by the Firm, where, the deceased P.Angulakshmi was shown a partner. The accident took place on 19.05.2009. Such being the factual position, the arguments advanced by the learned counsel for the appellant/Insurance Company that the income tax of the deceased P.Angulakshmi, was paid subsequent to the date of the accident of the deceased, in order to secure more compensation does not commend for acceptance. Further, the income tax returns marked as Ex.P.8 is corroborating with the income tax acknowledgment marked under Ex.P.7. Therefore, there is no scope to doubt the credibility of the documents marked before the Claims Tribunal. After all, no one would have filed Income Tax Return and also would have paid income tax in March in anticipation of the accident taking place in the month of May.

11. The Claims Tribunal, as per the said documents, found that the annual income of the deceased was Rs.1,66,000/-. Accordingly, the monthly income of the deceased was fixed at Rs.12,000/-, and by deducting 1/3rd towards her personal expenditure, the monthly income was determined at Rs.8,000/. Though in the Claim Petition pertaining to M.C.O.P.No.306 of

2009, the age of the deceased P.Angulakshmi is stated as 38 years, the post mortem report stipulates that the age of the deceased at the time of accident as '40'. Thus, taking into account the monthly income of the deceased at Rs.8,000/- and the age of the deceased as 40, multiplier '15' was adopted, and accordingly, a sum of Rs.14,80,000/- was awarded as compensation in MCOP.No.306 of 2009.

12. This apart, it is an unfortunate accident, in which, a young woman died, and the claimants are her husband and sons. Due to her death, the happiness of the entire family is shattered, and one cannot imagine or even ignore the trauma and mental agony faced by the entire family, and rest of the life time for the claimants will be relatively tedious.

13. The learned counsel for the appellant/Insurance though impressively put forth her contentions before us, we have to consider the plight of the surviving members of the family also. The deceased was not only a partner in the Partnership Firm, and beyond that, she was playing the role of a home maker also. The homemakers are to be declared as Nation Builders, in the sense that they are main part of the Society, building the nation, by creating good, idealistic families. A well disciplined individual and a homemaker can raise a good family, and good families alone can create a better Society, and the better Society alone will form a better Nation, which will be idealistic. One requires craft, carefulness and shall also possess a sense of sacrifice to be a homemaker and willpower to keep a family together and organize the day-to-day activities and then administer the affairs smoothly. Loss of a homemaker to a middle class family is an enormous loss, not capable of very precisely compensated.

14. We would like to have a pragmatic view of the prevailing situation in the Society. People may have different theories on the participation and contribution of homemakers within the family, but the situation prevailing in the Society is that, if the husband died in an accident, the dutiful wife is able to raise the family, even in his absence, most specifically, she is able to bring up her children as good citizens of this Nation, whereas, if the wife dies in an accident, entire family becomes handicapped and shattered and the husband will seldom be in a position to rear the children in a better manner, and again, there will be a vacuum in the family. The said situation is the reality, and we cannot shut our eyes in respect of the truth behind the situation.

14 A. In the judgment rendered by the Hon'ble Division Bench of our Court, in the case of (National Insurance Company Ltd., Grems Road, Chennai Vs. i) Minor Deepika, rep. by

Guardian Ranganantha and others) reported in (2009) 1 TN MAC 671 (DB) it is observed as under:-

" 11. The role of a housewife includes managing budgets, co-ordinating activities, balancing accounts, helping children with education, managing help at home, nursing care etc. One formula that has been arrived at determines the value of the housewife as, Value of housewife = husband's income wife's income + value of husband's household services, which means the wife's value will increase inversely proportionate to the extent of participation by the husband in the household duties. The Australian Family Property Law provides that while distributing properties in matrimonial matters, for instance, one has to factor in "the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of a homemaker or parent."

14.B Similarly, in the judgment rendered by the Hon'ble Supreme Court of India, in the case of (Jitendra Khimshankar Trivedi & others vs Kasam Daud Kumbhar & Ors) reported in (2015) 4 S.C.C. 237 it is observed as follows:-

"10. Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased Jayvantiben Jitendra Trivedi as the home maker, it is reasonable to fix her income at Rs.3,000/- per month.

11. Recognizing the services of the home maker and that domestic services have to be recognized in terms of money, in Arun Kumar Agrawal & Anr. vs. National Insurance Company Ltd. & Ors.[2], this Court has held as under:-

"62. The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.

63. Household work performed by women throughout India is more than US \$612.8 billion per year (Evangelical Social Action Forum and Health Bridge. We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing "just compensation.""

15. The case on hand is of such a nature, as the mother died leaving behind the husband and two children, viz., the respondents 2 and 3 in C.M.A.No.2491 of 2009, and they lost their mother at a very young age. Their mother would no longer

be available to them throughout their life to look after them, to guide and groom them. Their loss cannot be effectively compensated. Mere compensation will not be sufficient to mitigate the hardship caused to the entire family, and therefore, this Court is of the view that the compensation awarded by the Claims Tribunal can never be construed as exorbitant or excessive and it is just and reasonable.

16. Insofar as M.C.O.P.No.307 of 2009 is concerned, the injured claimant sustained multiple injuries, which are grievous in nature, and due to the accident, he sustained 20% permanent disability, and to prove the same Ex.P.16, disability certificate has been marked. Exs.P.12 and 18, are the medical bills, which would prove the expenses incurred towards medical expenditure. The Claims Tribunal, by taking into account the age of the injured, and the nature of injuries sustained by him, which were grievous, and inspite of prolonged treatment, he suffered 20% permanent disability, awarded a sum of Rs.3,35,050/- as compensation, and the same is also just and proper.

17. To neutralize the arguments advanced by the learned counsel for the appellant, Ms.Harini, that the quantum of compensation awarded by the Claims Tribunal is excessive, this Court is inclined to refer to the ratio of the judgment of the Hon'ble Supreme Court rendered in the case of (Rajesh and others Vs. Rajbir Singh and others) reported in (2013) 2 TN MAC 55 (SC) and the relevant portions from the said judgement reads as follows;-

"3. In Nagappa v. Gurudayal Singh and Others, 2003(1) R.C.R.(Civil) 258 , it has been held by this Court that the main guiding principle for determining the compensation is that it must be just. It has also been held that the award must be reasonable. Some of the relevant parameters in that regard arise for consideration in this case.

7. The expression 'just compensation' has been explained in Sarla Verma's case (supra), holding that the compensation awarded by a Tribunal does not become just compensation merely because the Tribunal considered it to be just. 'Just Compensation' is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles

relating to award of compensation. After surveying almost all the previous decisions, the Court almost standardised the norms for the assessment of damages in Motor Accident Claims.

15. Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumb to niceties or technicalities, in such matters. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of L 2,500/- to L 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of L 5,000/- to L 10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of

compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

18. The principles relating to just compensation, has been enunciated by the Hon'ble Supreme Court in the followings judgments:-

a) In Mr. R.D. Hattangadi vs M/S Pest Control (India) Pvt. Ltd. Reported in AIR (1955) S.C. 755, the Hon'ble Apex Court held as follows:-

" In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

b) In Common Cause, A Registered vs Union Of India, reported in (1999) 6 SC.C. 667, it is held as follows:-

"The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups : pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a

substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In Re: The Medianna (1900) A.C. 1300, Lord Halsbury L.C. observed as under:

"How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident...But nevertheless the law recognises that as a topic upon which damages may be given."

c) In yet another decision in the case of (Divisional Controller, Ksrtc vs Mahadeva Shetty And Another) reported in (2003) 7 S.C.C. 197, it is held as under :-

"Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded."

At para No.15 of the said judgment, it is held as follows:-

".....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."

d) In Nizam'S Institute Of Medical vs Prasanth S.Dhananka & Ors, reported in (2009) 6 S.C.C. 1 : (2010) AC 38 SC.) the Hon'ble Supreme Court, comprising of three Hon'ble Judges was dealing with a case arising out of a complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.15 lakhs to Rs.1 Crore, the Hon'ble Bench made the following observations, which can appropriately be applied for deciding the petitions filed under Section 166 of the Act:-

"39. We must emphasize that the Court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the Court must not be chary of awarding adequate compensation. The "adequate compensation" that we speak of, must to some extent, be a rule of the thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned. It must also be borne in mind that life has its pitfalls and is not smooth sailing all along the way (as a claimant would have us believe) as the hiccups that invariably come about cannot be visualized. Life it is said is akin to a ride on a roller coaster where a meteoric rise is often followed by an equally spectacular fall, and the distance between the two (as in this very case) is a minute or a yard. At the same time we often find that a person injured in an accident leaves his family in greater

distress, vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity."

e) In Reshma Kumari & Ors vs Madan Mohan & Anr reported in (2009) 13 S.C.C. 422 :-

"The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of only son to a mother, she can never be compensated in monetary terms.

The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles.

A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.

In the Indian context several other factors should be taken into consideration including education of the dependents and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely - the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Company Ltd. v. Jashuben and others*, [(2008) 4 SCC 162] held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard and fast rule, however, can be laid down therefor."

19. Bearing in mind the above principles, we are of the opinion that there is no merit in these Appeals.

20. For all the reasons, the common award of the Claims Tribunal in M.C.O.P.No.306 of 2009 and M.C.O.P.No.307 of 2009, dated 05.01.2011 is confirmed in all respects.

21. In the result, these Civil Miscellaneous Appeals are dismissed, as being devoid of merit. No order, as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The Subordinate Judge,
Motor Accident Claims Tribunal, Udumalpet.

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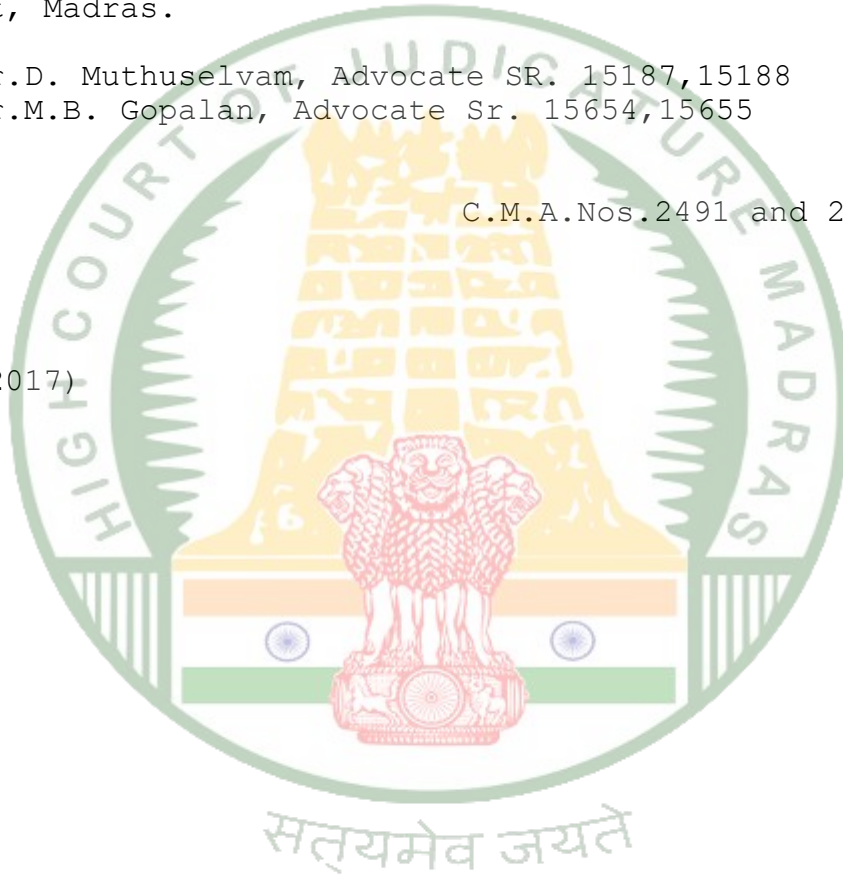
The Section Officer,
VR Section,
High Court, Madras.

+2cc to Mr.D. Muthuselvam, Advocate SR. 15187,15188

+2cc to Mr.M.B. Gopalan, Advocate Sr. 15654,15655

C.M.A.Nos.2491 and 2492 of 2013

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