

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1624 of 2017
and CMP No.8609 of 2017

United India Insurance Company Limited,
Rep. by its Branch Manager,
Branch Office, No.206 & 207, 2nd Floor,
Sapthagiri Towers, Begumpet,
Hyderabad - 16

.. Appellant

versus

1. S.Noorjahan Banu
2. Minor Mohammed Ayyan
3. K.Vasubabu

.. Respondents

[Minor 2nd respondent rep. by his mother and guardian Noorjahan Banu, the
1st respondent]

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree
in M.C.O.P.No.563 of 2011, dated 18.04.2013, on the file of the Motor
Accident Claims Tribunal, [Additional District Judge], Krishnagiri.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.K.Pattabi (for R1 & R2)

JUDGMENT

(Judgment of the Court was made by **S.MANIKUMAR ,J.**)

Being aggrieved by the judgment and decree in M.C.O.P.No.563 of
2011, dated 18.04.2013, on the file of the Motor Accident Claims Tribunal,
[Additional District Judge], Krishnagiri, by which, a sum of Rs.30,58,720/-,
has been awarded as compensation, with interest, at the rate of 7.5% per

annum, from the date of claim, till the date of realisation and costs, to the legal representatives of the deceased, M/s.United India Insurance Company Limited, has preferred the present appeal.

2. Facts deduced from the material on record and the impugned judgment are that on 01.12.2010, when the deceased Mohammed Saleem, was proceeding in his TVS Apachi Motorcycle bearing Regn.No.AP-03-AA-6635, along with a pillion rider Mechanic Harish, slowly and cautiously on the left side of the road and proceeding towards Kuppam from Abakaladoddi, about 9.10am, near Samaguttapalli Cross, a TATA Sumo Spacio bearing Regn.No.AP-03-TV-0112, belonging to the 3rd respondent herein and insured with the appellant-Insurance company, driven in a rash and negligent manner by its driver, M.Somasundarampillai, dashed against the motorcycle. In the result, the motorcyclist sustained grievous injuries and immediately was taken to the Government Area Hospital, Kuppam. On the way to hospital, he died. In this regard, a case in Crime No.159 of 2010 for offence under Sections 304(A) and 337 IPC was registered on the file of Kuppam Police Station and later, altered into a case under Section 304(A) of IPC.

3. Claimants have contended that at the time of accident, the deceased was aged 27 years and a part-time Lecturer in Govt. Vocational

Junior College, Kuppam, as well as Lecturer for B.Sc. Computers course in Vikas Degree College, Kuppam. In addition to above, he was doing seasonal as well as Real Estate business and earned a sum of Rs.53,500/- per month. Legal representatives of the deceased viz., wife and minor son aged about 2 years, though claimed compensation of Rs.2,38,58,050/- under various heads, restricted the same to Rs.1,00,00,000/-.

4. Before the claims tribunal, appellant-Insurance Company, has filed a counter affidavit denying the manner of accident. Without prejudice to the above, the company has also disputed the age, avocation and income of the deceased, and the quantum of compensation claimed under various heads.

5. On behalf of the claimants, wife of the deceased examined herself as PW1 and reiterated the averments made in the claim petition. PWs 2 to 6 are other witnesses, who have adduced evidence on the side of the claimants and Exhibits P1 to P37, have been marked. Insurance company has neither filed any document nor examined any witness.

6. On evaluation of pleadings and evidence, the Claims Tribunal, held that the accident occurred only due to rash and negligent act of the driver of the TATA Sumo Spacio bearing Regn.No.AP-03-TV-0112 and insured with

the appellant-insurance company. Considering the age, avocation, income and other parameters, required to be taken into consideration, the Claims Tribunal, fixed the monthly income of the deceased as Rs.18,500/- and by adding 30% of income under the head future prospects, computed the total monthly income as Rs.24,050/-. As per the postmortem report, age of the deceased was 27 and by applying multiplier '18', and after deducting 1/3 towards the personal and living expenses and 10% towards income tax, the tribunal computed the loss of contribution as Rs.29,43,720/-. That apart the claims tribunal has awarded compensation of Rs.50,000/-, towards loss of consortium to the wife and Rs.50,000/- to the minor son towards loss of love and affection. A sum of Rs.15,000/- has been awarded under the head, Transportation and funeral expenses. In all, the claims tribunal has quantified the compensation at Rs.30,58,720/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation and costs.

7. Mr.S.Arun Kumar, learned counsel for the appellant-insurance company submitted that though one of the grounds in the appeal is that the deceased also contributed to the accident and hence, contributory negligence out to have been fixed on the deceased, he is not pressing the same.

8. On the quantum of compensation, learned counsel for the appellant insurance company contended that the deceased was employed only on temporary basis and hence, monthly income of Rs.18,500/- fixed by the tribunal is excessive. Addition of 30% of Income towards future prospects, is also challenged by the appellant-insurance company.

9. Heard the learned counsel for the appellant-Insurance Company on the limited challenge and perused the materials available on record.

10. Perusal of the tribunal's award shows that the deceased, a MCA Post Graduate Degree holder, as Lecturer in Kuppam Vikas College, Andhra, earned Rs.10,000/-. In addition, as a part time lecturer in Kuppam Government Vocational College, earned Rs.8,500/-. To prove the same, Principals of the respective colleges have been examined as PWs.3 and 4, and considering the same, the tribunal has rightly arrived at the conclusion that the deceased earned a sum of Rs.18,500/- per month.

11. Further, on perusal of documents viz., Ex.P9-Provisional certificate of MCA, Ex.P10-MCA Degree Marks card, Ex.P11-Course Completion certificate of MCA, Ex.P12-Techno Mind Certificate of

Excellence, Ex.P13-Certificate issued by Govt. of AP Industrial Education, Ex.P-14, Appointment Order-Board of Intermediate Education Card, Ex.P15-B.Sc., Degree Certificate, Ex.P16-B.Sc. Provisional Certificate cum Marks Memorandum, Ex.P17-Hall Ticket issued by AP Forest, Ex.P18-Hall ticket Issued by AP Forest Department dated 08.12.2010, Ex.P19-APPSC Group I, Group II Hall tickets, Ex.P20-Hindi Intermediate Certificate, Ex.P21-Certificate in Janma Bhoomi Programme of Andhra Pradesh, Ex.P22-Running Race Awards Certificate, Ex.P23-Nikettan Part in ART Certificate, Ex.P24-Certificate of Merit First Class, Ex.P25-Certificate of Merit issued by District Artists Association, Chittoor, Ex.P26-Certificate issued by Zilla Art Association (Translation Copy), Ex.P27-Forest Department Chittoor, East (WL) Division Call Letter, Ex.P28-Hall Ticket for Divisional Forest Officer grade Test and Ex.P29-Forest Department (W.L.) Division, shows that the deceased had a good academic record and made sincere efforts to acquire better employment, by preparing and appearing for various competitive exams. He had completed 'Madhyana Visharadha', which is equal to intermediate level studies in Hindi and thus eligible to join as a Hindi Teacher, in High Schools of State / Central Government Schools.

12. Though, learned counsel for the appellant-Insurance company contended that addition of 30% income towards future prospects is contrary to the decision of the Hon'ble Supreme Court in **Reshma Kumar v. Madan**

Mohan reported in 2009 (2) TNMAC 36 (SC) : 2009 (13) SCC 422, on perusal of the award, we are convinced that the tribunal has rightly added 30% of the income under the head future prospects, by considering the aforementioned documents. Multiplier adopted and deduction made towards personal and living expenses have been done as per the decision of the Hon'ble Apex Court in *Sarla Verma and Others Vs. Delhi Transport Corporation*, reported in 2009 ACJ 1298 and therefore, the quantum of compensation awarded under the head loss of contribution to the family, does not require reduction and the same is confirmed.

13. Accident has occurred on 01.12.2010. Compensation awarded under other heads, viz., Rs.50,000/- towards loss of consortium, Rs.50,000/- to minor son aged 2 years, towards loss of love and affection and Rs.15,000/- awarded towards transportation and funeral expenses, is less. Further, there is no award towards loss of estate and conventional damages.

14. In view of the above, we are not inclined to reduce the award amount for the reason that the overall compensation to the legal representatives of the deceased viz., wife aged 26 years and minor son aged 2 years, who have lost their sole breadwinner, aged just 27 years, is not exorbitant. On the contra, appears to be less. Since, no appeal has been filed by the claimants seeking enhancement, award of the tribunal is

sustained. Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition, is closed.

15. The appellant-Insurance Company is directed to deposit the entire award amount with accrued interest and costs to the credit of M.C.O.P.No.563 of 2011 on the file of the Motor Accident Claims Tribunal, [Additional District Court], Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier.

16. On such deposit, the 1st respondent/wife of the deceased is permitted to withdraw her share, as apportioned by the tribunal, with interest and costs, by making necessary applications. Share of the minor/respondent No.2 shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minor/respondent No.2, shall be paid to the mother of the minor, the 1st respondent herein viz., Mrs.S.Noorjahan Banu, once in three months, till he attains majority.

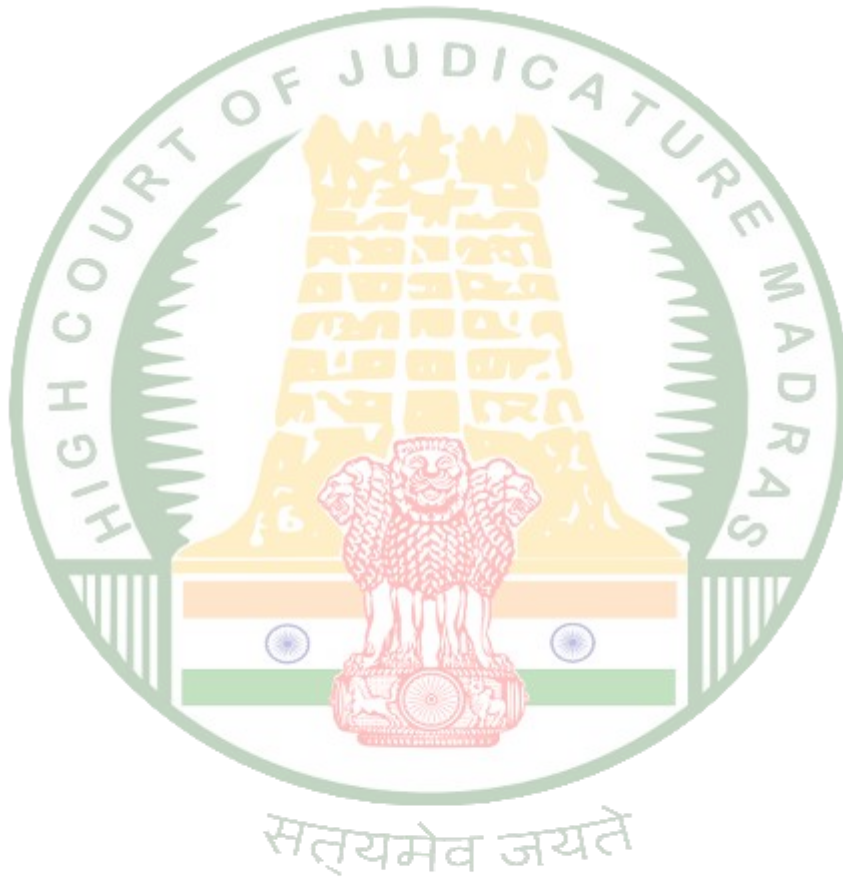
(S.M.K., J) (M.G.R., J.)
05.06.2017

Index: Yes/No.
Internet: Yes/No.
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To

1. The Motor Accident Claims Tribunal,
(Additional District Judge), Krishnagiri.

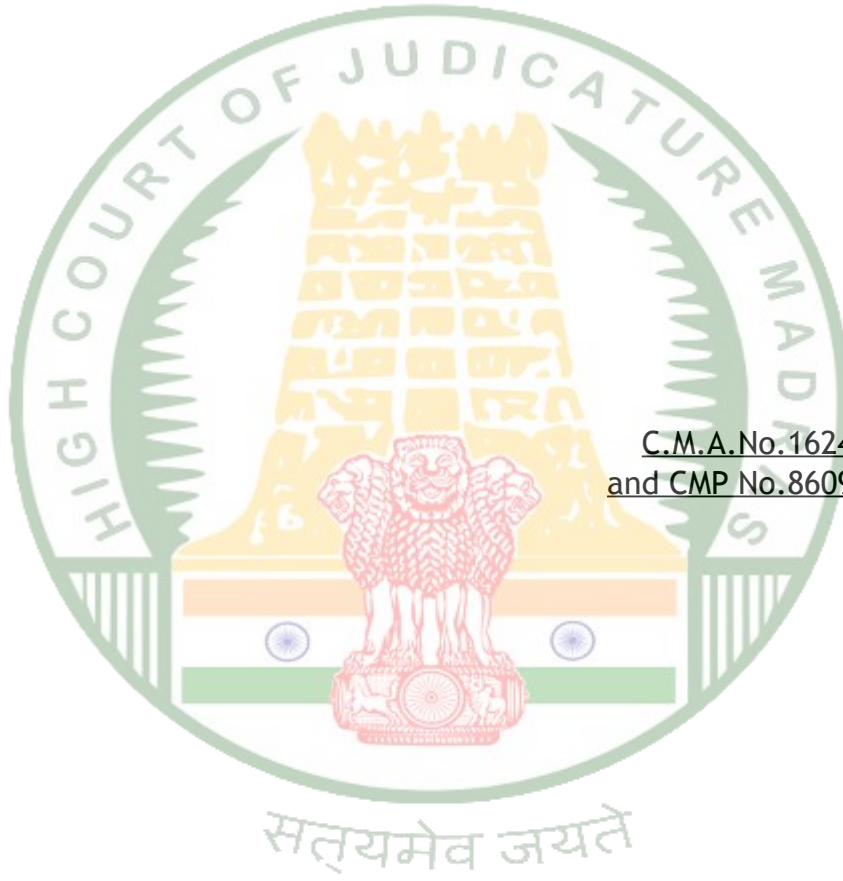
2. The Section Officer,
VR Section, High Court, Madras



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