

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.1059 of 2018
and
C.M.P.No.8628 of 2018

United India Insurance Company Limited.,
TKM Complex, Katpadi Road,
Vellore. Appellant/2nd Respondent

-vs-

1.Mariyammal
2.Minor Sugapriya
3.Minor Krishnaveni
4.Minor Iswarya
[Minors 2, 3 and 4 represented
by mother/ guardian]
5.Subban Chettiar
6.Azhagammal Respondents 1 to 6/Petitioner 1 to 6
7.Southern Roadways Limited,
Madurai, Lakshmi Building,
Usilampatti Road, Post Box No.3,
Kochadai, Madurai - 625016. 7th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP.No.1600 of 2013 on 28.11.2017 on the file of the learned Special Subordinate Judge (Motor Accident Claims Tribunal), Tirupattur.

For Appellant : Mr.J.Chandran

For Respondents : Mr.E.Kannadasan

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

The challenge in this appeal is to the award of the Motor Accident Claims Tribunal, Tirupattur made in MCOP.No.1600 of 2013, granting a compensation of Rs.17,21,483/- to the claimants

who are the wife, children and parents of one Murugan who died in the road accident that occurred on 23.11.2012. The claim petition itself was filed under Section 163(A) of the Motor Vehicles Act, 1988.

The case of the claimants as set out in the claim petition is as follows:-

2. On 23.11.2012, at about 2.45 p.m the deceased was driving a parcel van bearing registration No.KER 5658 belonging to the 1st respondent. The deceased lost control of vehicle due to unavoidable circumstances and it went off the road dashed against a rock. As a result of the accident, the driver suffered grievous injuries and he was immediately rushed to the Malankara Orthodox Syrian Church Medical College Hospital, Kolenchery in Kerala and he was admitted as an inpatient. Despite treatment he died in the hospital. A case was registered against the deceased by the Karimnal Police in crime No.16 of 2012. The claimants would term the accident as unavoidable and seek compensation of Rs.25,00,000/-.

3. The said claim was resisted by the Insurance Company contending that the accident occurred due to the negligence of the deceased who happened to be the driver of the parcel van. Terming him as a tort-feasor, the Insurance Company contended that if at all the claimants are entitled to any compensation, it could only be a fixed compensation, since the claim petition itself has been filed under Section 163(A) of the Motor Vehicles Act.

4. The Tribunal however tried the petition as one filed under Section 166 and awarded a compensation as above. Aggrieved, the Insurance Company is on Appeal.

5. Mr.J.Chandran, learned counsel appearing for the Insurance Company would submit that if the claim petition is filed under Section 163(A), the claimant would be entitled to compensation as per the schedule to the Motor Vehicles Act, which will be about Rs.4,95,000/- and nothing more. He would also concede that at best the claimants could be referred to stake their claim under the Employees Compensation Act. Mr.J.Chandran would also fairly submit that this Court could also take note of the provisions of Employees Compensation Act and award compensation as per the Schedule to the said Act, even though the claimants have invoked Section 163(A) of the Motor Vehicles Act.

6. Mr.J.Chandran would also invite our attention to the recent judgment of the Hon'ble Supreme Court in Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others reported in 2018 (2) TN MAC 149 (SC), wherein, the

Hon'ble Supreme Court held that any claim petition filed under Section 163(A), the question of negligence cannot be gone into, but, at the same time, the award could be made only as per the Schedule to the Motor Vehicles Act, 1988.

7. The Division Bench of this Court in Oriental Insurance Co. Ltd., Vs. Kaliya Pillai and others reported in 2003 ACJ 1021 had an occasion to consider the powers of this Court to grant compensation under the Workmen Compensation Act in a claim filed under Sections 166 and 167 of the Motor Vehicles Act. The Division Bench had concluded that this Court has got the powers to grant compensation as per the Schedule to the Workmen Compensation Act (Employees Compensation Act).

8. In view of the said decision of the Division Bench, we are of the opinion that the compensation payable to the claimants for the death of the said Murugan could be worked out under the Workmen Compensation Act which is more advantageous to the claimants.

9. The deceased was aged about 45 years at the time of the accident and his income as per the Employees Compensation Act is Rs.8,000/-. The relevant factor as per Schedule IV of the Employees Compensation Act is 169.44. As per Section 4(i)(a) of the Act, 50% of the monthly wages multiplied by the relevant factor would be the compensation payable for death of an employee. Thus worked out, the compensation works out to Rs.6,77,760/- [169.44 x 8000 x 50/100]. Under the Employees Compensation Act, the funeral expenses of Rs.5,000/- could be awarded, therefore, the total compensation payable works out to Rs.6,82,760/- with 12% interest from 23.12.2012 i.e., 30 days after the accident till date of payment.

10. In view of the above, the award of the Tribunal is set aside, the claimants are awarded a compensation of Rs.6,82,760/- with 12% interest from 23.12.2012 till date of payment. It is stated that the Insurance Company has already deposited a sum of Rs.5,00,000/-. The Insurance Company is granted four (4) weeks time to deposit the balance amount. The compensation is apportioned as follows:-

The parents of the deceased viz., respondents 5 and 6 would be entitled to a sum of Rs.41,380/- each with proportionate interest at 12%. The wife of the deceased and minor daughters viz., respondents 1 to 4 would be entitled to Rs.1,50,000/- each with proportionate interest at 12% per annum. The Tribunal is directed to deposit the share of the minor daughters with proportionate interest in a interest bearing Fixed Deposit till they attain majority in any one of the Nationalized Banks. The 1st respondent, mother is allowed to withdraw the interest on a quarterly basis from the shares of the minors so invested.

11. In fine, the appeal is allowed as indicated above. There will be no order as to costs in this Appeal. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

dsa

To

The Special Subordinate Judge (Motor Accident Claims Tribunal),
Tirupattur, Vellore District.

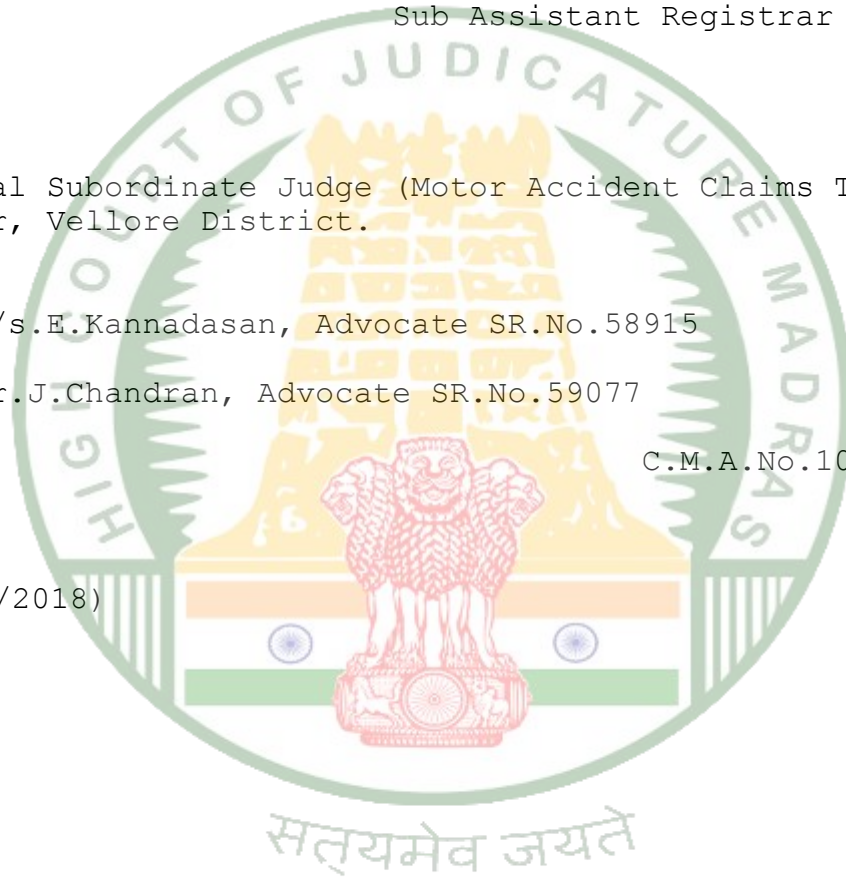
+1cc to M/s.E.Kannadasan, Advocate SR.No.58915

+1cc to Mr.J.Chandran, Advocate SR.No.59077

C.M.A.No.1059 of 2018

RSI (CO)

GMV (12/11/2018)



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