

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.2398 of 2006  
and  
CMP No.1 of 2006

United India Insurance Company Ltd.,  
No.52, General Muthiya Street,  
Chennai - 600 079.

... Appellant/  
2<sup>nd</sup> Respondent

Versus

1. M.G.Jayavelu,
2. M.J.Indra
3. Minor M.J.Rajesh,  
(Minor represented by Guardian  
and father M.G.Jayavelu)
4. M/s.Shanmugam Road Lines,  
No.33/1, Millers Road, Kilpauk, Chennai - 10  
Represented by Mr. Murugan

... Respondents/  
Petitioner /  
1<sup>st</sup> Respondent

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.12.2005 made in M.C.O.P.No.1245 of 2004 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.2), Chennai.

For Appellant : Mr. D.Bhaskaran

For Respondents : ----

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 29.12.2005 made in M.C.O.P.No.1245 of 2004 on the file of The Motor Accidents Claims Tribunal (Fast Track Court No.2), Chennai.

2. The brief facts of the case are as follows :

On 06.12.2002 at about 9.45 a.m., when the deceased was traveling as a pillion rider in the scooter bearing Reg. No.TN

07 V 0387 and proceeding from Neelankarai to Chennai on the E.C.Road, at the time a tanker lorry bearing Reg. No.TN 01 C 8307 driven by its driver in a rash and negligence manner in the opposite direction dashed against the scooter. As a result, the pillion rider sustained fatal injuries and died on the spot. The claimants who are the Legal Heirs of the deceased have claimed a sum of Rs.7,00,000/- as compensation.

3. The respondent in the counter statement denied the rash and negligent driving on the part of the lorry driver and also denied the possession of relevant documents in respect of the alleged lorry viz., RC Book, Tax Particulars, Fitness Certificate and Insurance particulars. That apart, the insurance company has also denied the compensation claimed under various heads.

4. The Tribunal, upon analyzing the evidence and documents placed before it, has given a finding that it is the driver of the Tanker Lorry who drove the vehicle in rash and negligent manner and caused the accident. Regarding the awarded as compensation tailor and also on considering with the age at the time of the accident and also the disability has awarded a sum of Rs.3,72,000/- as compensation under various heads as follows:

| Heads                                                                     | Amount awarded by the Tribunal |
|---------------------------------------------------------------------------|--------------------------------|
| For Loss of Income                                                        | 3,12,000.00                    |
| For Funeral Expenses                                                      | 5,000.00                       |
| For Loss of Consortium                                                    | 25,000.00                      |
| For Loss of Love and Affection for the Petitioners 2 & 3 each Rs.15,000/- | 30,000.00                      |
| TOTAL                                                                     | 3,72,000.00                    |

Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, the appellant/Insurance company has stated that the Tribunal has awarded huge sum of Rs.3,72,000/- as compensation without any basis of substantial materials, which is very much on the higher side and fixing the responsibility on the driver of the Tanker Lorry is also not

justified. Further the dependency of the claimant was also not proved before the Tribunal. Further, the multiplier applied for calculating the loss of income and the sum awarded under various heads are also awards as excessive.

6. It is argued by the appellant that the Tribunal without considering the negligent driving on the part of the two wheeler fixed liability on the part of the Tanker lorry. On a perusal it is seen that Ex.P1, FIR of the compliant has been preferred only against the driver of the tanker Lorry for his driving in a rash and negligent manner. The evidence of PW1 is also to the effect that the rash and negligent driving is on the part of the driver of the tanker Lorry which resulted in the accident. Hence, this Court is of the view that the determination of liability fixed on the driver of the Tanker lorry by the tribunal does not require any interference. The further contention received for the appellant is that the tribunal has awarded huge sum as compensation to the claimant in the absence of any documents to prove the occupation and income of the deceased.

7. After considering the facts and circumstances of the case, award and decree passed by the Tribunal and after hearing arguments advanced by the learned counsels for their respective parties, this Court is of the view that the award under the head Loss of Income at Rs.3,12,000/- by fixing the monthly income of the deceased at Rs.3,000/- who was doing tailoring work is appropriate and as such this Court confirms the award passed under this head. The Tribunal awarded a sum of Rs.5,000/- for funeral expenses and this Court grants the above said award of Rs.5,000/- under the funeral expenses. The Tribunal awarded a sum of Rs.25,000/- for Loss of Consortium, this Court confirms the same. Further the sum awarded by the Tribunal for Loss of love and affection for the claimants at Rs.30,000/-, this Court finds proper and reasonable and hence confirms the award passed under the head Loss of Love and Affection. In total, the Tribunal granted a sum of Rs.3,72,000/- together with interest, at the rate of 7.5% per annum from the date of filling the petition till the date of payment of compensation, into the credit of the M.C.O.P.No.1245 of 2004, on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.2), Chennai, which this Court considers as fair and proper and does not require any interference.

8. In the result, the order of the Tribunal is confirmed, the Civil Miscellaneous Appeal is dismissed. No costs. The Appellant Insurance Company is directed to deposit the entire Award amount along with interest as awarded by the Tribunal, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are directed to withdraw the amount as apportioned by the Tribunal. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

pds

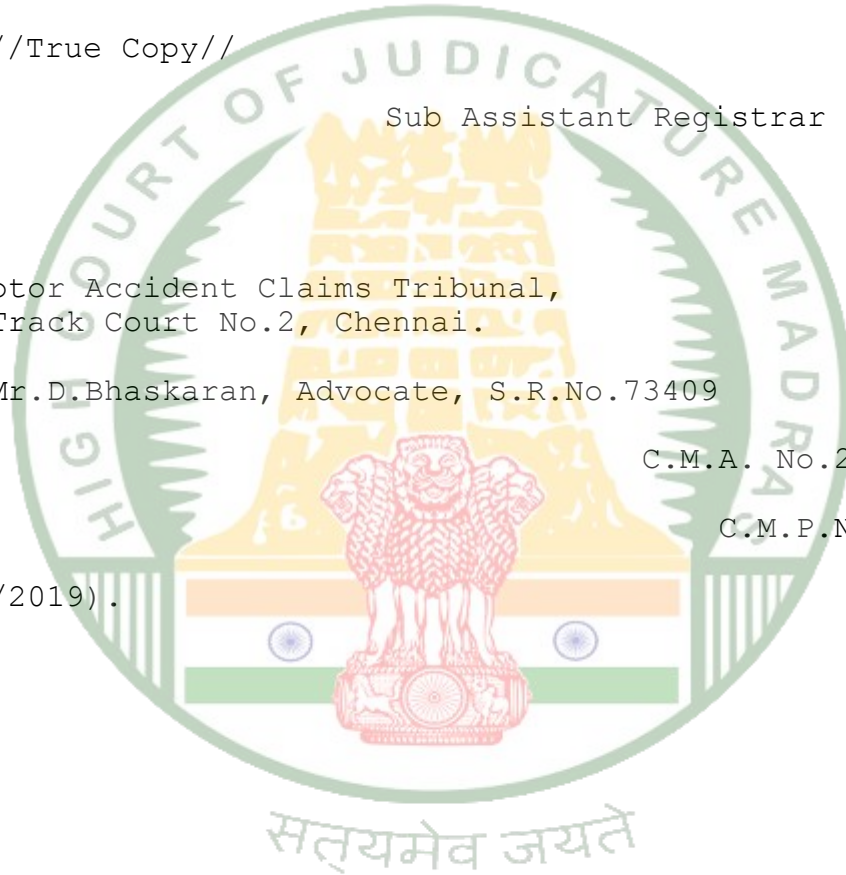
To

1. The Motor Accident Claims Tribunal,  
Fast Track Court No.2, Chennai.

+1 cc to Mr.D.Bhaskaran, Advocate, S.R.No.73409

C.M.A. No.2398 of 2006  
and  
C.M.P.No.1 of 2006

GJ(CO)  
SSM(08/05/2019).



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