

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.1445 of 2018
and
C.M.P.No.11511 of 2018

Reliance General Insurance Company Ltd.,
570, Naigaum Cross Road,
Next to Royal Industrial Estate,
Wadala (W), Mumbai 400 031. ... Appellant/2nd Respondent

Vs

1.Rajan

2.Jaya

3.Bhuvaneshwaran

4.M.N.Badrinath ... Respondents/Petitioners/1st
Respondent

PRAYER : Civil Miscellaneous Appeal filed against the award and
decree dated 29.02.2016 made in MCOP.No.2501 of 2014 on the file
of the Motor Accident Claims Tribunal, Special District Court,
Dharmapuri.

For Appellant :Mr.S.Arun Kumar

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company,
against the award of Rs.17,70,000/- as compensation for the
death of one Saravanan, aged about 25 years, Service Engineer in
Hondai Company Limited, Hosur, allegedly earning a sum of
Rs.21,000/- per month, in the accident, which occurred on
03.03.2014, when the deceased was riding his two wheeler, which
was hit down by the lorry, insured with the appellant/insurance
company, driven rashly and negligently.

2.Heard Mr.S.Arun Kumar, learned counsel appearing for the
appellant. He would stress the point that the accident occurred
in a turning and it was a head on collision. Therefore,
contributory negligence should have been fixed on the rider of

the two wheeler also and therefore, he seeks to fix the contributory negligence and accordingly seeks to reduce the compensation amount.

3.However, the award would disclose that PW3-eyewitness had categorically stated that the accident occurred because of the rash and negligent driving of the lorry. There is no contra or rebuttal evidence on the side of the appellant/insurance company. In view of the categorical evidence of PW3-eyewitness and in the absence of any rebuttal evidence, the Tribunal rightly found that the accident occurred because of the rash and negligent driving of the driver of the lorry, insured with the appellant/insurance company. Further the Tribunal took into consideration the filing of Ex.P.1-FIR against the lorry owner. Therefore, the finding in this regard that the driver of the lorry alone was rash and negligent and was responsible for the accident, cannot be disturbed and the same is confirmed.

4.Though Ex.P.9-Salary Certificate was marked to show that the deceased was earning about Rs.21,000/-, the Tribunal in the absence of any other documents, determined the monthly income notionally at Rs.15,000/- and deducted 50% towards personal expenses and determined the loss of income at Rs.7,500/-. The appropriate multiplier for the age of the deceased was rightly taken as "18" and the loss of income was determined at Rs.16,20,000/-. The Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection. Further, the Tribunal awarded a sum of Rs.25,000/- each towards transport and funeral expenses and the same can be adjusted along with loss of estate. Finally, the total compensation awarded by the Tribunal to the tune of Rs.17,70,000/- along with interest at the rate of 7.5% is confirmed.

5.This judgment is being passed only in the appeal preferred by the appellant/insurance company and it cannot be a res-judicata for the claimants, if they file any appeal. In that case, the right to deny that appeal is always available to the appellant herein.

6.The appellant/Insurance company is directed to deposit the entire award amount, with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of the claimants as per the apportionment made by the Tribunal along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon.

7. Accordingly, this appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

sai

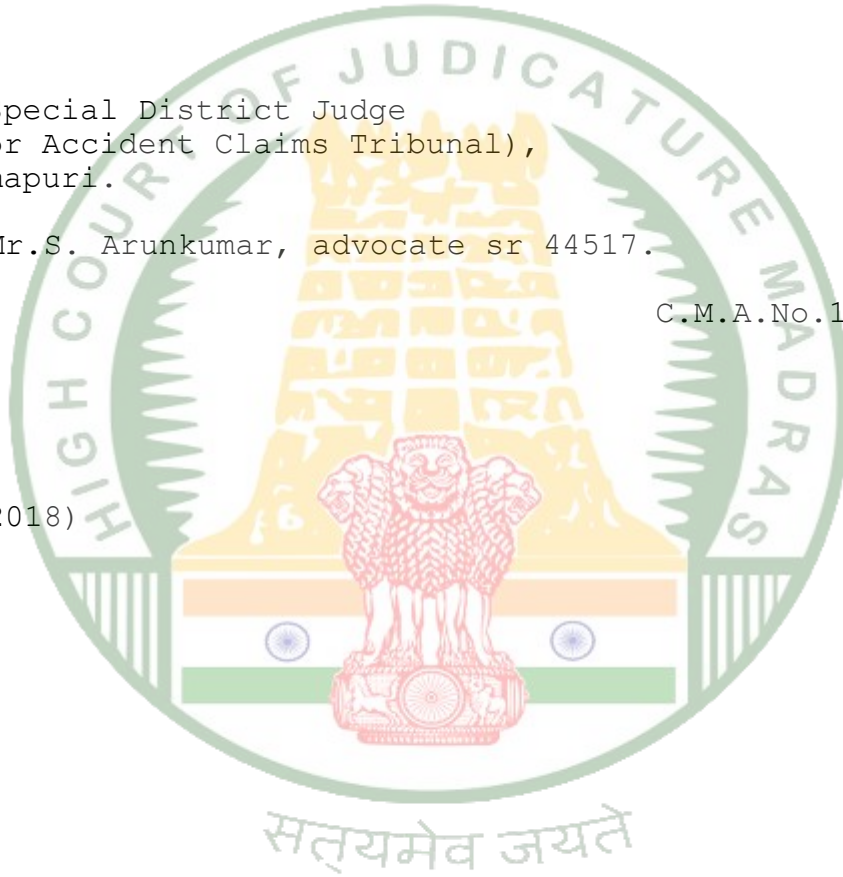
To

The Special District Judge
(Motor Accident Claims Tribunal),
Dharmapuri.

+1 CC to Mr.S. Arunkumar, advocate sr 44517.

C.M.A.No.1445 of 2018

AK (CO)
SP(31/07/2018)



WEB COPY