

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM:

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

C.M.A.No.1702 of 2018

The United India Insurance Co.Ltd.,
No.70, NSC Bose Road,
Chennai 600 079

: Appellant

versus

1.Arunachalam Shanthi
2.V.Karthika
3.A.Indira

: Respondents

PRAYER: Appeal filed against the Judgment and Decree of the Court of II Small Causes Court, Chennai, in MCOP No.7652/2013 dated 24.1.2018.

For appellant : Ms.R.Vijaya Kamala

For respondents : Mr.Amar D. Pandiya
1 & 2

J U D G M E N T

(made by R.SUBRAMANIAN, J.)

The award passed by the Motor Accidents Claims Tribunal, Chennai, in M.C.O.P.No.7652 of 2013 is under challenge at the instance of the Insurance Company mainly on the ground of negligence.

2. The respondents 1 and 2 filed a claim petition in MCOP No.7652 of 2013 claiming a sum of Rs.1,50,00,000/- towards compensation on account of the death of Thiru.Dharani Kumar, who was an employee of M/s.NCR Corporation, Egmore, Chennai, earning a sum of Rs.25,000/- per month. Thiru.Dharani Kumar was riding

his motorcycle bearing registration no.TN 01-AU-1461 at about 18.45 hours, on 19 October 2013 near Tambaram to Puzhal Bypass Road, Maduravoyal Bridge, Poonamallee Way Service Road. The motorcycle hit against the lorry bearing registration no.TN-04-A-1377, which was parked on the road without any parking signal. The deceased sustained multiple injuries and died on the spot. Postmortem was conducted in the Kilpauk Medical College and cause of the death was recorded as head injury, multiple fractures and injuries all over the body. Respondents 1 and 2 being the mother and sister of the deceased, filed a claim petition against the insured and the appellant being its insurer.

3. The claim was contested by the appellant by filing counter statement. According to the appellant, the deceased drove the motorcycle recklessly and without seeing the parked vehicle, hit against it and the same resulted in his death.

4. The Tribunal on the basis of the available materials, arrived at a finding that it was only the lorry driver who was at fault. The Tribunal therefore fixed the liability on the insurer to pay the compensation on the basis of the policy taken by the third respondent.

5. The learned counsel for the appellant contended that the lorry was parked on the side of a road and it was only the driver of the motorcycle who contributed for the accident.

6. The counter affidavit filed by the appellant before the Tribunal clearly shows that the lorry was parked on the road. The accident took place at about 6.45 p.m. on 19 October 2013. It is the case of the witnesses examined before the Trial Court that the driver of the lorry without any signal or parking light, parked the lorry in a reckless manner. The driver of the motorcycle without noticing the parked lorry hit against it and thereby sustained severe head injury. Even though the appellant has taken up a contention regarding negligence in the counter affidavit, the fact remains that not even a single witness was examined to prove the said contention. The Tribunal was therefore correct in fixing the negligence on the driver of the lorry and directing the appellant to pay the compensation. We therefore reject the contention taken by the appellant on the ground that it was only the motorcycle driver who was at fault. No other contentions were taken before us.

7. We have perused the award passed by the Court below and the documents produced by the appellant. We are of the view that the Tribunal was justified in awarding compensation to the respondents 1 and 2 and directing the appellant to satisfy the award. We therefore confirm the award passed by the Court below.

8. The Civil Miscellaneous Appeal is dismissed without any liability to pay costs. Consequently, C.M.P.No.13217 of 2018 is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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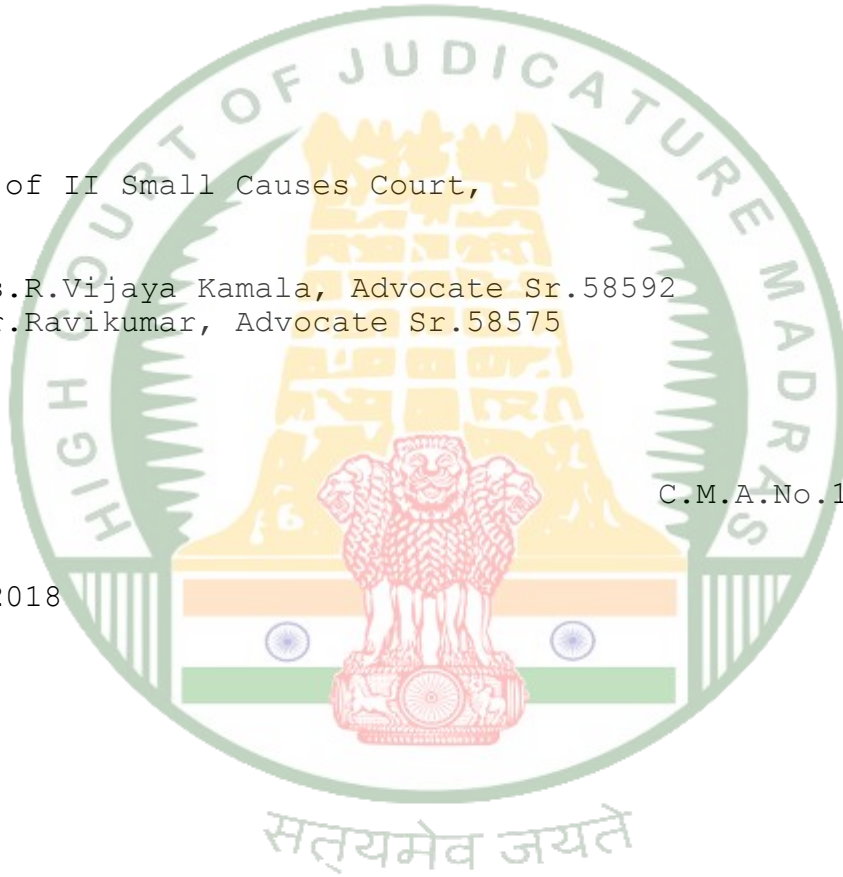
To

The Court of II Small Causes Court,
Chennai.

+1cc to Ms.R.Vijaya Kamala, Advocate Sr.58592
+1cc to Mr.Ravikumar, Advocate Sr.58575

C.M.A.No.1702 of 2018

srg 8/10/2018



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