

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.650 of 2018
and C.M.P.No.5834 of 2018

The Branch Manager,
United India Insurance Co. Ltd.,
Sree Saravana Complex, 1st floor,
No.18/116, Mettupalayam Road,
Thudiyalur, Coimbatore-641 034. Appellant

-vs-

1. P.Vijayalakshmi
2. Minor Abinash
3. Minor Ajjesh Kumar
4. Boopathy
5. Kanniappan
6. A.C.Nagaraj Respondents

(Minor respondents 2 and 3 are represented
by their mother and natural guardian 1st
respondent, P.Vijayalakshmi)

Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicles Act, 1988 against the judgment and decree dated
11.10.2017 made in M.C.O.P.No.51 of 2014, on the file of the
Motor Accidents Claims Tribunal (Principal District Court),
Kancheepuram District at Chengalpattu.

For Appellant : Mr.D.Bhaskaran
For Respondents : No appearance

J U D G M E N T
[Judgment of the Court was made by R.SUBRAMANIAN,J.]

The Insurance Company has challenged the award of sum of
Rs.19,15,000/- as compensation for the death of one Panchacharam
in a motor accident that occurred on 28.06.2013.

2.According to the claimants, the deceased was riding his
motor cycle bearing Registration No.TN-21-AJ-0408, at about 8.30
p.m on the Highways towards Chengalpattu. The driver of the

lorry bearing registration No.TN-38-AJ-6784 had parked the lorry on the Highways without any signal or warning light. The said negligent parking of the lorry had resulted in the accident leading to the two wheeler dashing against the lorry from behind. According to the claimants, pecuniary loss caused to them would be about Rs.50,00,000/-. Adding other conventional heads, the claimants have sought for award of Rs.84,00,000/- towards compensation, which they have restricted to Rs.36,00,000/-. The Insurance Company resisted the claim, contending that the two wheeler driver was also driving the vehicle in a rash and negligent manner and if only he had taken proper precaution, he could have avoided the accident. Therefore, according to the Insurance Company, there is contributory negligence on the part of the deceased also, resulting in the accident. The age and the income of the deceased were also denied by the Insurance Company.

3.The Tribunal considered the First Information Report filed by the father of the deceased against the lorry driver, which was closed as mistake of fact by the police. The Tribunal considered the other evidence and concluded that both the lorry driver as well as the deceased has contributed equally to the accident and fixed the quantum of negligence on the part of the deceased as 50%. On the quantum, the Tribunal has fixed the income of the deceased at Rs.21,738/-, based on the salary slip produced as Ex.P16. The Tribunal deducted 1/3 towards personal expenses and added 30% for future prospects. The Tribunal thus worked out the pecuniary loss as Rs.36,17,203/-. The Tribunal awarded a sum of Rs.12,797/- towards funeral expenses and Rs.1,00,000/- towards loss of consortium. The total compensation was thus arrived at Rs.38,30,000/- and since the Tribunal fixed the negligence of 50% on the deceased, a sum of Rs.19,15,000/- was awarded as compensation to the claimants.

4.Though Mr.D.Bhaskaran, learned counsel for the Insurance Company would contend that the award of Rs.1,00,000/- towards loss of consortium and loss of love and affection is on the higher side, we do not think that we can countenance the said submissions in view of the fact that the deceased left two children, wife and his parents. The loss of love and affection and loss of consortium even as per the judgment in the case of National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331 would come to Rs.1,20,000/-. Therefore we are of the considered opinion that the award does not call for any interference.

5.The appeal is therefore dismissed, confirming the award of the Tribunal. However there will be no order as to costs. The appellant-Insurance Company shall deposit the award amount less the amount already deposited if any, within a period of four (4)

weeks from the date of receipt of copy of this order.
Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

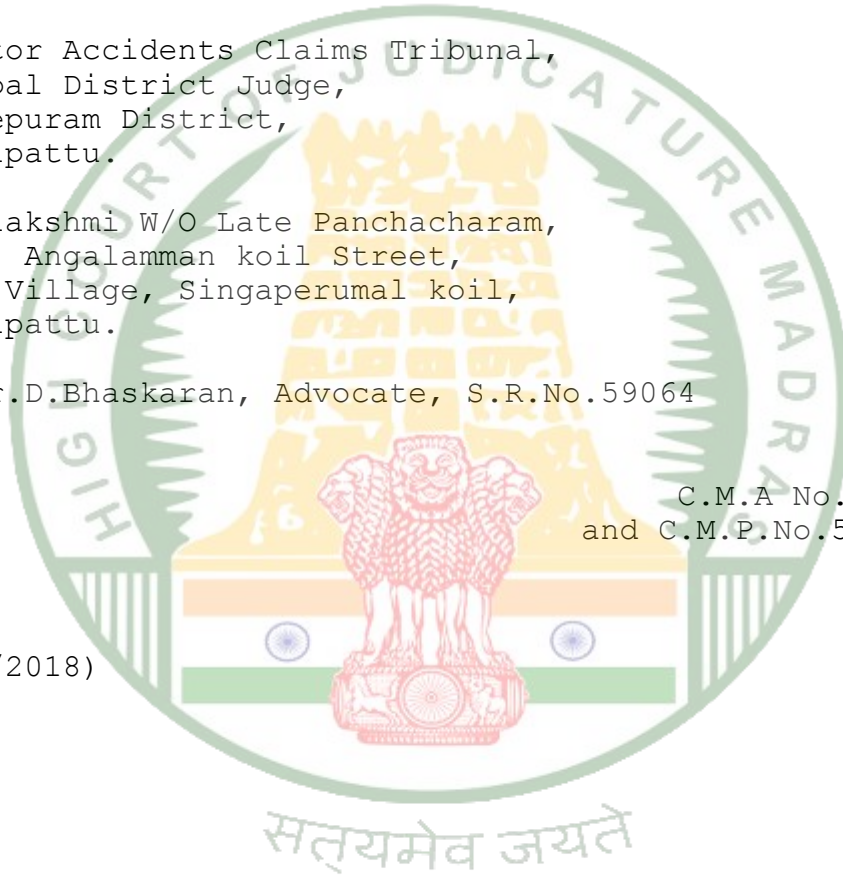
To

1. The Motor Accidents Claims Tribunal,
Principal District Judge,
Kancheepuram District,
Chengalpattu.
2. Vijayalakshmi W/O Late Panchacharam,
No.191, Angalamman koil Street,
Mathur Village, Singaperumal koil,
Chengalpattu.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.59064

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RSV (CO)
GSP (02/11/2018)



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