

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.Nos.4167 of 2008 and 1805 of 2017

and

M.P.No.1 of 2008 & C.M.P.Nos.9620 and 12546 of 2017

C.M.A.No.4167 of 2008

United India Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.38, Anna Salai,
Chennai 600 002

... Appellant/2nd Respondent

Vs

1.P.Sivakami @ Shantha

2.P.Deepak Muthukumar

3.Minor P.Divya Shree
Minor rep. by her mother and natural guardian

4.M.Chinathai .. 1 to 4 Respondents/Petitioner 1 to 4

5.The Executive Officer, सत्यमेव जयते
Nagar Palika Prasad,
Etah District, Uttar Pradesh. ...5th Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree in M.C.O.P.No.2429/2004, dated 28.08.2007, on the file of Motor Accidents Claims Tribunal, Chennai, Chief Court, Small Causes, Chennai.

For Appellants : Mr.R.Mohan Babu
for M.B.Gopalan

For Respondents : Mr.G.Balaji Prasad (for R1 to R4)

Dr.A.E.Chellaiah,
Senior Counsel
for S.Arun Kumar (for R5)

C.M.A.No.1805 of 2017

The Executive Officer,
Nagar Pallika Prasad,
Etah District, Uttar Pradesh. Appellant/1st Respondent

Vs

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2.P.Deepak Muthukumar

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No.38, Anna Salai,
Chennai 600 002 5th Respondent/2nd Respondent

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For Appellants : Dr.A.E.Chellaiah,
Senior Counsel
for S.Arun Kumar

For Respondents : Mr.G.Balaji Prasad (for R1 to R4)

Mr.R.Mohan Babu (for R5)
for M.B.Gopalan

C O M M O N J U D G M E N T

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

These appeals have been preferred by the Insurance company (C.M.A.No.4167 of 2008) as well as by the owner of the vehicle (C.M.A.No.1805 of 2017) against the award passed by the Tribunal awarding a sum of Rs.28,27,415/- for the death of one M.Pandithurai, aged about 48 years, Production officer in Hindustan Lever Limited, earning about Rs.27,500/-, in the accident, which occurred on 28.01.2004, when he was riding his motorcycle, which was hit down by the tractor trailer, belonging to the appellant in C.M.A.No.1805 of 2017.

2.Heard Mr.R.Mohan Babu, learned counsel appearing for the appellant in C.M.A. No. 4167 of 2008, hereinafter referred to as the Insurance Company; Mr.A.E.Chellaiah, learned senior counsel appearing for the appellant in CMA.1805 of 2017, hereinafter referred to as the owner of the vehicle; and Mr.Balaji Prasad, learned counsel appearing for respondents 1 to 4 in both the appeals, hereinafter referred to as claimants, for the sake of convenience.

3.The case of the claimants before the Tribunal was that the deceased was riding his motorcycle from Hindustan Lever Limited, Tea Factory towards his residence at Etah Town, Uttar Pradesh. When he approached the bridge on Kasganj Road, a tractor trailer, belonging to the Executive Officer, Nagar Palika Prasad, (owner), came in a rash and negligent manner and hit against the victim's motorcycle perpendicularly, resulting in falling of the victim on the metal wire that was used to attach the trailer, thereby slitting his throat, consequent to which, he died. Therefore, the claim petition.

4.On contest by the owner of the vehicle as well as by the Insurance company, the Tribunal found that the tractor trailer was involved in the accident and the rash and negligent driving of the tractor trailer only caused the accident and therefore, fixed the liability on the owner and directed the insurance company to pay the amount. The amount awarded by the Tribunal is 28,27,415/-. The said award is being challenged before this Court.

5.Mr.R.Mohan Babu, learned counsel appearing for the insurance company would submit that there was no insurance coverage for the offending vehicle at the time of the accident and no document was marked to prove that there was insurance coverage and therefore, the award against the insurance company has to be set aside.

6. Dr. A. E. Chellai, learned senior counsel appearing for the owner would submit that the vehicle was not involved in the accident. At the time of accident, only trailer was parked and the driver had gone for filling up fuel in a Petroleum outlet, which was 4 km away from the place of accident and therefore, neither the tractor trailer was involved in the accident nor the driver of the vehicle was rash and negligent. Further, he would rely upon Ex.R2, Criminal Court's judgment, which was marked through RW1 viz., the driver of the tractor trailer to contend that the criminal Court acquitted the driver, holding that the involvement of the tractor was doubtful and some other vehicle should have been involved in the accident. Relying upon the said Criminal Court's Judgment, the learned senior counsel would appeal to the Court that the liability fixed on the owner of the vehicle has to be set aside.

7. On the other hand, Mr. Balaji Prasad, learned counsel appearing for the claimants in both the appeals would submit that the Criminal Court's judgment is not binding on the Tribunal and based on eyewitness's evidence, the Tribunal categorically came to the conclusion that the accident occurred because of the rash and negligent driving of the tractor trailer and rejected RW1's evidence. Moreover, he seeks enhancement of the compensation as lesser amount has been awarded.

8. Heard the parties and perused the records. Meticulously, to prove the accident, the claimants examined on Mr. Neeraj Kumar Dixit as PW2, who was an eyewitness to the accident. Mr. Neeraj Kumar Dixit is a co-employee of the deceased, who was also travelling in his motorcycle, when the deceased was riding his motorcycle. He had categorically stated that when they neared the tractor trailer, which was parked across the road, suddenly, the driver of the vehicle moved the tractor trailer rashly and negligently and hit the victim causing the accident. Further, Ex.P.1 - FIR was given by Mr. Neeraj Kumar, who is an eyewitness himself. Therefore, the person who has deposed as an eyewitness as well as lodged the complaint, at the earliest point of time and who travelled in his motorcycle, when the victim was also travelling in his two wheeler, would only go to show that the accident occurred because of the rash and negligent driving of the driver of the tractor trailer. There is no contradiction between the evidence of PW2 as well as the recitals in Ex.P.1-FIR. Ex.P.2 is the rough sketch produced by the police. After perusing Ex.P.2, rough sketch prepared by the Police, the Tribunal found that the tractor was shown on the eastern side and the trailer is shown on the western side and the body of the deceased was shown in the middle of the road and the metal wire was shown to be running across the road. The said picture given by Ex.P.2,

rough sketch is in consonance with evidence of PW2 eyewitness. Therefore, the veracity of PW2 eyewitness cannot be doubted and the Tribunal rightly believed PW2 and reached the factual conclusion that the accident occurred because of the rash and negligent driving of the tractor trailer.

9. Though certain questions were raised with regard to the Registration number of the tractor trailer, PW1 categorically stated that it was faded and therefore, he was not in a position to give it in the complaint. Even otherwise, it is the usual conduct of human beings to save the human life at the time of accident and the person could not be accused of not noting down the tractor trailer's registration number meticulously. After investigation, the police has filed the charge sheet in which, the registration number of the tractor trailer has been categorically stated. The Tribunal also discussed PW2's evidence in a detailed manner in the following paragraphs of its Judgment:

"10. The first respondent appeared and filed his counter contending that the trailer lorry was not involved in the accident and further pleaded that the accident occurred only due to the rash and negligent driving of the motor cyclist the deceased herein, who got entangled himself in the wire, attached to the trailer which was parked on the road side. It is their case that the tractor was not involved in the accident and that is why the registration number of the tractor was not mentioned in the F.I.R. Nor the driver was caught at the spot or arrested. The second respondent did not deny the accident and the involvement of the tractor in the accident as well. Further no evidence was let in by the second respondent to disprove the negligence pleaded by the claimants.

11. It is the specific plea of the first respondent that the tractor was not involved in the accident, but the trailer (trolley) parked with a metal wire was admitted. This accident is claimed to have witnessed by the employee of the said company by name Neeraj Kumar Dixit, who worked with the deceased and he is said to have witnessed the accident while he was proceeding to his company after taking lunch in his residence, where as the deceased was coming from the company to his residence for lunch and met with a tragic death. Neerajkumar Dixit the said eye witness to the occurrence has been examined as P.W.2, who narrated the manner in which the accident took place and gave a detailed account of the accident in his evidence. According to him, while the deceased approached the tractor trailer, which was parked

across the road, the tractor was taken reverse by its driver negligently, thereby hit the motor cycle, as a result, the motor cyclist fell on the metal wire and further on seeing it, the driver again moved the tractor forward, due to which the metal wire got stiffened (rigid) and cut the neck of the deceased, thus causing fatal injuries to the deceased. He has specifically stated that after the accident, the tractor driver united the metal wire form the trailor took the tractor and sped away from the scene. It is his case that he could not note down the number as it was found faded, but later came to know the registration number of the tractor through police. His evidence indicated that he had been examined in the criminal court also. He had attributed the entire negligence on the driver of the tractor trailor.

12.It is, P.W.2., who lodge the complaint to the police i.e., within an hour of the accident. The averments stated in the FIR which is translated in English, is in conformity with the evidence given by P.W.2 before this Court. In fact, a specific mention is made in the F.I.R. That the driver and other workers fled from the scene taking away the tractor, abandoning the tarilor, P.W.2 has stated in his evidence and in the F.I.R. that a co employee who was also proceeding to the company in another motor cyle, saw the accident. In his cross examination, nothing noteworthy was brought out to shatter his evidence. The police had come to the spot and drawn the rough sketch, for which the English translated copy is marked as Ex.P.2. In it, the position of vehicles are shown. The tractor is shown on the eastern side and the trailor is shown on the western side. The body of the deceased is shown in the middle of the road and the metal wire is indicated in dotted line across the road. Though it is prepared after the accident, but the same is drawn on the account given by the eye witness regarding the manner of accident. There is no material to disbelieve the evidence of P.W.2 on the ground that he is a co-employee of the deceased. His veracity cannot be doubted. Inf act he has lodged the complaint without any possible delay and in the F.I.R., he has averred about the conduct of the driver that he sped away from the place of accident with the tractor, abandoning the trailor"

10.In the counter statement, the owner stated in paragraph 3 that the deceased drove the vehicle in a rash and negligent manner and caught with the wire attached to the

trailer and was dragged to the road side. In paragraph 5 of the counter statement it has been stated by the owner that the accident occurred due to the deceased, who had driven his motorcycle negligently. The driver of the tractor trailer was examined as RW1, who denied the involvement of the vehicle in the accident. However, he did not deny the accident. A specific question was put to him that whether he returned to duty the next day or thereafter, after the date of accident and he answered affirmatively stating that he returned. However, certified copy of the surrender application or bail application filed by the RW1 viz., Ex.P.17 would show that he surrendered on 09.02.2004 before the Chief Judicial Magistrate Court, Etah and he did not attend his office after the accident and after getting bail only, he reported for duty. Therefore, it is very clear that RW1 is not speaking the truth and his aim is only to escape from the liability by giving false information as if he reported for duty on the next day itself, suppressing the fact that he moved an application for bail as proved by Ex.P.17.

11.The tribunal has also noted by relying upon Ex.P.17 - Surrender application that the driver of the tractor trailer pleaded that he was the driver of the tractor trailer and the negligence of the deceased alone was responsible for the accident. Paragraphs 3 & 4 of the surrender application in B.A.No.132 dated 09.02.2004 filed before the Chief Judicial Magistrate, Etah, Uttar Pradesh, is usefully extracted as follows:

"3.That the applicant is a driver in Etah Municipality and was carrying garbage in the trailer along with tractor on that day and the said accident took place due to the negligence of the deceased

4.There is no negligence on his part. The accident took place due to recklessness and negligence of the deceased"

Even in the surrender application, he has not denied the involvement of the vehicle in the accident. Therefore, his own case is that he was not present at the time of accident on the spot and he was away with the tractor to fill the fuel in the petroleum outlet, which is about 4kms away from the accident spot. The plea of alibi as raised by RW1 was rightly rejected by the Tribunal.

12.The case of RW1 is he was away from the accident spot and was filling up fuel for the tractor in the petroleum outlet, which was 4 km away. To prove that no receipt from the petroleum outlet was marked and the said fact was also taken note of, by the Tribunal. The Tribunal elaborately discussed about RW1's evidence and how the evidence of RW1 is not sustainable and is contrary to his own document Ex.R17.

Paragraph 13 of the Tribunal's judgment is usefully extracted as follows:

"13. The first respondent has let in contra evidence by examining the driver of the tractor trailer as R.W.1 and pleaded alibi. R.W.1 had stated that he was in the nearby petrol bunk with his tractor, which is about 4 kms away from the place accident at the time of accident. To prove his version, he has not filed the bill or voucher from the petrol bunk nor examined any one from the said petrol bunk to substantiate his version. In his cross examination, a specific question was put to him whether he returned to duty the next day or there after, after the date of accident and he answered in the affirmative for the same. The claimants have filed the certified copy of the surrender application and bail applications filed by R.W.1 before the criminal court as Ex.P.17, obtaining the certified copy of those documents from the Chief Judicial Magistrate's Court, Ettah. It is seen that R.W.1 had surrendered on 09.02.2004 before the court of Chief Judicial Magistrate, Ettah District. According to the claimants, the driver did not attend the office after the accident and only after getting bail from the Chief Judicial Magistrate's Court, he attended the office. In order to substantiate the same, Ex.P.17 is brought on record. According to them if he was attending the office, definitely he would have been arrested as criminal prosecution was initiated against him by Dehath Police for an offence under Section 270, 304 (A) and 427 I.P.C. In the absence of any material to show his attendance to the office, from Ex.P.17 surrender application which is admitted by R.W.1, a presumption could be drawn that he was not attending the office for the fear of arrest and surrendered only on 09.02.2004 and obtained bail. To rebut this presumption either the attendance register or the acquittance registered is filed. Therefore an adverse inference could be drawn against him. It is worthy to mention that in the affidavit filed with the surrender application Ex.P.17, he had admitted that he was the driver of the tractor trailer and pleaded that the negligence was only on the deceased. The involvement of the vehicle was not specifically denied and it is not stated that the accident did not take place as narrated by the complainant in the F.I.R. Further unless he was present in the place of accident, he cannot blame the deceased to be at fault. In the surrender application, the plea of alibi that he was in the petrol bunk is not mentioned. So it is evident

that the plea of alibi is only a after thought and the same is introduced to escape from the accusation "

13.The learned senior counsel appearing for the owner would submit that the criminal court already acquitted the driver of the tractor trailer. He would further submit that the finding of the Criminal Court was that the eyewitness did not know the tractor's registration number and could not identify the accused and therefore, the eyewitness was not present at the place of the accident. In view of that the Criminal Court came to the conclusion that the death could have been caused by some other vehicle after which the tractor crossed due to which the case has been filed against the owner and the driver of the tractor trailer. The Criminal Court also noted that the eyewitness did not mention the exact date of the accident, during the cross examination and admitted his presence in the spot. Therefore, the Criminal Court concluded that the charges made against the accused were not proved and acquitted the tractor trailer. Though the owner is justified in relying upon the criminal court's judgment, Ex.R2, the settled position of law is that the finding of the criminal Court is not binding upon the Civil Court. Further, the burden of proof in Criminal Court is beyond doubt whereas in the civil proceedings or in summary proceedings, it is only preponderance of probabilities. Therefore, the acquittal of an accused would not necessarily lead to the conclusion that the driver of the tractor trailer is not rash and negligent.

14.The Honourable Supreme Court in M.K.V. Bros (P) Limited Vs. M.Karumai Ammal and others, reported in 1980 ACJ 435, observed that the plea that the criminal case ended in acquittal has no bearing and accepted the finding of the Tribunal.

15.Therefore, Ex.R2, Criminal Court's judgment acquitting the tractor trailer in criminal case No.562 of 2004, dated 17.07.2006 will not have any bearing on Tribunal's proceedings. Further, a close perusal of the criminal Court's judgment would reveal that it is not an honourable acquittal and only based on benefit of doubt, the tractor trailer driver was acquitted. The relevant paragraphs of the judgment is extracted as follows:

"After thorough analysis of all evidences present in the document, I came to this conclusion that the charge made by the plaintiff against the accused Chottein under Section 279, 304A, 427 IPC, is not successful doubtlessly. Hence with the benefit of doubt he accuse Chottein is eligible to be freed"

The Honourable Supreme Court in Bimla Devi and others V. Himachal Road Transport Corporation and others reported in 2009 (1) TNMAC 700 (SC) reiterated the claim merely as to establish their case on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt could not have been applied. Paragraph 15 of the said judgment is extracted as follows:

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties"

16. Therefore, the claimants proved the following:

1. The tractor trailer belonging to the appellant in CMA.No.1805/2017 viz., owner was involved in the accident.
2. The tractor trailer was driven rashly and negligently by its driver.
3. Because of rash and negligent driving, the victim was dashed down and died in the accident.

17. Therefore, the Tribunal, rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the tractor trailer, which is also proved to be involved in the case. Therefore, the liability fixed on the driver and owner of the vehicle cannot be disturbed and the finding reached by the Tribunal in this regard is confirmed.

18. With regard to the income, the Tribunal relied upon Ex.C.1(s) being the pay slip of the deceased for the months of January 2003 to December 2003, determined the gross salary of the deceased at Rs.24,991/-. The income tax deduction made was Rs.3,805/-. After deducting income tax, net salary was determined at Rs.21,186/-, which is rounded off to Rs.21,000/-. Further, 50% is added towards future prospects and a sum of Rs.31,500/- (Rs.21,000/- + Rs.10,500/-) was determined as total monthly income and after deducting 1/3rd towards personal expenses, the monthly income was determined at Rs.21,000/- (Rs.31,500/- (-) 1/3rd of Rs.31,500/-). By applying "11" multiplier as per the age of the deceased, the loss of the income was determined at Rs.27,72,000/- (Rs.21,000/- x 12 x 11).

19. Though the Tribunal rightly deducted the income tax and determined the loss of income at Rs.27,72,000/-, however, wrongly added 50% towards future prospects, especially, when the age of the deceased was about 48 years. The deceased was a permanent employee of Hindustan Lever Limited, and therefore, he was in permanent employment and as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), for a person aged between 40 and 50 years, 30% has to be added, if he has got a permanent job. Therefore, if 30% is added, income would be at Rs.27,300/- (Rs.21,000/- + 30% of Rs.21,000/-).

20. Even though the size of the family is 4, the Tribunal has deducted 1/3rd towards personal expenses of the deceased. As per the judgment of the Honourable Supreme Court in Sarla Verma & Others Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), if the size of the family is 4, 1/4th has to be deducted towards personal expenses. Therefore, this Court, instead of 1/3rd adopts 1/4th deduction towards personal expenses of the deceased. After deducting 1/4th, the income would be at Rs.20,475/- (Rs.27,300/- (-) 1/4th of Rs.27,300/-). As per Ex.P.7, Ex.P.9 and Ex.P.10, the age of the deceased is 49 years and therefore, the appropriate multiplier, as per the judgment of the Honourable Supreme Court in Sarla Verma & Others Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), is "13". Hence, the loss of income to the family would be at Rs.31,94,100/- (Rs.20,475/- x 12 x 13).

21. The Tribunal as per the Judgment of the Honourable Supreme Court, which was in force at that time, awarded a sum of Rs.20,000/- towards loss of consortium, Rs.25,000/- towards loss of love and affection and loss of expectation of life, Rs.5,000/- towards funeral expenses and Rs.5,415/- towards transportation charges.

22. Loss of consortium:

As per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the amount to be awarded towards loss of consortium is Rs.40,000/- and accordingly, the same is awarded.

23. Love and affection:

For 2nd and 3rd respondents/minors, a sum of Rs.1,00,000/- is awarded towards loss of love and affection as the same is akin to the amount awarded towards loss of consortium to the wife. A sum of Rs.25,000/- is awarded towards loss of love and affection to the 4th respondent/mother of the deceased. Totally, a sum of Rs.1,25,000/- is awarded to the respondents 2 to 4 towards loss of love and affection.

24.Loss of Estate:

Since no amount was awarded by the Tribunal, towards loss of estate, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), a sum of Rs.15,000/- is awarded under this head.

25.Funeral Expenses:

The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses. But, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the same is enhanced to Rs.15,000/-.

26.Transportation charges:

The Tribunal has awarded a sum of Rs.5,415/- towards transportation charges and the same is confirmed.

27.Hence, the total compensation awarded in this case is Rs.33,94,515/-, rounded off to Rs.34,00,000/-

Head	Amount (Rs.)
Loss of income	3194100
Loss of consortium	40000
Loss of love and affection	125000
Loss of estate	15000
Funeral expenses	15000
Transportation charges	5415
	3394515

28.Accordingly, award of the Tribunal (i.e.,) Rs.28,27,415/- is enhanced to Rs.34,00,000/-. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered.

29.The insurance company argued that the liability could not be fixed on the insurance company as there was no insurance policy in force, in respect of the offending vehicle. That is the categorical assertion made even in the counter statement and through RW2 evidence whereas there is no mentioning about insurance policy in the counter statement filed by the owner of the vehicle, viz., the appellant in CMA.No.1805 of 2017. No documents, no insurance policy was produced before the Tribunal, even though the owner contested the case. If really the owner was having the policy, it would have been filed before the Tribunal. As per Section 102 of the Indian Evidence Act, the best person to produce the document is the person who is in possession of the document and if he fails to do so, an adverse

inference has to be drawn against that person.

30. Therefore this Court draws an adverse inference against the owner of the vehicle. Moreover, the insurance company adduced evidence and categorically stated that on the date of accident, there was no insurance policy and the insurance policy was taken subsequently for the period from 26.04.2004 to 25.04.2005. Ex.R3, insurance policy marked is dated 28.04.2004, which is subsequent to the date of the accident.

31. Further, the Division Bench of this Court, while passing the interim order in this case in M.P.No.1 of 2008 on 28.04.2009, directed the owner and the 5th respondent in CMA.No.4167 of 2008 and the appellant in CMA.No.1805 of 2017 to produce the insurance policy for the vehicle covering the period 26.02.2003 to 25.02.2004. Paragraph 3 of the said order is extracted as follows:

" Therefore in this stay petition that is filed by the Insurance Company, we restrict the stay in so far as the appellant is concerned and we give a direction to the fifth respondent to produce the Insurance Policy for the insured vehicle covering the period 26.02.2003 to 25.02.2004 on or before 12th June, 2009, failing which they shall deposit a sum of Rs.14,00,000/- (Rupees fourteen lakhs) to the credit of M.C.O.P.No.2429 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Court, Small Causes, Chennai. If the fifth respondent produces the policy which covers the accident, then we will modify the grant of stay to the appellant appropriately."

32. Even after nine years of passing of the order, so far, the insurance policy for the period from 26.02.2003 to 25.04.2004 has not been filed by the owner of the tractor trailer. The non compliance of the order of this Court would also enable this Court to come to the conclusion that there was no valid insurance policy, available for the tractor trailer as on date of the accident ie., 28.01.2004. Therefore, the liability to pay the compensation is only on the owner of the vehicle. The liability fastened on the insurance company is set aside.

33. The Appeal filed by the owner in CMA.No.1805 of 2017 is dismissed and the award of the Tribunal at Rs.28,27,415/- is enhanced to Rs.34,00,000/-. The Appeal filed by the insurance company in CMA.No.4167 of 2008 is allowed, with regard to the liability alone. Consequently, connected miscellaneous petitions are closed. No costs.

34. Though, the owner filed the appeal against the award of Rs.28,27,415/-, this Court has enhanced the compensation to Rs. 34,00,000/- invoking Order 41 Rule 33 of CPC, and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. It should not be exorbitant or low. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

35. The owner in Appeal No.1805 of 2007 viz., The Executive Officer, Nagar Palika Prasad, Etah District, Uttar Pradesh is directed to deposit the entire amount along with interest and costs, after deducting the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order, failing which, the Secretary, Department of Local and Municipal Administration, Uttar Pradesh, shall appear before this Court on 04.07.2018. After depositing the same, the Tribunal is directed transfer the award amount as per the ratio fixed by the Tribunal along with proportionate interest and costs to the respective accounts of the claimants through RTGS.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sai

To

1. The Chief Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai 104.

2. The Secretary, Department
of Local and Municipal Administration,
Uttar Pradesh.

3.The Executive Officer,
Nagar Palika Prasad,
Etah District, Uttar Pradesh.

4. The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

5. United India Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.38, Anna Salai,
Chennai 600 002.

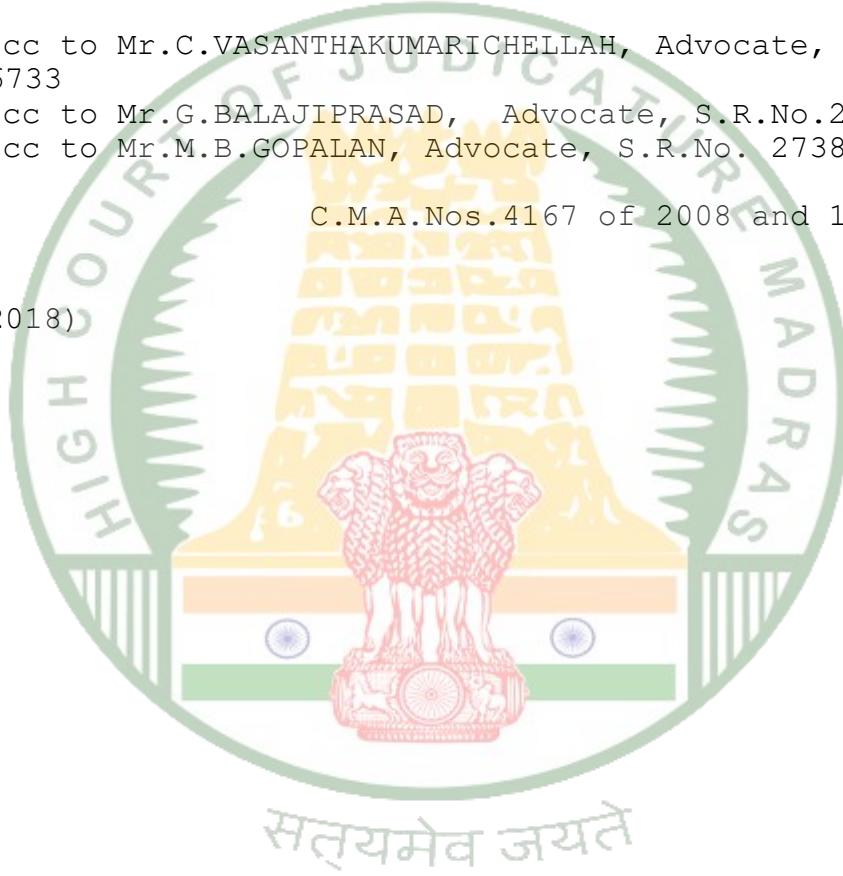
+4cc to Mr.C.VASANTHAKUMARICHELLAH, Advocate, S.R.No.
26734 & 26733

+2cc to Mr.G.BALAJIPRASAD, Advocate, S.R.No.26970

+1cc to Mr.M.B.GOPALAN, Advocate, S.R.No. 27380

C.M.A.Nos.4167 of 2008 and 1805 of 2017

SSD(CO)
TR(31/05/2018)



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