

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MS. JUSTICE. V.M.VELUMANI

C.M.A.Nos.2911 & 2916 of 2018
CMP No.22087 of 2018

M/s.United India Insurance Company Ltd.,
200, T.V.Swamy Road East,
R.S.Puram,
Coimbatore.

.... Appellant in both C.M.As (2nd
Respondent)

Vs.

1.Nachammal
2.Eswari
3.Selvarani
4.Rajeswari

...Respondent 1 to 4
in CMA 2911/2018 (Claimants)

5.Thangadurai

... 5th Respondent in
CMA.2911/2018 (1st Respondent)

1.Thangamuthu

...1st Respondent in CMA 2916/18 (Claimant)

2.Thangadurai

...2nd Respondents in
CMA.2916/2018 (1st Respondent)

Appeals filed under Section 173 of the Motor Vehicles Act,
1988 against the judgment and decree made in M.C.O.P.Nos.1453 &
1436 of 1999 dated 28.02.2003 on the file of the Motor Accidents
Claims Tribunal, Subordinate Judge at Tiruppur.

For Appellant : Mr.T.Ravichandran
in both CMAs

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against
the judgment and decree made in M.C.O.P.Nos.1453 & 1436 of 1999
dated 28.02.2003 on the file of the Motor Accidents Claims
Tribunal, Subordinate Judge at Tiruppur.

2. Both the claim petitions arise out of the same accident
and hence, they are disposed of by this common judgment. The
parties are arrayed to as per their rank in the claim petitions
for the sake of convenience.

3. The appellant is second respondent/Insurance Company, respondents 1 to 4 in CMA No.2911 of 2018 & 1st respondent in CMA No.2916 of 2018 are the claimants and fifth respondent in CMA No.2911 of 2018 & second respondent in CMA No.2916 of 2008, owner of vehicle, is the first respondent in M.C.O.P.Nos.1453 & 1436 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tiruppur. The claimants filed the above claim petitions claiming a sum of Rs.10,00,000/- & Rs.5,00,000/- respectively as compensation for the death / injuries sustained in the accident that took place on 29.08.1999.

4. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the rider of the motor cycle belonging to the first respondent and directed the second respondent, as insurer of the vehicle, to pay compensation to the claimants.

5. Against the said award dated 28.02.2003 made in M.C.O.P.Nos.1453 & 1436 of 1999, the second respondent has come out with the present appeals challenging the quantum of compensations awarded by the Tribunal.

6. The learned counsel appearing for the second respondent contended that the Tribunal erred in adopting the provisions of 163-A when the claim petition was filed under Section 166 of Motor Vehicles Act which is contrary to the ruling of the Apex Court. The Tribunal failed to note that the disability was not assessed in accordance with Schedule I of Workmen Compensation Act which is mandatory under Section 163-A of the Motor Vehicles Act. The Tribunal erred in fixing Rs.7,000/- as monthly income of the deceased in the absence of any evidence let in by the parties. The Tribunal has failed to note that the source of income still continues to be available and hence loss of value of services alone can be taken into account. The Tribunal ought to have adopted multiplier 11 since the deceased was aged more than 50 years. The amounts awarded by the Tribunal under different heads are excessive and hence, prayed for setting aside the award passed by the Tribunal.

7. Heard the learned counsel appearing for the second respondent and perused the materials available on record.

CMA No.2911 of 2018 (MCOP No.1453 of 1999)

8. According to the claimants, the deceased was an agriculturist, aged 49 years at the time of accident. He was owning agricultural lands and earning a sum of Rs.10,000/- per month through agricultural business. However, the claimants have not let in any evidence to substantiate their claim. The Tribunal, in the absence of any evidence, rightly fixed the notional income of the deceased at Rs.7,000/- per month. Since the deceased was aged 49 years at the time of accident, the Tribunal rightly adopted multiplier 13 and after deducting 1/3rd towards his personal expenses, awarded a sum of Rs.7,28,000/- ($7000 \times 12 \times 13 \times 2/3$) as loss of income. The said amount is not excessive and hence it is confirmed. The Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses and Rs.5,000/- towards pain and sufferings which are also reasonable and hence they are confirmed. In my considered opinion, the compensation awarded by the Tribunal at Rs.7,35,000/- is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

CMA No.2916 of 2018 (MCOP No.1436 of 1999)

9. According to the claimant, he was a milk vendor earning a sum of Rs.6,000/- per month at the time of accident. However, the Tribunal, in the absence of any proof regarding the income of the claimant, has rightly fixed the monthly income at Rs.5,00/- per month. PW3 - Doctor has deposed that the claimant has sustained 50% permanent disability and issued Ex.P15 disability certificate to that effect. Considering the age of the claimant as 39 years at the time of accident, the Tribunal adopted multiplier 16 and awarded a sum of Rs.4,80,000/- ($5000 \times 12 \times 16 \times 50\%$) towards permanent disability. The same is not excessive and hence it is confirmed. The Tribunal has awarded a sum of Rs.5,000/- towards pain and sufferings and Rs.84,629.10 towards medical bills which are reasonable and hence they are confirmed. In total, the Tribunal arrived at sum of Rs.5,69,629/- as compensation payable to the claimant and awarded only a sum of Rs.4,75,000/- as compensation payable to the claimant. In my considered opinion, the compensation awarded by the Tribunal at Rs.4,75,000/- is just and reasonable. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal.

10. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeals are dismissed. The second respondent/Insurance Company is directed to deposit the

award amounts along with interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

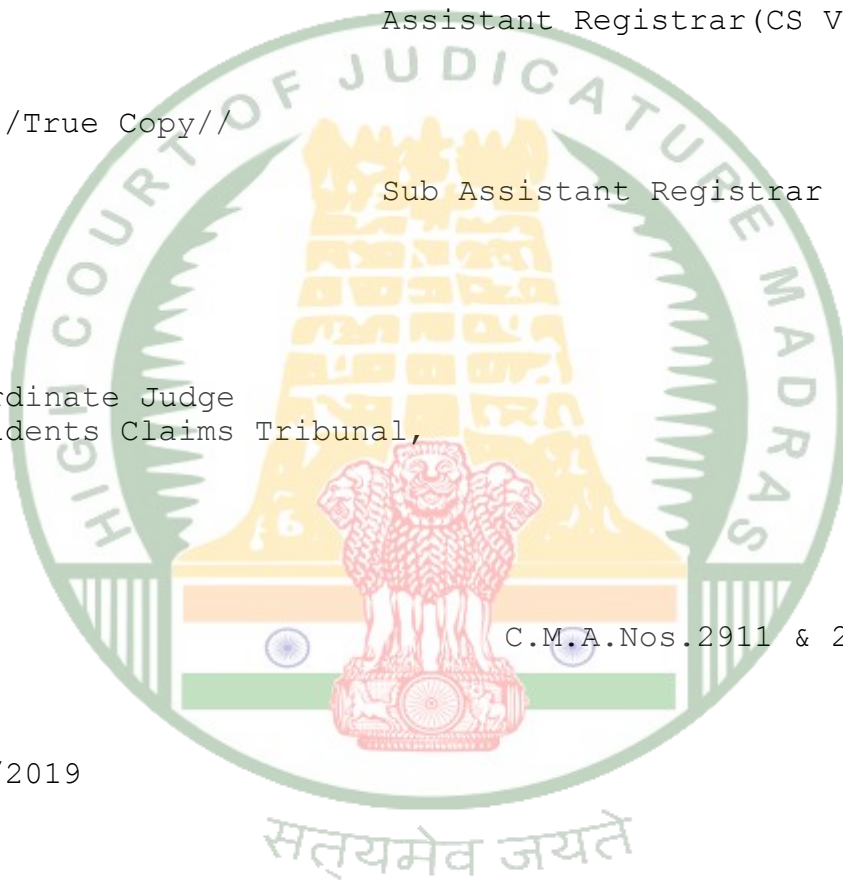
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To

The Subordinate Judge
Motor Accidents Claims Tribunal,
Tiruppur.

C.M.A.Nos.2911 & 2916 of 2018

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srg 11/02/2019



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