

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.3275 of 2011 and
M.P.No.1 of 2011

The United India Insurance Company Ltd.,
Divisional Office,
No.45, T.K.M. Complex,
Katpadi road,
Vellore - ...Appellant/2nd Respondent

Vs.

1.Amsaveni
2.Priya
3.Rajesh
4.Minor Nadhiya
(Minor rep. by N.F. guardian
morthor Amsaveni)
5.Munusamy
6.Pattammal ...Respondents 1 to 6/Claimants
7.Jyotiben Chimanlal Khona
...7th Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 15.03.2011, in M.C.O.P.No. 112 of 2006, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Vellore.

For Appellant : Mr.S.Arun kumar

For Respondents: Mr.G.Somasekar
for R1 to R6
R7 - Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 112 of 2006 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Vellore. They have filed this appeal questioning the quantum of compensation awarded by the Tribunal.

2. The brief case of the respondents 1 to 6/claimants is as follows:

(i) The respondents 1 to 6/claimants are the legal heirs of the deceased Natarajan, who is said to have been worked as a Head Constable in Tamil Nadu Police Service.

(ii) On 04.04.2006, at about 08.30 am, the deceased Natarajan was riding his TVS 50 in the extreme left side of the road, when he was approaching opposite to Tiruchooli Amman Koil, on MBT road, at that time a lorry bearing Registration No. TN 04 P 9121 came in a rash and negligent manner without following any traffic rules and norms and dashed on the TVS 50 and the deceased fell down. Due to this accident the deceased died on the spot. According to the respondents 1 to 6/claimants, the rash and negligent driving of the driver of the said lorry was the cause of the accident, and that, since, the said lorry was insured with the present appellant, both the owner of the said lorry and the present appellant, are jointly and severally liable to pay compensation of Rs.20,00,000/- to them.

3. The seventh respondent herein remained absent before the Tribunal and therefore, he was set ex-parte. The United India Insurance Company contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded compensation of Rs.9,00,000/- together with interest at the rate of 7.5% per annum to the respondents 1 to 6/claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the United India Insurance Company have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The Tribunal after taking into consideration, the evidence of Amsaveni (PW1) and the FIR (Ex.P1) has come to the conclusion that the deceased Natarajan died due to the rash and negligent driving of the driver of the said lorry, belonging to the seventh respondent herein and accordingly held that both the owner and the insurer of the said lorry are liable to pay compensation to the respondents 1 to 6/claimants.

5. The learned counsel appearing for the Insurance Company contended that when the salary certificate of the deceased was not produced, the Tribunal ought not have fixed the notional income of the deceased as Rs.10,000/- on assumption that the Head Constable could have earned the said amount. However, the learned counsel appearing for the appellant drew my attention to the entry made in the claim petition that the deceased was earning a sum of Rs.8,000/- per month. He would therefore contend that the award passed by the Tribunal is on the higher side and the same should be scaled down.

6. The learned counsel appearing for the respondents 1 to 6/claimants would contend that the Tribunal after considering various aspects awarded just and reasonable compensation and the same need not be disturbed at this juncture. It is also brought to the notice of this court by the learned counsel appearing for the respondents 1 to 6/claimants that the fifth respondent herein, namely, Munusamy, who is the father of the deceased Natarajan died on 01.03.2008, pending the present Civil Miscellaneous Appeal and the same is hereby recorded.

7. If the income of the deceased was fixed at Rs.8,000/-, then as per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, future prospectus should be added and since, the deceased was aged 54 years, the proper multiplier to be adopted in the case would be 15 as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Assuming that the above calculations are carried out, then the amount arrived would be more or less same to the compensation awarded by the Tribunal. Therefore this court, in this view of the matter, is inclined to confirm the compensation awarded by the Tribunal and accordingly it is confirmed.

8. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The orders passed by the Tribunal is upheld.

(iii) The present appellant - United India Insurance company is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.9,00,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 112 of 2006, dated 15.03.2011, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Vellore within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The respondents 1 to 3 are permitted to withdraw their share of compensation, as apportioned by the Tribunal, after following due process of law.

(v) Since, the fifth respondent herein has already died, his share of compensation is hereby re-alloted to the sixth respondent herein, namely, Pattammal and therefore the sixth respondent is permitted to withdraw her share and the fifth respondent's share as apportioned by the Tribunal after following due process of law.

(vi) The fourth respondent herein is a minor, and therefore,

her share of compensation amount is ordered to be deposited in any one of the nationalized bank until she attains majority and the first respondent herein is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

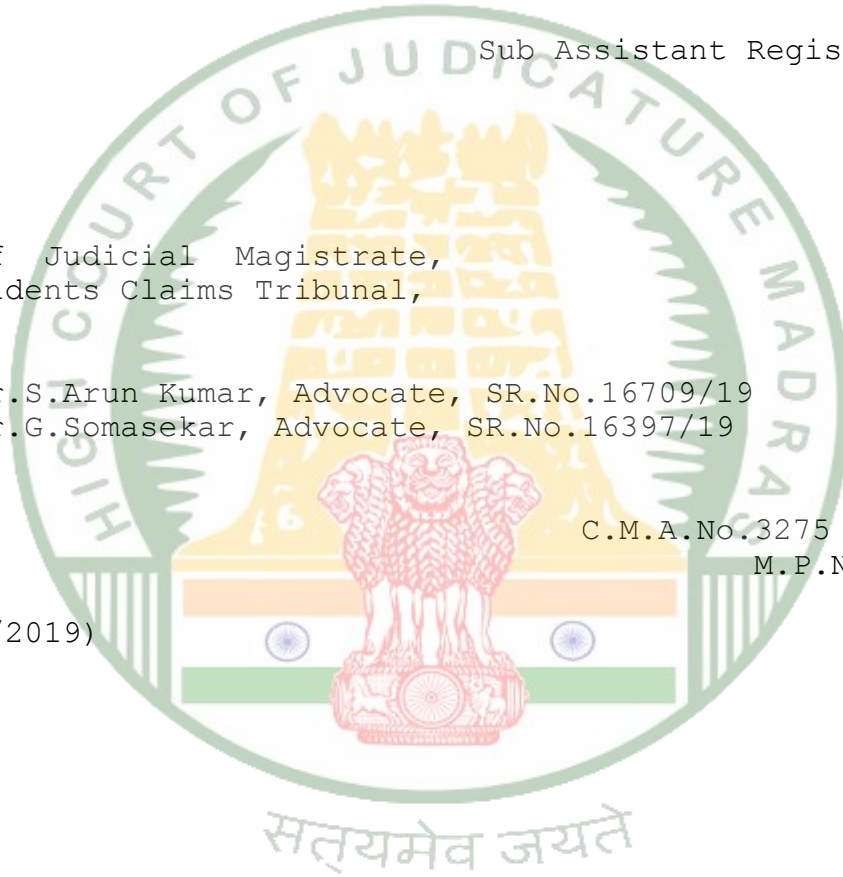
The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Vellore.

+1cc to Mr.S.Arun Kumar, Advocate, SR.No.16709/19

+1cc to Mr.G.Somasekar, Advocate, SR.No.16397/19

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M.P.No.1 of 2011

Kak(08/07/2019)



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