

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.3163 of 2013

Jayanthi

... Appellant/Petitioner

..Vs..

1. M.Thangammal

2. ICICI Lombard General Insurance
Company Limited, Swarnambigai Plaza,
Near New Bus Stand, Omalur Main Road,
Salem-636 009.

3. A.Murugan ... Respondents/Respondents
(R1 set ex-parte)

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.06.2010 in M.C.O.P.No.268 of 2008 on the file of the Motor Accident Claims Tribunal/I Additional District Judge, Salem.

For Appellant : K.Kuppusamy

For Respondents : R1-Exparte
Mrs.R.Sreevidhya for R2
Mr.R.Neelakandan for R3

JUDGMENT

The appellant is the claimant in M.C.O.P No.268 of 2008 on the file of the I Additional District Judge / Motor Accident Claims Tribunal, Salem. She filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- for the death of her minor son, aged 2 years in a road accident that took place on 12.11.2007.

2. The case of the claimant is that her son Surender was hit by a lorry bearing Registration No.TN 28V 4458, near Chinnayapuram, Salem, as a result of which, he died on the spot. According to the claimant, the rash and negligent driving of the

driver of the lorry belonging to the 1st respondent and insured with the 2nd respondent was the cause of the accident and therefore, the owner as well as the Insurance company are jointly and severally liable to pay compensation to the claimant.

3. The learned I Additional District Judge/Motor Accident Claims Tribunal, after analysing the evidence on record, awarded a compensation of Rs.3,05,500/- to the claimant. However, he reduced 50% towards contributory negligence on the part of the claimant. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal.

4. Mr. K.Kuppusamy, learned counsel appearing for the appellant/claimant contended that the Tribunal is wrong in fixing 50% contributory negligence on the part of the mother of the deceased, since the driver is guilty of rash and negligent driving for running over the 2 year old child standing on the extreme left side of the road on the untarred portion.

5. The Tribunal had fixed contributory negligence on the part of the mother of the deceased merely based on the FIR lodged by the grand father of the deceased child wherein he has stated that his daughter left the child for collecting water. But, the claimant had clearly deposed that both she and her son were walking on the mud portion of the road on the extreme left hand side and her evidence clearly shows that the driver of the lorry was responsible for the accident. Therefore, the Tribunal was clearly wrong in fixing contributory negligence on the part of the mother of the deceased and that too at 50%. Therefore, the orders passed by the Tribunal in this regard is liable to be set aside.

6. As regards the quantum of compensation, the Tribunal has awarded Rs.3,05,000/-. In the decision in Kishan Gopal and another v. Lala and others reported in 2013 (5) CTC 212 (SC), the Hon'ble Supreme Court had awarded a sum of Rs.5,00,000/- for the death of a child aged 8 years. Applying the principles laid down in the said decision, I hold that awarding a compensation of Rs.5,00,000/- to the claimant would meet the ends of justice.

7. Mr.R.Neelakandan, learned counsel appearing for the 3rd respondent, father of the child contended that his claim petition in MCOP No.1746 of 2007 was dismissed by the I Additional District Judge /Motor Accident Claims Tribunal. Though he did not file any appeal against the orders passed by the Tribunal, Mr.K.Kuppusamy, the learned counsel appearing for the claimant fairly conceded that a portion of the amount can be awarded to the father of the deceased child also. Since the

award is enhanced from Rs.3,05,000/- to Rs.5,00,000/-, a sum of Rs.1,00,000/- is awarded to the father of the claimant, the balance of Rs.4,00,000/- with interests and costs shall be awarded to the claimant.

8. In the result,

(i) The appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,05,000/- to Rs.5,00,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv) The second respondent, the ICICI Lombard General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.5,00,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order.

(v) A sum of Rs.1,00,000/- is awarded to the father of the deceased child / third respondent and the remaining amount of Rs.4,00,000/- with accrued interests and costs shall be given to the claimant.

(vi) On such deposit being made by the second respondent, the claimant and the father of the deceased ie., Murugan are at liberty to withdraw the same after following due procedure of law.

Sd/-

सत्यमेव जयते Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
I Additional District Judge,
Salem.

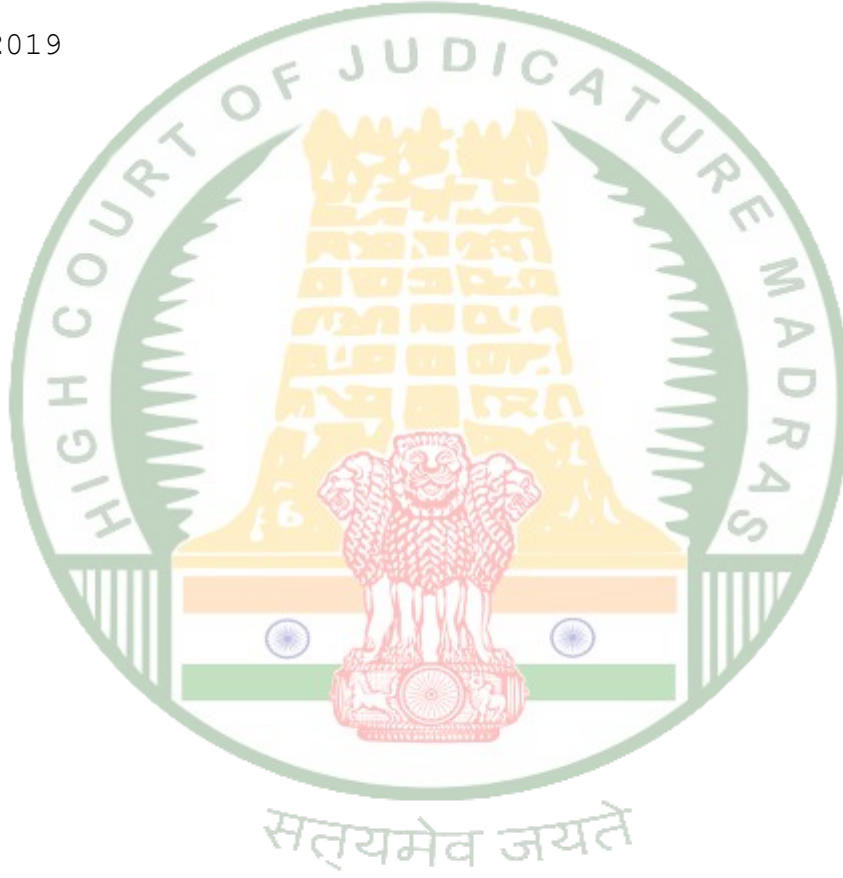
Copy To

The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.K.Kuppusamy, Advocate, S.R.No.79980
+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.80603
+1cc to Mr.R.Neelakandan, Advocate, S.R.No.80671

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CS/30/12/2019



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