

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.1401 & 1964 of 2018
and C.M.P.No.21923 of 2018

C.M.A.No.1401 of 2018:

Universal Sompo General Insurance Co. Ltd.
'Vadjiram Towers', Flat No.103,
New No.44, Old No.39, 1st Floor,
Halls Road, Chennai - 600 008. ... Appellant/2nd Respondent

Vs.

1.E.Eswari ... 1st Respondent/claimant
2.P.Thirunavukkarasu ... 2nd Respondent/1st Respondent

C.M.A.No.1964 of 2018:

E.Eswari ... Appellant/Claimant

Vs.

1. P.Thirunavukkarasu ... 1st Respondent/1st Respondent

2.Universal Sompo General Insurance Co. Ltd.
'Vadjiram Towers', Flat No.103,
New No.44, Old No.39, 1st Floor,
Halls Road, Chennai - 600 008.

.. 2nd Respondent/2nd Respondent

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 06.01.2018 made in M.C.O.P.No.1008 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

In C.M.A.No.1401 of 2018

For Appellant : Ms.R.Sreevidhya

For R1 : Mr.A.Shanmugaraj

In C.M.A.No.1964 of 2018

For Appellant : Mr.A.Shanmugaraj

For R2 : Ms.R.Sreevidhya

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

These Civil Miscellaneous Appeals are filed against the award dated 06.01.2018 made in M.C.O.P.No.1008 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

2.Both the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The appellant in C.M.A.No.1963 of 2018 is claimant in M.C.O.P.No.1008 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai. The claimant filed the above claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one minor Srimathi, who died in the accident that took place on 15.06.2014. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said auto to pay a sum of Rs.5,15,000/- as compensation to the claimant. Not being satisfied with the award amount granted by the Tribunal, the claimant has come out with C.M.A.No.1963 of 2018 seeking enhancement of compensation. Against the said award dated 06.01.2018 made in M.C.O.P.No.1008 of 2015, the 2nd respondent/Insurance Company has come out with C.M.A.No.1401 of 2018 challenging the liability fastened on them.

4.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the compensation awarded by the Tribunal is on the higher side and the claimant has not made out any case for enhancement of compensation and prayed for allowing C.M.A.No.1401 of 2018 filed by the Insurance Company and prayed for dismissal of C.M.A.No.1964 of 2018 filed by the claimant.

5.Per contra, the learned counsel appearing for the claimant contended that the Tribunal ought to have fixed the notional income of the deceased child at Rs.45,000/- per annum instead of fixing Rs.30,000/- per annum. The Tribunal ought to have add future prospects, as per the decision of the Hon'ble Apex Court. The Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Heard the learned counsel appearing for the claimant as well as 2nd respondent/Insurance Company and perused the materials available on record.

7.From the materials available on record, it is seen that the deceased child was aged 4 years at the time of accident. As per the decision of the Hon'ble Apex Court reported in "(2009) 4 MLJ (SC) 997" in the case of "Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.", the age of the deceased at the time of accident has to be determined. Insofar as the income of the deceased at the time of accident is concerned, the deceased was studying in LKG and was aged about 4 years. As per schedule II of the Motor Vehicles Act, the notional income of non earning person is fixed as Rs.15,000/- per annum. The Tribunal held that if the deceased girl would be alive, she would have contributed substantially to the family of the claimant by working hard. Therefore, the Tribunal has taken into account the notional income of the deceased child at Rs.30,000/- per annum. The Tribunal taking into account the age of the mother who was aged about 27 years and applying the legal principles laid down in the case of "Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr." as cited supra, applied multiplier '15' and arrived at Rs.4,50,000/- i.e. (Rs.30,000/- x 15) towards pecuniary loss. The Tribunal has awarded a sum of Rs.50,000/- under conventional heads. Further the Tribunal has awarded a sum of Rs.15,000/- towards loss of estate as per the decision of the Hon'ble Apex Court report in "2017(2)TNMAC 609 (SC)", in the case of "National Insurance Company v. Pranay Sethi and others". The Tribunal arrived a sum of Rs.5,15,000/- as compensation and the same is in order and it does not warrant any interference by this Court.

8.In the result, both the appeals are dismissed. The compensation awarded by the Tribunal at Rs.5,15,000/- is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

9.The 2nd respondent/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.1008 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai. On such deposit, the

claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

mtl

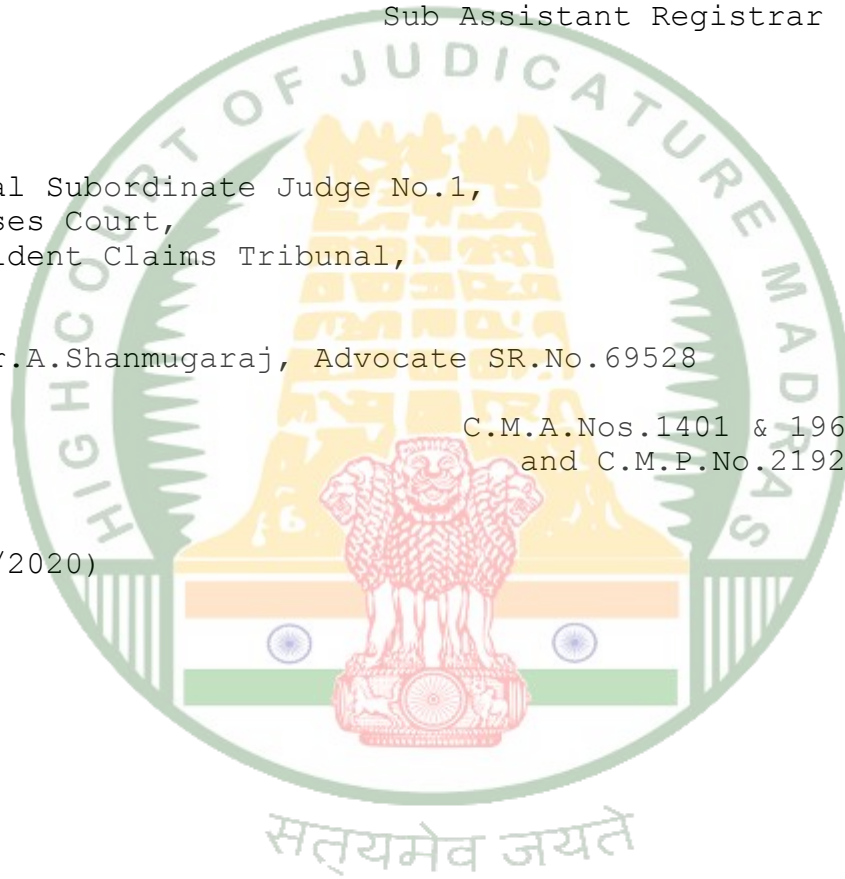
To

The Special Subordinate Judge No.1,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.A.Shanmugaraj, Advocate SR.No.69528

C.M.A.Nos.1401 & 1964 of 2018
and C.M.P.No.21923 of 2018

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