

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1837 of 2017  
and C.M.P.No.9872 of 2017

M/s.United India Insurance Co.Ltd.,  
rep.by its Divisional Office-II (HUB)  
No.104A, Peramanoor Main Road,  
Salem-7. .... Appellant/2<sup>nd</sup> Respondent

Vs

1.Kalpana  
2.Vijaya  
3.Paramasivam ...Respondents 1 to 3/Petitioners 1 to 3  
4.P.Rajalakshmi ...4<sup>th</sup> Respondent/1<sup>st</sup> Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 12.09.2016 made in MCOP No.1669 of 2015 on the file of the Motor Accidents Claims Tribunal (Additional District Judge cum Special Court) at Salem District.

For Appellant : Mr.J.Chandran

For Respondents: Mr.S.P.Yuvaraj for R1 to R3  
No appearance for R4

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.11,66,811/- towards compensation to the respondents 1 to 3, due to the death of the husband of the first respondent in a motor vehicle accident.

2.The case in brief, is as follows:

On 10.07.2015, the deceased Mahendran was riding the motorcycle bearing Reg.No.TN-36-Q-8394 from North to South direction in the Veerappampalayam Bye-Pass Road. At about 08.15 p.m., when the motorcycle reached near Thainagar Sri Nana Sithi Vinayagar Kovil, the car bearing Reg.No.TN-09-AE-0290 belonging to the fourth respondent herein and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the motorcycle. Due to the said impact, the deceased sustained injuries in the head and

neck. He was taken to the Erode Emergency Care Hospital, Erode and thereafter to the Government Mohan Kumaramangalam Medical College Hospital, Salem on 11.07.2015 and he died in the hospital on that day. The wife and parents of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.25,00,000/- as total compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.11,66,811/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the car bearing Reg.No.TN-09-AE-0290 insured with the appellant Insurance Company. He also disputed the quantum of compensation awarded by the Tribunal, stating that the same is excessive and exorbitant.

5.The learned counsel for the respondents 1 to 3 / claimants has submitted that the Tribunal has rightly considered the materials and evidence and has correctly awarded the just, fair and reasonable compensation, fixing the negligence on the driver of the car in question. Hence the judgment of the Tribunal does not require any interference in the hands of this Court, according to the learned counsel.

6.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 / claimants, and perused the materials available on record carefully and meticulously.

7.Ex.P1 is the First Information Report, in which it is stated that the accident had occurred only due to the rash and negligent driving of the driver of the car. As per Ex.P5-Post Mortem Report, the death of the deceased was due to the head injuries he sustained. Even though it has been put forth on the side of the Insurance Company before the Tribunal that they found some errors in respect of the accident on enquiring the witnesses; that they have dropped further action; that final report has been filed after completion of investigation in RCS No.41 of 2015, the signature of the complainant was not found in the RCS notice. The name of the accused was also not found. It is also seen that objecting the said Notice of the Inspector of Police, Erode West Police Station which has been marked as Ex.R1, P.W.1 filed Ex.P8-Objection Petition before the Chief Judicial Magistrate, Erode stating that RCS is not maintainable and in that petition, it has been stated that the petitioner had

to appear. In that petition, no final order has been passed and the same has been accepted by both sides. It is also seen that the details as to the enquiry made by the Inspector of Police to substantiate filing of RCS, have not been produced. In these circumstances, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the car, which this Court is not inclined to interfere.

8. With regard to the quantum of compensation, the Tribunal came to the conclusion that the deceased would have earned a sum of Rs.7,500/- as Hair Dresser, deducted 1/3<sup>rd</sup> of the amount towards his personal expenses, arrived at the monthly income at Rs.5,000/-, calculated the annual income at Rs.60,000/-, adopted the multiplier of 16 and arrived at the sum of Rs.9,60,000/- towards loss of income. The Tribunal has also awarded a sum of Rs.50,000/- towards loss of consortium, Rs.25,000/- each to the claimants (amounting to Rs.75,000/-) towards loss of love and affection, Rs.51,811/- towards medical expenses based on Ex.P9-Medical Bills and Rs.30,000/- towards funeral expenses, thus awarding a total compensation of Rs.11,66,811/-. The Tribunal has rightly fixed the monthly income of the deceased by considering the materials and evidence adduced on record, adopted the correct multiplier and awarded Rs.9,60,000/- towards loss of income. The amounts awarded by the Tribunal towards other heads are also very reasonable. In view of the same, the compensation awarded by the Tribunal at Rs.11,66,811/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount with interest as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3 / claimants are permitted to withdraw the same, on making proper application before the Tribunal.

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-s/d-  
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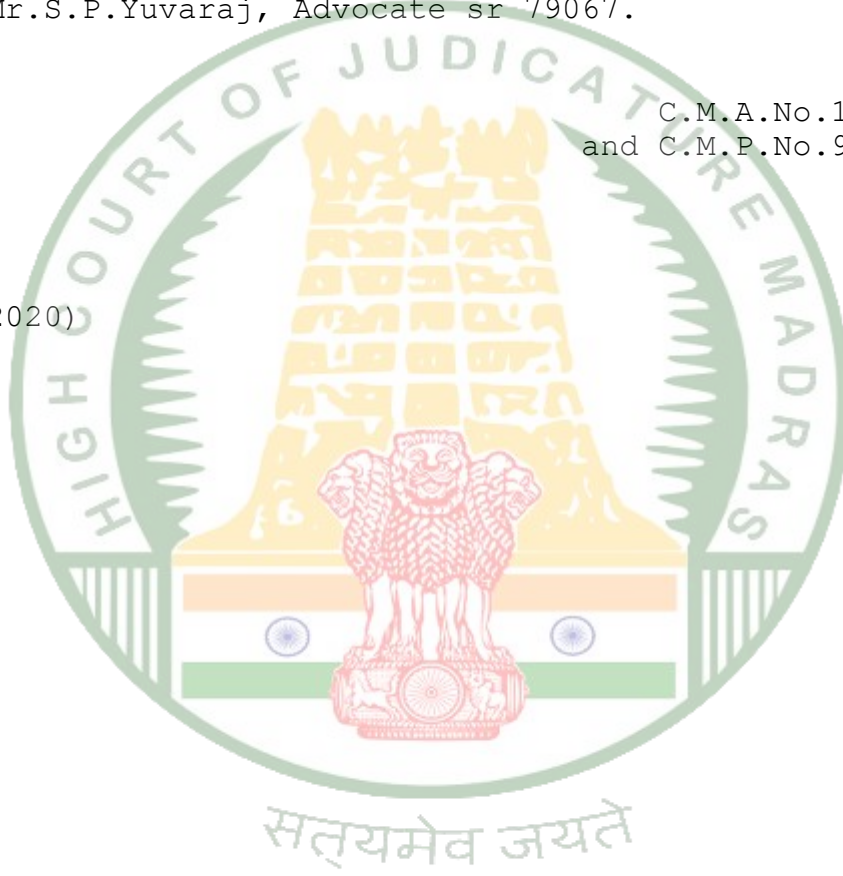
1.The Motor Accidents Claims Tribunal  
(Additional District Judge cum Special Court)  
at Salem District.

2.The Section Officer,  
VR Section, Madras High Court.

+1 CC to Mr.S.P.Yuvaraj, Advocate sr 79067.

C.M.A.No.1837 of 2017  
and C.M.P.No.9872 of 2017

SVI (CO)  
SP(08/06/2020)



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