

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3069 of 2018 and 307 of 2019  
and C.M.P.Nos.23280 of 2018 & 1095 of 2019

United India Insurance Co. Ltd.,  
Having Branch Office at  
104-A, Peramanur Main Road,  
Salem 636 007.

.... Appellant/R3 in  
both the appeals

Vs.

1.M.Bhuvaneswari ... Respondent 1/Petitioners  
2.Minor M.Nathiya ... Respondent 2/Petitioners  
(minor rep. By next friend & guardian  
sister M.Bhuvaneswari)  
3.R.Govindan ... Respondent 3/Respondent 1  
4.R.Lakshmi ... Respondent 4/Respondent 2

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act against the common award dated 24.11.2015 made in M.C.O.P.Nos.200 of 2012 and 146 of 2015 on the file of the Special District Court, (Motor Accident Claims Tribunal), Erode.

(In both appeals)

For Appellant : Mr.D.Bhaskaran

For R1 & R2 : Mr.A.Sivaji

## WEB COPY COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award dated 24.11.2015 made in M.C.O.P.Nos.200 of 2012 and 146 of 2015 on the file of the Special District Court, (Motor Accident Claims Tribunal), Erode.

2.Both the appeals arise out of same accident and common award and hence, disposed of by this common judgment.

3.The appellant is the 3<sup>rd</sup> respondent in M.C.O.P.Nos.200 of 2012 and 146 of 2015 on the file of the Special District Court, (Motor Accident Claims Tribunal), Erode. The respondents 1 and 2 filed the said claim petitions, claiming a sum of Rs.10,00,000/- each as compensation for the death of Malar and Munusamy respectively who died in the accident that took place on 22.10.2010. The Tribunal considering the pleadings, oral and documentary evidence, fixed 75% negligence on the part of the 3<sup>rd</sup> respondent, driver of the lorry belonging to the 4<sup>th</sup> respondent and 25% negligence on the part of the rider of the motorcycle (deceased Munusamy) and directed the appellant-Insurance Company to pay a sum of Rs.9,19,000/- and Rs.3,15,000/- as compensation to the respondents 1 and 2 respectively. Against the said common award dated 24.11.2015 made in M.C.O.P.Nos.200 of 2012 and 146 of 2015, the appellant-Insurance Company has come out with these appeals.

4.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to consider Exs.P1 to P4 relied on by the respondents 1 and 2 and evidence of R.W.1 let in by the appellant. The Tribunal failed to note the fact that in Exs.P1 to P4, the deceased rider of the motorcycle was only shown as responsible for the accident. The deceased who is the rider of the motorcycle is the tort-feasor. In such circumstances, the Tribunal ought to have fixed entire negligence on the part of the rider of the motorcycle.

5.Per contra, the learned counsel appearing for the respondents 1 and 2 in both the appeals contended that the respondents 1 and 2 proved the manner of the accident and accident occurred only due to rash and negligent driving by the 3<sup>rd</sup> respondent, driver of the lorry belonging to the 4<sup>th</sup> respondent herein and insured with the appellant. The appellant did not examine the 3<sup>rd</sup> respondent, driver of the lorry to disprove the contentions of the respondents 1 and 2. The 3<sup>rd</sup> respondent parked the lorry without any parking light and his negligence caused the accident. The Tribunal erred in fixing 25% negligence on the part of the deceased and prayed for dismissal of both the appeals.

6.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 and 2 and perused the materials available on record.

7.From the materials on record, it is seen that the respondents 1 and 2 contended that the accident occurred only due to parking of the lorry negligently by the 3<sup>rd</sup> respondent, driver. To prove the same, they examined P.W.2, eye-witness. The

appellant examined Inspector of Police as R.W.1 and marked Ex.R1, referred charge sheet. R.W.1 has admitted in his evidence that 3<sup>rd</sup> respondent parked the lorry in non-parking area. The Tribunal considering the evidence of P.W.2, R.W.1 and Ex.P3-observation magazar of the place of occurrence, held that the lorry was parked without parking light and due to the negligent parking of the lorry by the 3<sup>rd</sup> respondent, the accident occurred. Further, the Tribunal considering the fact that the deceased would have seen the parked lorry and had he been cautious, he would have avoided accident, fixed 25% negligence on the part of the deceased. The Tribunal has given cogent and valid reason for fixing 75% negligence on the part of the 3<sup>rd</sup> respondent.

8. In view of the same, both these Civil Miscellaneous Appeals are dismissed and the sum of Rs.9,19,000/- and Rs.3,15,000/- along with interest and costs, awarded as compensation to the respondents 1 and 2/claimants respectively are confirmed. The appellant-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 judgment. On such deposit, the 1<sup>st</sup> respondent/1<sup>st</sup> claimant is permitted to withdraw her share of the award amount, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. The share of the 2<sup>nd</sup> respondent minor/2<sup>nd</sup> claimant is directed to be deposited in any one of the Nationalized Bank till she attains majority. The 1<sup>st</sup> respondent/guardian who is sister of the 2<sup>nd</sup> respondent minor is permitted to withdraw accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

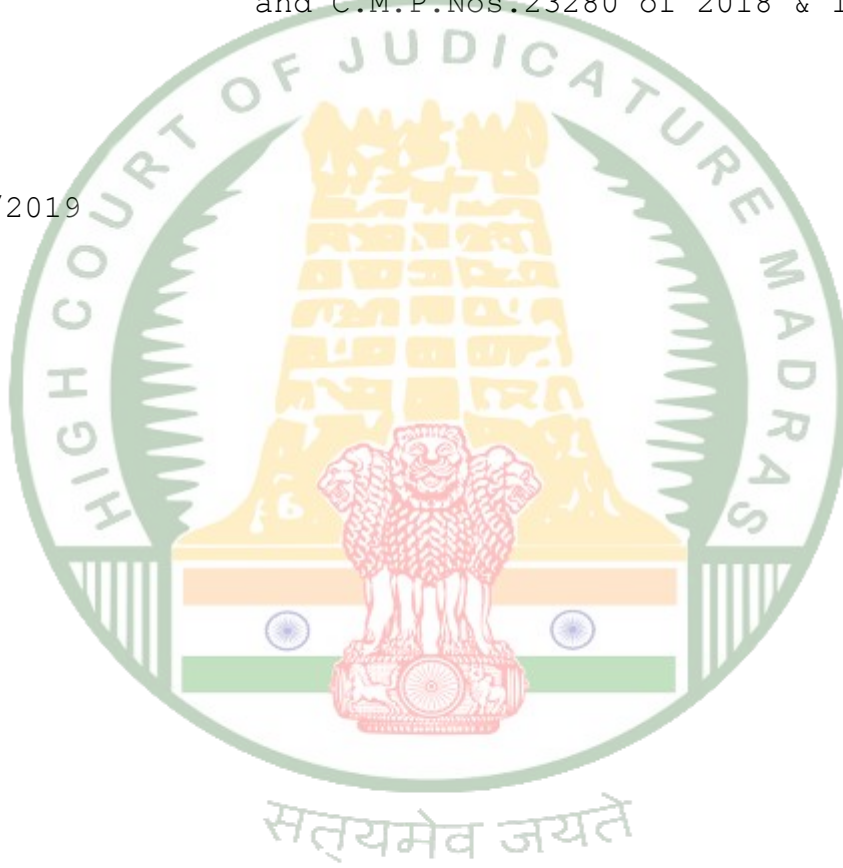
1. The Special District Judge,  
(Motor Accident Claims Tribunal), Erode.

2.The Section Officer,  
V.R. Section,  
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate Sr.19136  
+1cc to Mr.A.Sivaji, Advocate Sr.18741

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srg 27/08/2019



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