

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2673 of 2018
and
C.M.P.No.20182 of 2018

M/s.TATA AIG General Insurance Company Limited,
"Jaya Enclave", 3rd Floor,
Avinashi Road,
Coimbatore - 641 018. Appellant

Vs.

1.A.K.Krishnasamy
2.K.Malathi
3.K.Kavin Respondents

Appeal filed under Section 173 of Motor Vehicles Act, 1988
against the judgment and decree made in MCOP No.1843 of 2013
dated 22.12.2017 on the file of the Motor Accidents Claims
Tribunal, Special Subordinate Court, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.F.Terry Chella Raja

JUDGMENT

(Delivered by M.M.SUNDRESH., J)

The appellant is the insurer of the motorcycle which was involved in the accident. The motorcycle bearing Regn. No.TN 41 AC 1446 was driven by the third respondent who is none other than the brother of the deceased. When the vehicle was proceeding on the Valparai Road towards Pollachi, it was hit by unknown vehicle. The deceased was a pillion rider of the two wheeler. The deceased succumbed to the injuries. Thereafter, respondents 1 and 2 before us being the claimants filed the petition seeking compensation alleging that the third respondent was responsible for the accident having driven the vehicle in a rash and negligent manner.

2. Before the Tribunal, the appellant contended that it is the third respondent before us who gave the complaint which has been registered under Ex.P1 dated 24.05.2011 inter alia alleging that the vehicle driven by the unknown person caused the accident. This aspect has not been taken into consideration by the Tribunal. P.W.1 is not an eye witness. The evidence of P.W.2 ought not to have been accepted. On the question of quantum, the Tribunal has not considered due deduction towards income tax.

3. Learned counsel appearing for respondents 1 and 2/claimants submitted that the Tribunal took into consideration the evidence of P.Ws.1 and 2. P.W.2 has clearly deposed that the accident occurred due to the negligence of the third respondent herein. The amount fixed is just compensation. Therefore, the appeal will have to be dismissed.

4. On the question of negligence, we do not find any error in the award passed by the Tribunal. Reliance has been made on the evidence of P.W.2. There is nothing to suggest that P.W.2 was not present at the time of occurrence. Ex.P1 first information report is only a piece of evidence. This evidence is not a substantive one. Ex.P1 merely reflects the statement of the third respondent. The Tribunal has rightly relied upon the evidence of P.W.2 and fixed the negligence on the part of the third respondent, which has been fastened on the appellant. Thus, we do not find any error in the procedure adopted by the Tribunal.

5. On the question of quantum, we find some force in the submission made by the learned counsel for the appellant. No due deduction has been made towards income tax. Therefore, even if we take the income as fixed by the Tribunal is correct, appropriate deduction ought to have been made. If such deduction is made after taking note of the income which is not taxable for the relevant year viz., 2011, the compensation payable for loss of income is Rs.33,54,885/-, after adding conventional heads along with medical expenses, the same would come to Rs.34,22,274/-. We round off the said amount to Rs.34,23,000/- along with the same rate of interest and the ratio fixed by the Tribunal.

6. Accordingly, the Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

7. The appellant insurance company is directed to deposit the reduced compensation amount awarded by this Court, less the amount if any already deposited, to the credit of MCOP No.1843 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Coimbatore, within a period of

eight weeks from the date of receipt of a copy of the judgment.

8.We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank account of the claimants within a period of three weeks from the date of deposit of the award amount. On such deposit, the claimants are entitled to withdraw the same. The appellant is permitted to withdraw the excess amount, if any.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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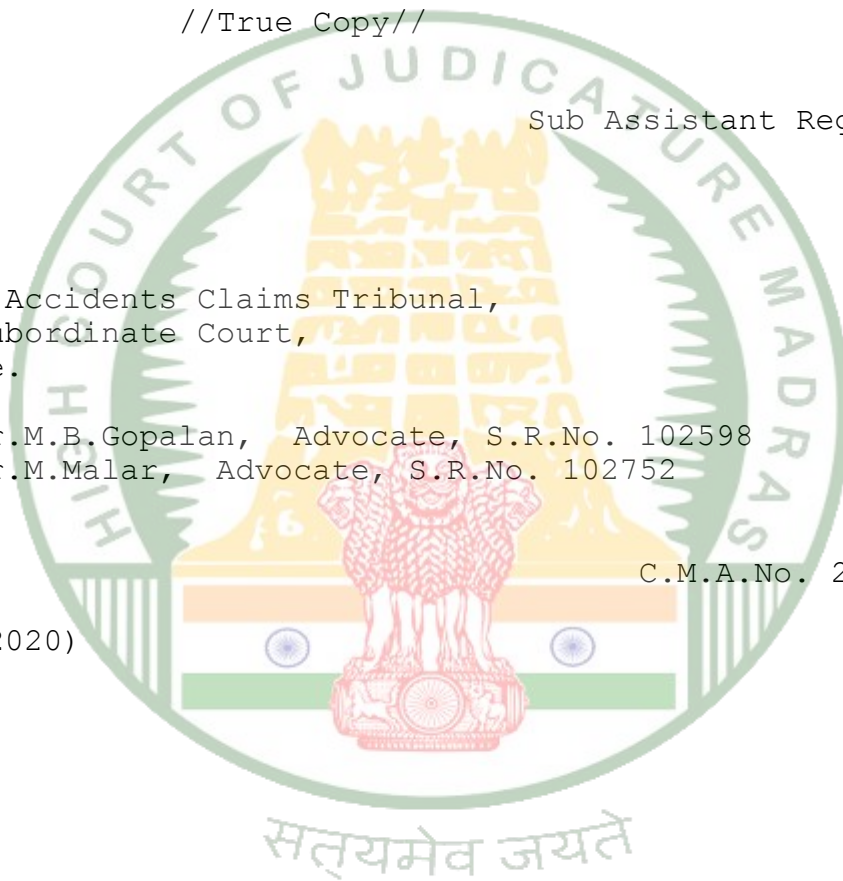
The Motor Accidents Claims Tribunal,
Special Subordinate Court,
Coimbatore.

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No. 102598

+1cc to Mr.M.Malar, Advocate, S.R.No. 102752

C.M.A.No. 2673 of 2018

RK (CO)
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