IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2437 of 2014
and C.M.P.No.18222 of 2016

The Divisional Manager,
Oriental Insurance Co. Ltd.,
179, Eswaran Koil Street,
Pondicherry. ... Appellant/2nd Respondent

versus

1. Pandurangan
2. Minor Gautam
3. Minor Sonia
4. Minor Pavitra ... 1st to 4th Respondents/Claimants
   (Minor Respondents 2 to 4 are represented by their father and natural guardian 1st respondent herein)
5. Kumarakrishnan … 5th Respondent/1st Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 08.09.2010 made in M.C.O.P.No.67 of 2008 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram District.

For Appellant : Mr.N.Vijayaraghavan

For R1 to R4 : Mr.K.Varadhakamaraj

For R5 : No appearance

JUDGMENT

In respect of death of one Shanthi, who was aged about 35 years, running an Idly shop, earning a sum of Rs.5,000/- p.m., who died in an accident that took place on 29.01.2006, the husband and three minor children of the deceased filed a claim petition for compensation, claiming a sum of Rs.10,00,000/- in M.C.O.P.No.67 of 2008, before the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Villupuram. The Tribunal has quantified the compensation at Rs.4,40,000/-. The break-up details of the compensation read as under:

Loss of dependency	-	Rs.	4,08,000/-
Cremation expenses	-	Rs.	5,000/-
Loss of love and affection	-	Rs.	15,000/-
Loss of consortium to the husband	-	Rs.	12,000/-
Total	-	Rs.	4,40,000/-

The age of the deceased was taken as 35 years based on the Postmortem report. Even though it was claimed that the deceased was earning a sum of Rs.200/- per day, the monthly income of the deceased was taken at Rs.3,000/- and adopting the multiplier of 17 and deducting 1/3rd towards her personal expenses, the loss of dependency was estimated at Rs.4,08,000/-

2. So far as the liability of the Insurance Company is concerned, the Tribunal gave a finding that there was a policy in force as on date of accident, i.e. on 29.01.2006. But, the period of insurance under Ex.R1 was from 23.08.2005 to 22.08.2006. Finding that there is a policy of Insurance Company, the Insurance Company was held liable to pay compensation.

2.1. But, the liability of the Insurance Company is disputed on the ground that the deceased was an unauthorized passenger in a Tractor and therefore, the Insurance Company cannot be made liable as per the terms and conditions of the policy. This contention was not accepted by the claims Tribunal and the Liability has been fastened upon the owner as well as the Insurance Company.

2.2. The main contention of the Insurance company, who challenged the award dated 08.09.2010 is that the Tribunal should have ordered pay and recovery. In other words, the contention is that even though the Insurance Company is made liable to pay compensation, the claims Tribunal should have given liberty to the Insurance Company to recover the compensation from the owner of the vehicle. This contention is not disputed by the learned counsel for the claimants.

3. Even though the owner has contested the claim before the Tribunal, he did not examine any witnesses to show that the terms and conditions of the policy is not violated. On behalf of the Insurance Company, evidence has been let in to say that there is a violation of terms and conditions of the policy. But, the details and nature of violation is not clearly stated. Considering the fact that there is no evidence adduced on the side of the owner of the vehicle, the contention of the

Insurance Company that "pay and recovery" has to be ordered, is acceptable.

4. Under such circumstances, the quantum of compensation awarded by the Claims tribunal and the liability of the Insurance company to pay compensation are upheld, with liberty to the Insurance Company to recover the compensation from the owner of the vehicle.

5. With the above modification, this Civil Miscellaneous Appeal is allowed. No costs. The Insurance Company shall deposit the entire amount of compensation, less the amount already deposited if any, along with interest as ordered by the claims Tribunal, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the first claimant is permitted to withdraw her share amount. The share of minors shall be deposited in fixed deposit in any one of the Nationalized Bank for a period of three years, till they attain majority. The mother of the minors is permitted to withdraw the accrued interest thereon once in three months. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ogy
To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Villupuram District.

Copy to

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

+1cc to Mr.K.Varadha Kamaraj, Advocate Sr.73158
+1cc to Mr.N.Vijayaraghavan, Advocate Sr.73973

C.M.A.No.2437 of 2014

ssi[co]
srg 12/05/2017