

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.08.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.2375 of 2010

&

M.P.No.1 of 2010

M/s.United India Insurance Co. Ltd.,
D.O-III E.P.Building
No.24, Mill Road
Coimbatore-641 001 ... Appellant/3rd Respondent

Vs.

1. C.Selvaraj

2.Smt.S.Kaleeshwari

3.P.Chinnasamy

4.R.Marudhachalamoorthy

5.M/s.Om Sakthi Nursery & Primary School

Rep. By its Correspondent

Thennamanalur Post

Thondamuthur (via)

Coimbatore - 641 109

... Respondents/Petitioners 1 & 2

& Respondents 1,2 & 4

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed in M.C.O.P.No.213 of 2008 dated 18.03.2010 on the file of the Motor Accidents Claims Tribunal (First Additional District Court), Coimbatore.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.C.Veeraraghavan for R2
Mr.K.S.Kumar for R3

JUDGMENT

Challenging the order of the Claims Tribunal directing to pay the award amount to the claimants and recover from the insured at the later stage, the appellant Insurance Company, who is the third respondent in the claim petition in M.C.O.P.No.213 of 2008, has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

2. The respondents 1 and 2 herein, being the claimants, had moved the claims Tribunal (I Additional District Judge, Coimbatore) with a claim petition in M.C.O.P.No.213 of 2008 claiming totally a sum of Rs.4,00,000/- for the death of their minor daughter, one Suji Bharathi in a road traffic accident involving a van bearing Registration No.TN 43 6616. The minor Suji Bharathi was studying LKG in a school at the time of occurrence.

3. The first respondent being the driver remained ex parte before the Tribunal. The claim was contested by the appellant Insurance Company, who is the third respondent in the claim petition. The owner of the vehicle is the second respondent and the owner of the school is the fourth respondent in the claim petition.

4. The Tribunal, based on the available evidences, both oral and documentary had proceeded to award a sum of Rs.2,40,000/- as compensation directing the appellant Insurance Company to pay the said amount with interest at the rate of 7.5% p.a to the claimants and recover the said amount with interest from the first, second and fourth respondents.

5. Mr.M.B.Raghavan, learned counsel for the appellant Insurance Company has contended that though the award was passed directing the third respondent, who is the appellant herein, to pay the award amount and recover the same from the 1st, 2nd and 4th respondents at the later stage, the decree was not drafted by the trial Court in consonance with the award. He has also submitted that the award amount might be confirmed by inclusion of the direction of the Tribunal to pay the award amount and then recover the same from the 1st, 2nd and 4th respondents at the later stage.

6. Mr.C.Veeraraghavan, learned counsel appearing for the second respondent has no objection for the submission made by the learned counsel for the appellant. However, Mr.K.S.Kumar, learned counsel appearing for the first respondent alone has objected to allow this appeal because he wanted to get instructions from his client. However, as indicated supra, the

first respondent being the driver of the vehicle, had not chosen to contest the claim and remained ex parte and therefore, he cannot be permitted now to contest the appeal as suggested by Mr.Raghavan, learned counsel for the appellant.

7. Considering the submissions made by the learned counsels appearing for respective parties, this Court is of the view that the award passed by the Tribunal may be confirmed and the order of pay and recovery ordered by the Tribunal may also be confirmed.

Keeping in view of the above facts, this civil miscellaneous appeal is dismissed and the appellant Insurance Company is directed to deposit the entire award amount of Rs.2,40,000/- along with the accrued interest at the rate of 7.5% and then recover the same from the first, second and fourth respondent. It is brought to the notice of this Court that the appellant Insurance Company had already deposited the entire award amount with interest and the amount is still lying to the credit of the claim petition. The respondents 1 and 2 being the claimants are entitled to withdraw the entire award amount with accrued interest without filing any formal application seeking permission. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gpa

To

The Motor Accidents Claims Tribunal
First Additional District Court, Coimbatore

+1 cc to Mr.B.Gopalan Advocate sr 43780
+1 cc to Mr.C.Veeraraghavan Advocate sr 43759

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rj(co)
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