IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.691 of 2017
and C.M.P.No.3856 of 2017

The Manager,
M/s.New India Assurance Company Ltd.,
Nadu Street, Sheikput,
Kancheepuram District. ... Appellant / 2nd respondent

Versus

1. Veeraraghavan
2. Anjalakshi ... Respondents 1&2/Petitioners
3. V.Gopal ... 3rd respondent / 1st respondent

(R3 remained ex parte before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.12.2014 made in M.C.O.P.No.1 of 2012, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Chengalpattu.

For Appellant	:	Mr.N.Vijayaraghavan
For R1 and R2	:	Mr.S.L.Venkatesan for Mr.E.Kumarakotti

JUDGMENT

One Ponnammal, aged about 22 years, working as an Agent in a private company, earning a sum of Rs.5000/- p.m. met with an accident on 23.05.2007 and sustained grievous injuries and succumbed to those injuries. Hence, the father and mother of the deceased filed a claim petition in M.C.O.P.No.1 of 2012, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Chengalpattu, claiming a sum of Rs.5,00,000/- as compensation.

2. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.9,71,000/- as compensation payable with interest at the rate of 7.5% p.a. from the date of accident till the date of deposit. The break-up details of the compensation read as under:

Loss of income	-	Rs.8,91,000/-
Loss of love and affection (Rs.25,000/- each to the 1st and 2nd petitioner)	-	Rs. 50,000/-
Funeral expenses	-	Rs. 25,000/-
Transport expenses	-	Rs. 5,000/-
Total	-	Rs.9,71,000/-

3. The main contention of the learned counsel for the appellant is that the Tribunal ought not to have fastened the entire liability on the part of the Insurance Company, especially, when the driver had no valid and effective driving licence.

4. A perusal of the award passed by the Tribunal would go to show that on

the side of the respondent, no oral and documentary evidence has been adduced and only on the side of the claimant, two witnesses have been examined.

4.1. When the Insurance Company has not chosen to adduce any evidence, it is not open to them to contend that the driver did not have valid and effective driving licence, as the burden is on the insurance company to show that there had been breach of terms and conditions of the policy with reference to driving licence.

4.2. The fact remains that the date of accident was 23.05.2007, the claim petition has been filed in the year 2009, the award has been passed in the year 2014. Having regard to the long delay involved from the date of accident, it would be very difficult for the Insurance Company to adduce evidence with regard to the driving licence. Therefore, there is no use of remanding the matter to the Tribunal.

4.3. The liability fastened is correct. Hence, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 23.12.2014 passed in M.C.O.P.No.1 of 2012, by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Chengalpattu.

5. The Insurance Company is directed to deposit the entire amount of compensation, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw the same as per the apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2017

ogy

To

1. The Motor Accident Claims Tribunal
   (Chief Judicial Magistrate), Chengalpattu.

Dr.S.VIMALA, J.

ogy

C.M.A.No.691 of 2017

22.02.2017