

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.2014 of 2008

and

MP.No.1 of 2008

United India Insurance Co. Ltd.,
Nethaji Bypass Road,
Dharmapuri Town,
Dharmapuri District.Appellant/2nd Respondent

Vs.

1. Lakshmiammal1st Respondent/Claimant
2. Subramani2nd Respondent/1stRespondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against Judgment and decree dated 31.03.2005 made in M.C.O.P.No.70 of 2003 on the file of the Motor Accidents Claims Tribunal Sub Court, Dharmapuri.

For Appellant : Mr.N.Vijayaragavan

For R1 : Mr.M.Selvam

R2 : Exparte

JUDGMENT

This appeal has been filed by the appellant / Insurance Company against the award passed in M.C.O.P.No.70 of 2003 on the file of the Motor Accident Claims Tribunal, Sub-Court, Dharmapuri. The claim petition has been filed by the 1st respondent herein under Section 163-A of the Motor Vehicles Act, 1988.

2. The 1st respondent herein is the mother of deceased Murugan, who died in an accident on 16.01.1999, filed the claim. The 2nd respondent herein is the owner of the vehicle and it was insured with the appellant / Insurance Company. The deceased Murugan, while driving a motor cycle bearing Registration No. TN-29-U-3436 met with an accident and died on the spot. He was aged 26 at the time of accident.

3. The Tribunal has awarded a total compensation of Rs.4,53,500/- as against the total claim of Rs.6,15,684/-. The Tribunal directed the appellant/Insurance Company and the owner of the said two wheeler to pay the compensation. This appeal has been filed on the ground that the victim Murugan was riding the two wheeler belonging to the 2nd respondent and as such, he is not entitled for coverage under the Insurance policy for the two wheeler.

4. The learned counsel appearing for the appellant / Insurance Company contended that the award of Rs.4,53,500/- was not correct, since the insurer has not covered the risk to the rider / victim of the two wheeler.

5. On perusal of the records, it is seen that the appellant/Insurance Company did not adduce any evidence before the Tribunal in support of its case. A copy of the Insurance Policy has not been marked to show that the risk to the rider of the two wheeler was not covered under the Insurance Policy. Ex.P3 is the Certificate of Insurance, which is marked by the claimant to show that there is a policy in the name of the 2nd respondent and it was in force on the date of accident. The officials of the Insurance company have not been examined to explain the coverage or lack of coverage for the rider / victim. It is also pertinent to note that the Insurance company has not taken any specific pleadings to this effect. It is seen from the impugned order that such a defence was not taken before the Tribunal. Therefore, the contention of the learned counsel for the appellant that Insurance Company was not liable to pay compensation cannot be countenanced.

6. The Tribunal has fixed the loss of dependency at Rs.33,000/- p.a, which is less than Rs.40,000/- p.a. under Section 163-A of the Motor Vehicle Act, 1988. Therefore, the next contention of the learned counsel for the appellant/ Insurance Company, that the Tribunal erred in entertaining the claim petition filed under Section 163-A of the Motor Vehicle Act, 1988 also cannot be accepted. No argument has been advanced on the question that the award for Rs.4,53,500/- is excessive. The accident took place 18 years ago. Therefore, the claimant can take the benefit of the provisions of Section 163-A of the Motor Vehicles Act, 1988.

7. In the above circumstances, the appeal of the Insurance Company is dismissed and the award of the Tribunal for Rs.4,53,500/- with interest at 9% p.a. is confirmed. The insurer has already deposited the entire award amount as per

order dated 14.07.2008 in MP.No.1 of 2008 in CMA.No.2014 of 2008. The claimant shall be entitled to withdraw the award amount lying to the credit of the claim petition. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Sub-Judge, Dharmapuri.

+1cc to Mr.M.Selvam, Advocate Sr.13263

CMA.No.2014 of 2008

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