IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.02.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

C.M.A.No.3435 of 2012

1.Asalambal
2.Palanivel ... Appellants/Claimants

Vs

1. Aruldoss
2. Branch Manager,
M/s.Ifco Tokiya General Insurance
Company Limited,
No.28,1&2 floor,
North Usman Road,
T.Nagar, Chennai - 600 017. ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of M.V.Act of 1988, against the Judgment and Decree dated 10.07.2012 and made in M.C.O.P.No.170 of 2008, on the file of Motor Vehicles Accidents Claims Tribunal, (Subordinate Judge), Ariyalaur.

For Petitioner : Mr.A.Murugan
For R1 : Not ready Notice
For R2 : Mr.N.Vijayaraghavan

J U D G M E N T

The appellants are the claimants. They have filed the above petition for grant of compensation for the death of Ramalingam in a Motor Vehicle Accident. The first appellant is the wife of the deceased. The second appellant is the son. As against the claim of Rs.3,00,000/-, the Tribunal awarded Rs.1,70,000/-. The Tribunal exonerated the Insurance Company on the ground that the driver of the vehicle did not have valid license at the time of the accident.

2.The learned counsel for the appellant would submit that the trial Court ought to have fixed income of the deceased at Rs.4,500/- per month. He would also submit that the Insurance

Company ought to have been directed to pay the compensation to the claimants in the first instance and thereafter, recover the compensation from the insured/owner of the vehicle.

3.The learned counsel for the second respondent-Insurance Company would contend that the exoneration of the insurer was based on the violation of policy condition and further, the award of Rs.1,70,000/- was justified, as the deceased was 67 years old at the time of accident and there was no proof of income.

4.The claimants in support of their claim examined two witnesses. On the basis of the evidence adduced on the side of the claimants, the Tribunal has come to the conclusion that the accident occurred only due to the negligent driving of the offending vehicle. It is not in dispute the lorry was driven by one Anbalagan. The Insurance Company examined two witnesses. R.W.1 is the Junior Assistant working in the Regional Transport Office, Ariyaloor. He would state that the lorry was driven by the said Anbalagan and he did not have license to drive the lorry at the time of accident. Ex.P4 is the Motor Vehicles Inspector's Report. It shows the licence of the driver was not submitted before him. Hence, it is made clear that the driver of the offending vehicle did not have licence to drive the vehicle at the time of accident.

5.In a similar situation, a Division Bench of this Court in the decision in Iffco Tokio General Insurance Company Ltd. Vs. A.Jafer Sadiq (2012 (1) TNMAC 394 (Mad) (DB)) held that pay and recover was a rule, even if the driver had no valid driving licence or did not have a valid endorsement to drive the specific class of vehicle involved in the accident.

6.In the case on hand, the involvement of the vehicle insured with the second respondent-Insurance Company, is not in dispute. Therefore, following the above said decision of the Division Bench, I am inclined to direct the second respondent/Insurance Company is directed to pay the compensation and recover the same by filing Execution Petition before the tribunal.

7.Coming to the quantum of compensation, the Tribunal has fixed the monthly income of the deceased at Rs.3,000/-. However, P.W.1 has given evidence to the effect that the deceased was earning of Rs.6,000/- per month. The learned counsel for the appellants would point out that there is no contra evidence. The accident took place in the year 2008. The deceased would have earned Rs.150/- per day. Therefore, it can be assumed that the deceased earned monthly income at Rs.4,500/-. Hence, monthly income of the deceased is fixed at Rs.4,500/-. One-third of his income has to be deducted towards personal expenses.

8.As per the post-mortem report, the deceased was aged 67 at the time of accident. The award of compensation under the head "loss of income" works out to Rs.1,80,000/- (4500-1/3=Rs.3000 X 12 X 5 =Rs.1,80,000/-)

9.The first claimant, namely the wife lost her husband. The trial Court has awarded only a meagre sum of Rs.20,000/- under the head "loss of consortium", which shall be enhanced to Rs.40,000/-.

10.The Tribunal awarded Rs.20,000/- towards loss of love and affection to the son of the deceased and Rs.10,000/- towards funeral expenses.

11.Having regard to the inflation factor, I am inclined to award Rs.20,000/- for funeral expenses. Further, for the loss of love and affection to the son, a sum of Rs.30,000/- shall be awarded. The claimants are entitled to a total compensation of Rs.2,70,000/- with interest at 7.5% per annum from the date of claim petition till the date of payment.

12.The second respondent-Insurance Company shall deposit the award amount of Rs.2,70,000/- with interest at 7.5% p.a on and from 01.07.2008 till the date of deposit, within four weeks from the date of receipt of copy of this judgment. The second respondent-Insurance Company is at liberty to recover the award amount from the first respondent-owner of the vehicle by way of execution petition without filing separate proceedings. The appellants/claimants are at liberty to withdraw the award amount so deposited by the Insurance Company. The appellants/claimants shall pay Court fee, if any, for the enhanced compensation amount. The appeal shall stand allowed in the above terms. There shall be no order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

The Subordinate Judge,
The Motor Vehicles Accidents Claims Tribunal,
Ariyalaur.

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

+1cc to Mr.a. Murughan, Advocate Sr. 13243

C.M.A.No.3435 of 2012

BR(CO)
VR(22/5/2017)