IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE S.VIMALA

C.M.A.No.2039 of 2017
and
C.M.P.No.10960 of 2017

United India Insurance Co.Ltd.,
Rep.by its Branch Manager,
M.M.Reddy Complex,
Hosur. ... Appellant/2nd Respondent

Vs.

1.Lakshmi
2.Srinivasan ... Respondents 1 & 2/Claimants
3.Ramachandran ... 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.11.2008 made in M.C.O.P.No.1029 of 2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the liability as well as the quantum of compensation.

2. The deceased Narayanappa, aged 50 years, Compounder, earning a sum of Rs.5,000/- per month, met with an accident and died on 16.06.2006. The daughter and son of the deceased have filed the claim petition for compensation claiming a sum of Rs.10,00,000/-.

3. The Tribunal has passed an award for a sum of Rs.3,31,500/- with the following break-up details;

Loss of Income	-	Rs. 3,12,000/-
loss of love and affection (Rs.5,000/- each)	-	Rs. 10,000/-
Transport expenses and medical expenses	-	Rs. 4,500/-
Cremation expenses	-	Rs. 5,000/-
Total compensation	-	Rs. 3,31,500/-

Considering the age of the deceased as 50 years, multiplier 13 has been adopted and annual income has been taken at Rs.24,000/- and “Loss of Income” has been awarded (Rs.24,000/-x 13) at Rs. 3,12,000; thus the loss dependency has been calculated. This award is under challenge in this appeal.

4. While considering the question of liability as to whether the Insurance Company should pay the amount or the owner should pay the amount, the tribunal has given a finding that only the Insurance Company is liable to pay the compensation.

5. The contention of the learned counsel for the Appellant/Insurance Company is that when the Insurance Company issued a notice to the owner calling upon him to produce the driving license, the driving license was not produced. The Court drew adverse inference based upon the decision rendered in Sardari and others Vs. Sushilkumar and others reported in (2008 (1) TNMAC 294(SC).

6. The tribunal has given a finding that despite grant of time from 2007 to 2008, no evidence has been adduced on the side of the Insurance Company and therefore, in the absence of any evidence, the Insurance Company cannot be exonerated. A specific finding has been given that the Insurance Company has not taken any steps to examine the Road Transport Officer and therefore, it is only the Insurance Company, which is liable to pay the compensation.

7. Though the learned counsel for the appellant/Insurance Company would point out that non-production of driving license is sufficient to draw adverse inference against the third respondent/owner, when an opportunity has been taken by the Insurance Company to adduce evidence and despite sufficient grant of time given by the tribunal, the Insurance Company has not chosen to adduce any evidence from 11.12.2007 to 23.09.2008, it is not open to the Insurance Company to ask the Court to draw adverse inference and based upon that to exonerate the Insurance Company. It is the duty of the insurance company to adduce best evidence possible. When there is a possibility of adducing best evidence and when that has not been done, it is not open to the failing party to make use of the opportunity of non- production of records and to rely on that circumstances alone.

8. The appeal has no merits and the same is dismissed confirming the award of the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

9. The claimants are described as daughter and son of the deceased. Award has been passed in favour of the daughter and it has been dismissed as against the son. It is a finding

rendered based upon the legal heir certificate issued by the Thashildar disclosing only daughter as the legal heir. The legal heir certificate issued by the Tasildar is not decisive on the right of the parties to get compensation as legal heir. The legal heriship is determined based upon the provision of Law relating to succession. Under the Hindu Succession Act both son and daughter are the legal heirs. Therefore, the award is modified granting the award in equal proportion to both the claimants. Even though no appeal has been preferred by the second claimant challenging non grant of compensation, this Court has chosen to award compensation as the records should not carry incorrect proposition of law.

10. The appellant/Insurance company is directed to deposit the entire award amount along with 7.5% from the date of petition till the date of deposit and costs, less the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first and second respondents/ claimants equally, through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kv/sms

To

1. The Motor Accidents Claims Tribunal,
   Chief Judicial Magistrate Court,
   Krishnagiri.

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

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SV(CO)
CA(04/10/2017)