BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.282 of 2015

1. Minor Robin Anderson
   S/o.Isaac Robertson
   (1st appellant through his
   father and natural guardian
   Isaac Robertson)

2. Isaac Robertson ... Appellants

Vs.

1.Madurabai
2.Minor Devaprasath
3.Minor Pradeesha
4.Minor Prabin Prasath
(Respondents 2 to 4 are represented through their mother and natural guardian Madurabai, 1st respondent)

5.The Branch Manager,
National Insurance Company Ltd,
Anguvilas Buildings,
Nagercoil Head post office junction,
Agastheeswaram Taluk,
Kanyakumari. ... Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award dated 13.03.2014 made in M.C.O.P.No.44 of 2013 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Nagercoil.

For Appellant : Mr.V.Raghavachari
For Respondents : Mr.F.Deepak R1 to R4
Mr.A.K.Baskarapandian for R5

JUDGMENT

Heard the learned counsel on either side.

2.The vehicle owner has filed this appeal questioning the award passed by the Tribunal on the ground of quantum and application of pay and recover principle.

3.Admittedly, the offending vehicle was ridden by the minor, the first appellant herein. The vehicle belongs to the second appellant, father. It appears that the son who was a minor during the relevant time had taken the vehicle and caused the accident in question. Since the vehicle was ridden by a person who could not have a driving licence, the proof of breach of policy condition is clearly established. The Tribunal rightly directed the insurance company to satisfy the award and thereafter recover the amount from the vehicle owner. Application of pay and recover principle cannot be faulted.

4.As regards the quantum of compensation, the learned counsel for the appellant would submit that the deceased was aged 45 years. If we have a look at the second schedule, it is seen that multiplier 13 is invoked only if the age of the victim exceeds 45 years. In this case, the age of the victim did not exceed 45 years. Therefore, applying multiplier 14 cannot be faulted. It is true that no income proof was adduced. Therefore, the Tribunal fixed the monthly income at Rs.6,000/-. By no stretch of imagination can this be said to be excessive. The compensation awarded under other heads cannot also be termed as unreasonable. The Tribunal has passed correct award. No interference is called for.

5.The fifth respondent insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum with costs from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any and thereafter recover the same from the vehicle owner as directed by the Tribunal. On such deposit, the claimants are entitled to withdraw the same, less the amount already withdrawn by them if any, as apportioned by the Tribunal, by filing proper application before the Tribunal. The share of the minor claimants shall be deposited in any one of the nationalized bank and the natural guardian is entitled to withdraw the interest thereon once in three months directly from the bank.

6.The Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal/
   Chief Judicial Magistrate, Nagercoil.

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Mr.V.RAGHAVACHARI, ADVOCATE IN SR No. 84419
+ 1 CC TO Mr.F.DEEPAK, ADVOCATE IN SR No. 84343

SKM
TE/KK/SAR-3 : 28/12/2017 : 3P/5C

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