

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2374 of 2015

United India Insurance Co. Ltd.,
Motor Third Party Cell
No.38, Anna Salai,
Chennai 600 002.

... Appellant/2nd Respondent

Vs.

1.R.Amaravathi

2.M.Shanmugham

... R1 & R2/Claimants

3.T.H.Hussain

... 3rd Respondents/1st Respondents

(R3 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 17.04.2014, made in MCOP.No.5080 of 2004, on the file of the VI Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.P.Sankaranarayanan
For R1 & R2 : Mr.N.M.Muthurajan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Award and Decree dated 17.04.2014, made in MCOP.No.5080 of 2004, on the file of the VI Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.5080 of 2004, filed by the respondents 1 and 2 on the file of the VI Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai, claiming compensation of a sum of Rs.4,00,000/- for the death of one M.Muthu, father of the respondents 1 and 2/claimants, who died in the accident that took place on 05.08.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the 3rd respondent and awarded a sum of Rs.6,25,000/- as compensation to the respondents 1 and 2, directing the appellant-Insurance Company to pay the same.

4.The appellant-Insurance Company is challenging the said award of the Tribunal on the ground that the respondents 1 and 2 are not dependents of the deceased and the claim petition dismissed on 19.08.2008 was restored to file only in the year 2013, but the Tribunal erred in awarding interest for this period also. The respondents 1 and 2 are aged 34 and 32 years respectively and are married. Also, they have not produced any evidence to show that they are the dependents of the deceased.

5.Per contra, the learned counsel for the respondents 1 and 2 contended that the respondents 1 and 2 are daughter and son of the deceased and they have produced Ex.P6, copy of the legal heirship certificate and proved that they are the dependents of the deceased and prayed for dismissal of the appeal.

6.Heard the learned counsel for the appellant as well as the respondents 1 and 2 and perused the materials available on record.

7.The respondents 1 and 2 have produced Ex.P6, copy of the legal heirship certificate to prove that they are the daughter and son of the deceased. The contention of the learned counsel for the appellant that respondents 1 and 2 are aged 34 and 32 years and are married and hence, they are not dependents, is not acceptable. It is well settled that even married daughter is entitled to get compensation. In the present case, the respondents 1 and 2 have pleaded that they are the dependents of the deceased and P.W.1 has deposed to that effect. No contra evidence was let in by the appellant to disprove the same. In such circumstances, the award of the Tribunal granting compensation to the respondents 1 and 2 cannot be termed as perverse, warranting interference by this Court. The contention of the learned counsel for the appellant that Tribunal erred in awarding interest for the period from 19.08.2008 to 2013, when the claim petition was dismissed and restored to file, has considerable force. The respondents 1 and 2 are not entitled to interest during this period for their fault. In the result, the award of the Tribunal is modified with regard to interest. The respondents 1 and 2 are not entitled for the interest for the default period i.e., from the date of dismissal to the date of restoration of the M.C.O.P. The amounts granted by the Tribunal in all other aspects are confirmed.

8.In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant-Insurance Company is directed to deposit the compensation of a sum of Rs.6,25,000/-, along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.2374 of 2015, on the file of the VI Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai, within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, the respondents 1 and 2/claimants are permitted to withdraw the entire award amount with interest from the date of petition till date of realization and costs, except for the default period on the basis of apportionment fixed by the Tribunal, by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The VI Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

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

+lcc to Mr.N.M.Muthurajan, Advocate sr.no.78531

+lcc to Mr.P.Sankaranarayanan, Advocate sr.no.78399

sr(co)
nr 08/02/2019

CMA.No.2374 of 2015

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