IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1098 of 2011
and
MP.No.1 of 2011

United India Insurance Company, Ltd.,
Divisional Office,
1170, Mettur Road, II Floor,
Muthiah Complex, Erode.

... Appellant/3rd Respondent

Versus

1.Rajammal

2.Shanmugavalli
3.Subiramani
4.Malar
5.Pushpalatha

... 1 to 5 Respondents/Petitioners

6.P.Murugesan
7.P.Sachithanathan

... 6th & 7th Respondents/1st and 2nd Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 25.08.2010 made in M.C.O.P.No.102 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Perundurai.

For Appellant : Mrs.R.Sreevidhya

For Respondent: Mr.S.Kaithamalai Kumaran (for R1 to R5)

: Mr.K.Ponmani
for Mr.T.Murugamanickam (for R6)

: No Appearance (for R7)

J U D G M E N T

The appellant/United India Insurance Company Limited has come forward with this appeal questioning their liability to pay compensation to the claimants on the ground that there is a violation of policy condition inasmuch as the driver of the vehicle did not possess a driving licence at the time of accident.

2.In the claim petition before the Tribunal, the claimants have stated that on 09.03.2008, when the deceased Kannammal was standing with some other women in the Perundurai Road near Gray Nagar bus stop, a car driven by the first respondent in bearing vehicle No.TN-33-P-3963 in a rash and negligent manner and hit the deceased and others standing there. In the impact, the deceased sustained severe injuries on head and grievous injuries in her both legs and she died on the spot. It is further stated in the claim petition that at the time of accident, the deceased was aged 63 years and a vegetable vendor earning Rs.4,500/- per month. Therefore, the children of the deceased have filed the claim petition claiming Rs.5,00,000/- as compensation.

3.The claim petition was resisted by the Insurance company by contending that at the time of accident, the driver of the car did not possess a licence at all which is a violation of policy violation, therefore, they cannot be fastened with any liability to pay compensation to the claimants.

4.I have Heard both sides. After hearing, it is seen that even though the claimants have claimed that the deceased was a vegetable vendor and earning Rs.4,500/- per month, the Tribunal has taken only a sum of Rs.2,500/- as monthly income. Further, the Tribunal has deducted 1/3rd amount towards personal expenses of the deceased and arrived at Rs.1,666.67/- per month. By applying multiplier '7', a sum of (Rs.1,666.67 X 12 X 7) was arrived at Rs.1,40,000.28/- towards loss of income. A sum of Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of love and affection and Rs.14,000/- towards compensation for loss of income. In spite of the claimant not claiming for compensation under the head "transportation charges", the Tribunal has awarded a sum of Rs.5,000/- in the interest of Justice. Therefore, the total compensation amount awarded by the Tribunal at Rs.1,60,000.28 to the claimants towards the death of the deceased. This amount, in the considered view of this Court, cannot be said to be excessive and it need not be interfered with.

5.The main contention raised by the appellant/Insurance company in this appeal is that there is a violation of policy condition and therefore, they cannot be fastened with any liability to pay compensation. Even though the Tribunal had directed the insurance company to pay the compensation amount and to recover it from the owner of the vehicle. Hence, the present appeal has been filed by the appellant/Insurance Company to set aside the findings rendered by the Tribunal with respect to pay and recover.

6.It is well settled law that even if there is violation of policy condition, yet, the insurance company can pay the compensation amount to the claimants and to recover it from the owner of the vehicle. This was reiterated by this Court in the decision rendered in the case of (Cholamandalam MS General Insurance Co. Ltd., vs. Veerasamy and another) reported in (2010) 2 CTC 423. In that decision, this Court followed the Judgment of Supreme Court case in Oriental Insurance Company vs. Zaharulnisha and others, reported in AIR 2008 SC 2218 wherein it was held that even though there is a violation of policy condition, the insurance company shall pay the compensation amount to the claimants and to get it recovered from the owner of the vehicle. Therefore, in the light of the above decision, this Court is of the opinion that the Tribunal has rightly directed the insurance company to pay the compensation amount awarded by it and recover it from the owner of the vehicle. I do not find any reason to interfere with the same.

7.In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is dismissed by confirming the Judgement and Decree dated 25.08.2010 passed in MCOP.No.102 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Perundurai. The appellant/Insurance Company is directed to deposit the amount as determined by the Tribunal together with interest, after adjusting amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgement. On such deposit, the respondents/claimants are permitted to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accident Claims Tribunal
   (Subordinate Judge) at Perundurai.

2. The Section Officer,
   V.R. Section, High Court, Madras - 104.

+1cc to M/s.R.Sreevidhya, Advocate sr.13045
+1cc to Mr.S.Kaithamalai Kumaran, Advocate sr.12237
+1cc to Mr.BabuRangasamy, Advocate sr.12531

CMA.No.1098 of 2011
and
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nr 22/10/2019