IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2873 of 2018

1.N.Preethi
2.N.Raj Balaji
3.N.Raj Vishnu
4.S.Padmavathi ..Appellants/Petitioners

Vs.

1.M/s.Sree Vel Transport,
No.114/275, Thambu Chetty Street,
1st Floor, Room: G1,
Chennai -1.

2.ICICI Lombard General Insurance Co., Ltd.,
Chotabhai Centre, 3rd Floor,
140, Nungambakkam High Road,
Chennai 600 034. ..Respondents/Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.09.2018 made in M.C.O.P.No.7328 of 2014 on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.K.Babu

For R2 : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the portion of the award exonerating the 2nd respondent-Insurance Company from its liability as well as for enhancement of the compensation granted by the award dated 07.09.2018 made in M.C.O.P.No.7328 of 2014 on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellants/claimants filed M.C.O.P.No.7328 of 2014 on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.30,00,000/- as compensation for the death of one Sujatha, mother of the appellants 1 to 3 and daughter of the 4th appellant, who died in the accident that took place on 07.10.2014.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the container lorry belonging to the 1st respondent and since the insurance policy was not in force on the date of accident, exonerated the 2nd respondent-Insurance Company from its liability and directed the 1st respondent to pay a sum of Rs.17,13,750/- as compensation to the appellants/claimants.

4.Challenging the portion of the award exonerating the 2nd respondent-Insurance Company from its liability and not being satisfied with the amounts granted by the award dated 26.04.2018 made in M.C.O.P.No.5213 of 2015, the appellants/claimants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal failed to see that the 2nd respondent-Insurance Company did not intimate the dishonour of cheque and cancellation of policy to the 1st respondent/owner of the vehicle and concerned RTO. The 2nd respondent failed to prove that Ex.R3, letter was sent to the 1st respondent as well as RTO, Chennai Central. The Tribunal failed to see that the 2nd respondent has not filed any proof for having served the letter of cancellation of policy to 1st respondent as well as to the RTO and erred in relying on the said documents and exonerating the 2nd respondent-Insurance Company. Ex.P22, the Motor Vehicle Inspector's report shows that the Insurance policy was in force at the time of accident. The Tribunal failed to appreciate the proof affidavit and cross examination of R.W.1 with regard to insurance policy. The 2nd respondent has given different number and date with regard to cover note and policy issued to the 1st respondent. The learned counsel appearing for the appellants further contended that the deceased was 39 years at the time of accident and the Tribunal erred in fixing the age of the deceased as 40 years and granting only 25% enhancement, instead of 40% enhancement for future prospects. The amounts awarded by the Tribunal under different heads are also meager and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that the policy issued by the 1st respondent was dishonoured and immediately after dishonour of the cheque, the 2nd respondent cancelled the policy and intimated the same to the 1st respondent as well as to the RTO. Further, by Ex.R4-Samadhan Report, issued notice and intimated the 1st respondent as well as the RTO about cancellation of the policy. By such cancellation, there was no insurance policy in force at the time of accident. The Tribunal has appreciated the evidence let in by the 2nd respondent-Insurance Company in proper perspective and exonerated the 2nd respondent from its liability. The Tribunal have given valid reason for giving such a finding. In any event, the amounts awarded by the Tribunal are excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on records.

8.From the materials available on record, it is seen that the 1st respondent issued a cheque for premium amount and the 2nd respondent issued policy. The cheque was dishonoured on presentation. According to the 2nd respondent-Insurance Company, the dishonour of cheque and cancellation of policy was intimated to the 1st respondent and RTO by Ex.R3. From the materials on record, it is seen that the 2nd respondent-Insurance Company has not produced proof for having sent the said letter and also has not filed any acknowledgement to show that the 1st respondent as well as the RTO have received the letter of cancellation. Further Ex.P22, the report of the Motor Vehicle Inspector shows that the Insurance policy was in force on the date of accident. The Tribunal failed to see that 2nd respondent-Insurance Company did not produce any materials to show that Ex.R3 was sent and received by the 1st respondent and RTO. The Tribunal also failed to consider Ex.P22, the report of the Motor Vehicle Inspector, wherein it has been stated that the insurance policy was in force at the time of accident. For the above reasons, the finding of the Tribunal exonerating the 2nd respondent-Insurance Company from its liability to pay the compensation is set aside and both the respondents are jointly and severally liable to pay the compensation to the appellants.

9.As far as the quantum of compensation is concerned, the contention of the learned counsel appearing for the appellants is that the deceased was aged only 39 years and the Tribunal erroneously fixed her age as 40 years and granted only 25% enhancement towards future prospects. The said contention is contrary to the materials on record. In the post mortem report and death certificate, marked as Exs.P2 & P3, the age of the deceased is shown as 40 years. In view of the same, the Tribunal has fixed the age of the deceased as 40 years and granted 25% enhancement for future prospects. The same is correct and there is no reason to modify the said finding. As far as the quantum of compensation granted by the Tribunal is concerned, the Tribunal has granted excessive amounts under conventional heads. Hence, the appellants are not entitled for any enhancement.

10.In the result, the appeal is partly allowed and both the respondents are jointly and severally directed to deposit the sum of Rs.17,13,750/- granted by the Tribunal as compensation along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.7328 of 2014. On such deposit, the appellants are permitted to withdraw their share of the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

gsa

To

The Judge,
V Small Causes Court,
(Motor Accident Claims Tribunal), Chennai.

Copy To : The Record Keeper,
V.R. Section, High Court, Chennai.

+1cc to Mr.K.Babu, Advocate SR.No.3206

C.M.A.No.2873 of 2018

VG I(CO)
GMY(06/06/2019)