IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1736 of 2013

The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office,
Nethaji Road,
Cuddalore. ... Appellant /2nd Respondent

Vs

1. Vennila
2. Minor Harikaran
3. Minor Vaishnavi
4. Anjalai ... Respondent 1 to 4/Petitioner
5. M.Sudhakar ... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.06.2012 made in MCOP.No.344 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

For appellant : Mr.S.Arunkumar

For respondents: Mr.R.V.Dinesh kumar - R1 to R4
R5 - unclaimed

J U D G M E N T

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the insurance company challenging the award dated 29.06.2012 passed by the Motor Accident Claims Tribunal Principal District Judge, Cuddalore in MCOP.No.344 of 2010.

2. A person by name Sankar, died on 20.10.2009 as a result of an accident caused by a car bearing registration No. TN 10 D 8588 owned by the 5th respondent and insured with the appellant/insurance company. The claimants are the wife, two minor children and the mother of the deceased, who are the respondents 1 to 4 herein. They have preferred a claim before the Motor Accident Claims Tribunal in MCOP. No.344 of 2010 seeking compensation for the death of Sankar.

3. The Motor Accident Claims Tribunal, under the impugned award dated 29.06.2012 passed in MCOP.No.344 of 2012, directed the appellant/insurance company and 5th respondent/owner of the vehicle to pay the claimants a compensation of Rs.8,99,000/-

together with interest and costs as detailed hereunder:-

Sl.No.	Heads	Awarded by the Tribunal (Rs.)
1	Loss of income	8,64,000/-
2	Loss of love and affection	20,000/-
3	Funeral expenses	2,500/-
4	Transportation	2,500/-
5	Loss of consortium	10,000/-
	Total	8,99,000/-

4. The only ground raised by the appellant/insurance company in this appeal is that the Tribunal has erroneously mulcted the liability on them, despite the cancellation of insurance policy by them prior to the date of the accident. According to them, the insurance policy was cancelled through a notice dated 02.07.2009 which was marked as Ex.R5 before the Tribunal.

5. Heard Mr.S.Arunkumar, learned counsel for the appellant and Mr.R.V.Dinesh kumar, learned counsel for the respondents 1 to 4/claimants and there is no representation on behalf of the 5th respondent.

6. The appellant/insurance Company has not challenged the quantum of compensation awarded to the claimants under the impugned award. As regards the contention raised by the appellant/insurance company that as on the date of the accident, there was no insurance coverage for the subject vehicle, the Tribunal has duly considered the same as seen from the impugned award. Excepting for filing the notice, dated 02.07.2009, which was marked as Ex.R5 before the Tribunal, the appellant/insurance company has not filed any acknowledgment card to establish whether the fifth respondent who is the insured received the said notice or not. Therefore, the appellant/insurance company has not established before the Tribunal that the intimation of cancellation of the insurance policy to the insured (owner of the vehicle) was done prior to the date of the accident. Since they have not established the same, the Tribunal has rightly awarded a compensation to the claimants both against the insured as well as the insurer.

7. Based on the evidence and materials available on record, the Tribunal has rightly awarded pay and recovery rights to the appellant/insurance.

Conclusion:

8. For the foregoing reasons, there is no merit in this appeal. Accordingly, the appeal shall stand dismissed. No costs.

9. The Appellant/Insurance company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal

after deducting the amount, if any, already deposited to the credit of MCOP.No.344 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment.

10. The appellant/insurance company is permitted to recover the amount deposited by the fifth respondent/owner of the vehicle by filing an execution petition before the same Tribunal in accordance with law.

11. On such deposit being made, the Tribunal is directed to transfer the respective shares of the award amount to the bank account of the respondents 1 and 4/claimants 1 and 4 respectively through RTGS within a period of two weeks thereafter.

12. Insofar as the respective shares of the second and third respondents/minor claimants are concerned, the same shall be deposited in a fixed deposit in any one of the Nationalized Banks till they attain the age of majority, and till such time, the interest accrued thereon shall be withdrawn by the first Appellant/guardian of the minor claimants once in three months, directly from the Bank. If the minor claimants have attained the age of majority, it is open for them to file a formal petition before the Tribunal to get their share of apportionment.

Sd/-
Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor accident Claims Tribunal
Principal District Judge, Cuddalore.

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

C.M.A.No.1736 of 2013

GMR(CO)
GN(27/04/2021)