IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.200 OF 2016
AND
C.M.P.NO.1725 OF 2016

United India Insurance Co.Ltd.,
No.2, Dr.Sankaran Salai,
Namakkal. .. Appellant

Vs.

1.Vellaiyammal
2.Sakthivel
3.Chettiyannan .. Respondents

Prayer:
This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 15.04.2015 made in M.C.O.P.No.715 of 2013 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellant : Mr.S.Arun kumar

For Respondents : Mr.A.R.Suresh [For R1 & R2]
No appearance for R3

JUDGMENT

The civil miscellaneous appeal is filed against the judgment and decree dated 15.04.2015 passed in M.C.O.P.No.715 of 2013.

2. The United India Insurance company filed an appeal mainly on the ground that the driver, who was driving the Vehicle, which met with an accident, was not possessing a valid driving license and the driving license expired on 20.10.2011 and the accident occurred on 27.03.2013. However, the Tribunal erroneously made a finding that it is only a renewal of driving license and on that ground, the compensation cannot be denied and Pay and Recovery also need not be ordered.

3. This Court is of the considered opinion that the accident occurred on 27.03.2013 and the factum regarding the accident was established by the claimant. During the cross examination of documents and witnesses, the Tribunal found that the Driver, who was driving the vehicle, was not possessing a valid driving license and his driving license expired on 20.10.2011. This being the factum established, the Tribunal ought to have granted an order of Pay and Recovery, enabling the Insurance company to recover the compensation amount from the owner of the vehicle. Contrarily, the Tribunal granted compensation, but not the Pay and Recovery order. Thus, the Insurance company preferred the present appeal.

4. The learned counsel appearing on behalf of the respondent/claimants also contended that is a case for suo motu enhancement in view of the fact that the deceased boy was aged about 13 years and school going at that point of time and the Tribunal has granted a sum of Rs.4,35,000/- in total and such compensation with reference to the accident of the year 2013 is inadequate and cannot be construed as fair compensation.

5. Admittedly, the claimant has not preferred any appeal for enhancement.

6. This Court is of the considered opinion that the accident occurred on account of the negligence committed by the driver of the insured vehicle and accordingly, the appellant/Insurance company is liable to pay compensation. However, during the course of adjudication, the Insurance company could able to establish that the driver of the vehicle, which met with an accident, was not possessing the valid driving license. Thus, the Tribunal ought to have granted an order of Pay and Recovery and this Court is of the considered opinion that as far as the enhancement of compensation is concerned, undoubtedly, the deceased was 13 years old at the time of accident and was a school going boy. This being the factum, this Court is not inclined to interfere with the other heads and inclined to grant a total compensation of a sum of Rs.5,00,000/-(Rupees Five Lakhs only), which would meet the ends of justice. Accordingly, the total compensation of Rs.4,35,000/- is enhanced to a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and the claimants are entitled to get the said compensation along with the interest at the rate of 7.5% per annum, so also, the appellant/Insurance company is permitted to file an Execution Petition to recover the compensation from the owner of the vehicle.

7. Accordingly, the judgment and decree dated 15.04.2015 passed in M.C.O.P.No.715 of 2013 is modified and consequently, C.M.A.No.200 of 2016 stands allowed in part. The Appellant/ Insurance company is permitted to file an Execution Petition to

recover the compensation from the owner of the vehicle. With reference to the enhanced compensation, the appellant is directed to deposit the same along with the interest at the rate of 7.5% per annum, if not already deposited, within a period of (6) six weeks from the date of receipt of a copy of this judgment and on such receipt, the respondent claimants are permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Kak

To

1. The Principal District Judge,
(Motor Accidents Claims Tribunal),
Namakkal.

Copy To

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

+1cc to M/s.A.R.Suresh, Advocate, S.R.No.23278
+1cc to M/s.S.Arunkumar, Advocate, S.R.No.22960

C.M.A.No.200 of 2016

VSNII(CO)
CS/17/04/2021