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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.581 of 2016

and

C,M.P.No.4835 of 2016

The United India Insurance Co.Ltd.,
3, Whites Road, III Floor,
Royapettah, Chennai - 14.

...Appellant/2nd Respondent

/versus/

1. E.Santha Kumari

2. E.Gundasekaran

3. E.Ramakrishnan

4. E.Suganthi

5. E.Vijayalakshmi

6. E. Rahini

7. E.Ramanathan

..Respondents 1 to 7/Claimants

8. K.Boopathy

...8th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the judgement and decree dated 18.11.2014 in M.C.O.P.No. 567 of 2009 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.Krishnamoorthy

For Respondents: Mr.P. Chinnaraj
for R1 & R7
R3 - Exparte.



J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the Insurance Company being aggrieved over the amount of compensation awarded by the Tribunal under various heads which the legal heirs of the claimant are not entitled.

2. The accident occurred on 30.11.2008. While travelling in an auto on 30.11.2008, the deceased has sustained fracture on his right humerus due to the rash and negligent driving of the auto driver. The injured person filed a claim petition seeking Rs.3,00,000/- as compensation under various heads. In the claim petition it is contended that for the injuries sustained, he was admitted in the Government Hospital on 30.11.2008 and he was there till 30.12.2008 and was unable to move and do any work. He has claimed a sum of Rs.19,000/- towards loss of earning for the period from 30.11.2008 to 30.01.2009. He has claimed a total sum of Rs.3,00,000/- towards other Expenses incurred for treatment, pain and suffering, permanent disability and loss of earning capacity. The Insurance Company contested the claim on the ground that the Auto driver had no valid driving licence. In the Additional Counter filed by the Insurance Company, it is stated that the first respondent Auto had violated the condition of the permit. Therefore, due to violation of the permit, the claimant is not entitled for the Insurance coverage.

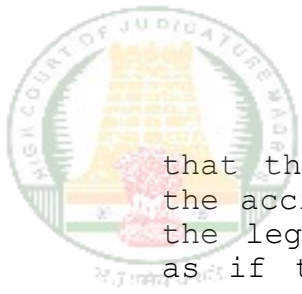
3. It has been specially stated that RTO, Chennai permitted the first respondent Auto to ply only within the city of Chennai and the same was valid from 31.05.2006 to 23.11.2010. The Auto capsized along with the passengers while plying at old Mahabalipuram, violating the permit condition. The driving licence of auto driver expired on 21.04.2008 and the said accident took place on 30.11.2008. For the said reason also, the Insurance Company sought for dismissal of the claim petition. The Tribunal, while considering the claim petition and the counter, has raised the following three points.

(i) Whether the petitioners sustained injuries due to the rash and negligent driving of the first respondent vehicle?

(ii) Whether the respondents are liable to pay the compensation?

(iii) Whether the petitioners are entitled for the compensation, if it is so, what is the compensation?

4. On a perusal of the award passed by the Tribunal, this Court finds that the Tribunal has taken note of the other fact



that the claimant died on 11.09.2009, that is, 10 months after the accident and 9 months after filing of the claim petition and the legal heirs of the claimant are entitled for compensation, as if the claimant died due to the road accident. Under such wrong premises, the Tribunal has awarded a sum of Rs.3,97,000/- under the various heads. The errors in the award are as follows;

In the claim petition, injured has sought for Rs.19,000/- towards loss of earning between 30.11.2008 to 30.01.2009, whereas, the Tribunal awarded a sum of Rs.65,000/- towards loss of income without any basic record to show the income or the alleged loss of income incurred by the legal heirs of the claimant. Towards pain and suffering to the family members, the Tribunal has awarded Rs.1,00,000/-. The law is to compensate the injured fairly for the pain and suffering and not the dependants. When the claimant has sought Rs.40,000/- as compensation towards pain and suffering, the Tribunal has awarded Rs.1,00,000/-. Under the head of loss of love and affection and mental agony, the Tribunal has awarded Rs.1,00,000/-. When there is no connection between the accident and the death, which happened 10 months after the accident, the Tribunal has gone to the extent of compensating the dependants for funeral expenses a sum of Rs.25,000/-.

5. Since the claimant died pending claim petition, the claim towards loss of amenity and disability dies with the claimant. The Tribunal linking claimant's death after 10 months of the accident had awarded Rs.25,000/- compensation for funeral expenses also awarded for love and affection and pain and sufferings to the family members is contrary to the materials available on records. Hence, the award passed by the Tribunal requires modification and interference.

Medical Expenses		Rs.7,000/-
Transport expenses	-	Rs.25,000/
Extra Nourishment	-	Rs.25,000/
Attender Charges	-	Rs.25,000/
Damages for clothes		Rs.1,000/-
Loss of Income	-	Rs.19,000/
Total		Rs.1,02,000/-



6. This Court finds that pursuant to the interim order passed by this Court, the Insurance Company has already deposited the entire amount with interest and the claimants were permitted to withdraw 50% of amount. In such circumstances, while modifying the award as above, this Court is of the view that since the claimants have already withdrawn 50% of the amount, the same shall not be recovered by the Insurance Company. The balance money kept in deposit shall be withdrawn by the Insurance Company. The Civil Miscellaneous Appeal is partly allowed. The right of recovery from the vehicle owner conferred to the Insurance Company by the Tribunal is hereby confirmed. No order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
VI Judge, Court of Small Causes at Chennai.

C.M.A.No.581 of 2016
and
C,M.P.No.4835 of 2016

RSV(CO)
SP(17/08/2021)