

(2013) 09 MAD CK 0280
In the Madras High Court
Case No : C.M.A. No. 2908 of 2009

A. Muthu (Since Dceased), A. Arumugam and A. Vasantha	APPELLANT
Vs	
V.N.S. Sethu (Since Deceased), The New India Assurance Co. Ltd. and Vijayakumar	RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0280

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : K. Varadhakamaraj, for the Appellant; R. Sivakumar for R2 and Mr. M. Dayalan for R3, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The appellants/claimants have preferred the present appeal against the judgment and decree dated 23.09.2008, made in M.C.O.P. No. 3666 of 2001, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. V, Chennai. The short facts of the case are as follows:-

The first petitioner namely A. Muthu had originally filed the claim petition in M.C.O.P. No. 3666 of 2001, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. V, Chennai, against the respondents herein, claiming a sum of Rs. 2,00,000/- as compensation, for the injuries sustained by him in a motor vehicle accident. Subsequently, after he died the legal heirs of the deceased had filed enhanced claim for a sum of Rs. 4,00,000/-.

2. It was submitted that on 28.06.2001, when the deceased Muthu was riding the motorcycle bearing registration No. TN07 V4559, along with one Anandhi as a pillion rider, on the East Coast Road and at about 15.30 hours, when it was near Muttukadu Check Post, the first respondent's car bearing registration No. TN01 V0636, coming in the opposite direction and driven in a rash and negligent manner by it's driver dashed against the motorcycle and caused the accident. As

a result, the first petitioner had sustained injuries and had died subsequently. Hence, the legal heirs of the deceased had filed the claim petition against the respondents 1 and 2, who are the owner and insurer of the car bearing registration No. TN01 V0636. As the first respondent died during pending of the claim petition, the third respondent was impleaded as per order dated 17.09.2003 in M.P. No. 2661 of 2003.

3. The second respondent Insurance Company, in their counter statement, had submitted that the driver of the first respondent's car did not have a valid licence and that the car was not covered under a valid policy of insurance at the time of accident. The averments made in the claim regarding age, income and occupation, injuries sustained treatment taken and disability was also not admitted. It was contended that the accident was caused due to the negligence of the motorcyclist and as such the claim was bad for non-joinder of the owner and insurer of the motorcycle as necessary parties in the claim. It was submitted that the claim was excessive.

4. The third respondent in his counter statement had denied the averments in the claim regarding age, income and occupation of the first petitioner as well as the manner of accident. It was submitted that as the car was insured with the second respondent, only the second respondent is liable to pay compensation.

5. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Whether the accident was caused due to the rash and negligent driving by the driver of the car bearing registration No. TN01 V0636? and

ii. Is the petitioner entitled to get compensation? If so, what is the quantum?

6. In the same accident, another claim has been filed by the pillion rider of the motorcycle namely Anandhi in M.C.O.P. No. 3665 of 2001 claiming compensation from the same respondents for the injuries sustained by her. On the request made by the counsels for their respective petitioners, through a joint memo, a joint trial was conducted a common evidence was recorded. The petitioner in M.C.O.P. No. 3665 of 2001 was examined as P.W. 1 and the second petitioner in M.C.O.P. No. 3666 of 2001 was examined as P.W. 2, one Dr. Thiagarajan was examined as P.W. 3 and one Dr. Saravana Bhavanandam was examined as P.W. 4 and 12 documents were marked as Exs. P1 to P12 namely FIR, discharge summary note books, discharge summaries, continuation of medical treatment record, medical bills, death and legal heir certificate, expert medical opinion, disability certificate and X"ray. On the respondents' side no witness was examined and no document was marked.

7. The petitioners had stated that on 28.06.2001, at about 15.30 hours when they were proceeding in the motorcycle bearing registration No. TN07 V4559, along with a pillion rider on the East Coast Road and when the vehicle was near Muttukadu Check Post, the first respondent's car bearing registration No. TN01

V0636, coming in the opposite direction and driven in a negligent manner had dashed against the motorcycle and caused the accident. P.W. 1 had also adduced evidence that the accident had been caused by the rash and negligent driving of the first respondent's car driver.

8. P.W. 2 had also adduced evidence on similar lines to the evidence of P.W. 1 regarding manner of accident and in support of their evidence, they had marked Exs. P1 to P. 12. The Tribunal, on scrutiny of Ex. P1, had observed that FIR had been registered against the car driver based on the complaint given by P.W. 1. The Tribunal, on observing that the car driver had not lodged any complaint to prove that the accident had been caused by the negligence of the motorcyclist and on observing that the respondents had not let in any oral or documentary evidence to rebut the claim of P.Ws. 1 and P.W. 2, held that the accident had been caused by the rash and negligent driving by the driver of the car and hence held that the second and third respondents are liable to pay compensation to the petitioners.

9. P.W. 2 had deposed that due to the accident his son had sustained fracture in the right leg and also sustained head injury and multiple injuries on his body and was treated in Government Royapettah Hospital, as an inpatient and later took treatment as an outpatient, and that on 22.07.2003, the health condition of his son deteriorated and he was admitted in A.G. Hospital, Tambaram in Intensive Care Unit on 01.08.2003 as the Doctor had stated that his son could not be saved, he was taken by ambulance to Government General Hospital, but he succumbed to his injuries on the way to hospital. He deposed that the deceased was aged about 22 years and was earning Rs. 5,000/- as a driver.

10. P.W. 4 Dr. Saravana Bhavanandam, had deposed that according to him, the injured had died due to septicemia and in support of his evidence he had marked the opinion certificate given by him as Ex. P10. He had however admitted that only the doctor, who had given him treatment could give the opinion for the cause of death. On scrutiny of Ex. P8 discharge summary, it is seen that at the time of discharge, it was found by the Doctors that the petitioner is cured of the injury and discharged. Ex. P9 is the discharge summary issued by AG Hospital and it is mentioned in Ex. P9 that the petitioner was admitted in hospital on 22.07.2003. Though it is mentioned in Ex. P9 that he was given continuous treatment, it is mentioned that it is only post traumatic complication and there is no specific complaint mentioned in Ex. P9. However, the Tribunal opined that just because it has been mentioned in Ex. P9 that the petitioner had post traumatic complication, it cannot be accepted that there is proximity between the injury and his death.

11. The Tribunal had observed that no continuous treatment records were filed and there was no postmortem conducted. The Tribunal had observed from Ex. P8 that the then injured was discharged from the hospital in a good condition and that P.W. 4 had admitted that he had never seen the injured/deceased for giving opinion as per Ex. P10. The Doctor had not stated emphatically that the injured/

deceased had died only due to injuries sustained in the accident. He had further stated that he had not seen any of the medical records to appreciate traumatic complications. The Tribunal had opined that the petitioner had failed to prove that the first petitioner in the O.P. died as a result of the injuries sustained in the accident. The Tribunal had further observed that no documents had been filed by the petitioners 2 and 3 to prove the actual expenses incurred by them for treatment. Hence, the Tribunal, on considering that the injured/deceased was treated in Royapettah Hospital for nearly one month, had opined that the claimants, who are the parents of the injured/deceased would have incurred incidental expenses due to the accident and hence awarded a sum of Rs. 30,000/- as compensation. The Tribunal had directed the second respondent Insurance Company to deposit the said sum together with interest at the rate of 7.5% from the date of claim petition till the date of payment of compensation with costs, within a period of one month from the date of it's order.

12. Not being satisfied by the award passed by the Tribunal, the second and third claimants have preferred the present appeal.

13. The learned counsel appearing for the appellants has contended in the appeal that the Tribunal failed to note the records marked as Exs. P8 and P10, which clearly reveal that the death was due to accidental injuries. It is contended that the Tribunal, without any basis, had rejected the contents in Exs. P9 and P10. Though Ex. P9 clearly stated that the deceased died due to post traumatic complications, the Tribunal had disbelieved the contents of Ex. P9, without any basis. It is also contended that the Tribunal had failed to note that P.W. 4 Doctor in his evidence had clearly stated that the deceased died due to accidental injuries and failed to note that the deceased had taken treatment in four hospitals and taken continuous treatment.

14. It is contended that the Tribunal ought to have believed that the deceased died due to accidental injuries and granted an award of Rs. 3,30,000/- under the head pecuniary loss. It is also contended that the Tribunal failed to grant any amount under the head of conventional damages viz., loss of love and affection, funeral expenses and loss of expectation of life. Hence, it is prayed for grant of additional compensation of Rs. 3,70,000/-.

15. The learned counsel appearing for the Insurance Company has argued that the deceased had sustained simple injuries and he had undergone treatment for a short period at Government Hospital, Royapettah. After coming to his normal health, the injured claimant had expired after about two years from the date of accident and as such it is evident that the injury had not led to his death.

16. On verifying the factual position of the case and arguments advanced by the leaned counsels on either side and on perusing the documents marked by the claimants, it is evident that the claimant had sustained skull injury and that he had undergone treatment at Government Hospital and subsequently at A.G. Hospital, wherein he was admitted on 22.07.2003 for further medical treatment.

Further, as per medical records, it is seen that the injured claimant underwent treatment as an inpatient for one month at Royapettah Hospital. As per Ex. P9, medical discharge summary, it is seen that the injured was given continuous medical treatment and the records reveal that the injured had developed traumatic complications. Considering this aspect, it is probable that the injuries sustained by him had led to his death. Therefore, this Court treats the case as a fatal case in order to meet the ends of justice and directs the second respondent Insurance Company to deposit the appeal value amount i.e., a sum of Rs. 3,70,000/- as compensation to the claimants, to the credit of M.C.O.P. No. 3666 of 2001, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. V, Chennai, within a period of four weeks, from the date of receipt of a copy of this Order, as it is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation.

17. After such a deposit having been made, it is open to the appellants/claimants to withdraw the compensation amount with accrued interest thereon, equally, lying in the credit of M.C.O.P. No. 3666 of 2001, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. V, Chennai, after filing a memo along with a copy of this Order. In the result, this civil miscellaneous appeal is allowed and the Judgment and decree dated 23.09.2008, made in M.C.O.P. No. 3666 of 2001, on the file of the Motor Accident Claims Tribunal, Fast Track Court No. V, Chennai, is modified. Consequently, connected miscellaneous petition is closed. There is no order as to costs.