
(2013) 08 MAD CK 0214
In the Madras High Court
Case No : C.M.A. No. 2082 of 2008

Branch Manager, United India Insurance Co. Ltd.	APPELLANT
Vs	
Jayabalan (deceased) and Others	RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0214

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

Bench : Single Bench

Advocate : S. Arun Kumar, for the Appellant; R. Marudhachalamurthy (for R2, R4 to R6), Died R1 and Not Ready Notice R3, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The respondents herein/claimants have filed the claim petition in M.C.O.P. No. 92 of 2004, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankari, against the appellant herein and owner of the vehicle bearing Registration No. TN-01-J-8754, stating that when their son Prakash was travelling along with his friends in a Maruti Van bearing Registration No. TN-01-J-8754 on 05.05.2004 on the Bhavani Main Road, the driver of the car drove it in a reckless manner and as a result the Maruti Van capsized and the said Prakash had succumbed to his injuries. Hence, the claimants have filed the claim against the respondents and claimed compensation of a sum of Rs. 10,00,000/-. The Insurance Company had filed a counter statement and resisted the claim petition. The respondent denied the averments in the claim regarding manner of accident, age, income and occupation of the (deceased). It was submitted that the claimants were not depending on the income of the deceased.

2. On verifying the averments of both the parties, the Tribunal had framed two issues namely: (1) Whether the driver of the 1st respondent had committed the said accident by his rash and negligent driving? and (2) If so, what is the quantum of compensation?

3. On the side of the claimants, two witnesses were examined and 12 documents were marked as Exhibits P1 to P12 namely: Ex.P1-F.I.R.; Ex.P2-Motor Vehicle Inspector's report; Ex.P3-Postmortem report; Ex.P4-Charge sheet; Ex.P5-Insurance policy; Ex.P6-Educational qualification particulars; Ex.P7-Registration Certificate; Ex.P8-Death Certificate; Ex.P9-Legal heir certificate; Ex.P10-Licence for the computer educational institution and branches in Tamilnadu; Ex.P11-Receipt for getting licence for computer institution; and Ex.P12-Income Certificate of (deceased) Prakash. On the side of the respondents, no witness was examined and no document was marked.

4. PW1, had adduced evidence that his son Prakash was travelling along with his three friends and driver in a Maruthi Van bearing Registration No. TN-01-J-8754, on 05.05.2004, at about 6.00 a.m., on the Bhavani Main Road and at that point of time, the driver had applied the brake suddenly and as a result, the van had capsized. His son had sustained head injuries and died on the spot and the others had sustained injuries.

5. PW1 further stated that at the time of accident, his son was aged 28 years and he was earning Rs. 10,000/- as salary from the Bharathiar University Computer Centre.

6. PW2, Employer of the deceased had adduced evidence that he had paid a sum of Rs. 20,000/- per month as salary to the deceased, who was the Manager of his Computer Centre.

7. On recording the evidence of the witnesses and on perusing the documents marked by the claimants, the Tribunal had awarded a sum of Rs. 6,65,000/- with interest at the rate of 7.5% per annum.

8. Aggrieved by the said award and decree, the Insurance Company has filed the above appeal. The highly competent counsel argued that the deceased was a bachelor and as such the claimants are not depending on the income of the deceased. The vehicle was covered under an act policy and as such the occupants of the vehicle are not covered under the act policy. The Tribunal had fixed the income of the deceased at Rs. 10,000/- per month arbitrarily, without any authenticated documents.

9. The learned counsel for the claimants submitted that the deceased was aged about 28 years and he was the Manager of the computer centre and he was earning Rs. 20,000/- per month and the same had been proved through his employer, who had adduced evidence before the trial Court. Therefore, the quantum of compensation is not on the higher side. Besides this, the deceased was qualified in computers. The aged parents of the deceased were depending upon the income of the deceased, who was the breadwinner of the family.

10. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions

arrived at regarding negligence, liability and quantum of compensation. This Court is of the further view that as per the evidence of the claimants, the deceased was a qualified computer personnel and he was aged about 28 years. Further, he was the earning member of his family as is seen from scrutiny of Ex.P12-Income Certificate. Therefore, it is evident that the claimants have lost their earning son in the said accident. As such, the quantum of compensation is not on the higher side. Regarding negligence and liability, the claimant had marked copy of Insurance policy and Charge sheet, which had been levelled against the driver of the offending vehicle. Therefore, this Court is not inclined to entertain the appeal. This Court directed the appellant herein to deposit a sum of Rs. 5,00,000/- with proportionate interest. Now, this Court directs the appellant to carry out the trial Court's order, by way of depositing the balance compensation amount, with accrued interest thereon, as per Tribunal findings, within a period of four weeks from the date of receipt of this order.

11. The learned counsel for the claimants informed to this Court that the 1st claimant i.e. father of the deceased had expired while this appeal was pending. Hence, the legal heirs have been brought on record. After such deposit has been made, it is open to the 2nd claimant i.e. mother of the deceased is entitled to receive her apportioned share amount, with accrued interest thereon. The 1st claimant's share amount with accrued interest thereon, shall be apportioned equally among the legal heirs, including the 2nd claimant. The claimants, after filing a memo along with a copy of this order are permitted to withdraw their apportioned compensation lying in the credit of M.C.O.P. No. 92 of 2004, on the file of Motor Accidents Claims Tribunal, Subordinate Court, Sankari. In the result, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed in M.C.O.P. No. 92 of 2004, dated 04.07.2006, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankari, is confirmed. No costs.