

(2011) 03 MAD CK 0559

In the Madras High Court

Case No : C.M.A. No. 1059 of 2008 and M.P. No. 1 of 2008

Iffco-Tokio General Ins. Co. Ltd.

APPELLANT

Vs

N. Kalarani and Others

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0559

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; V. Nicholas, for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant Iffco-Tokio General Ins. Co. Ltd., against the award and decree made in M.C.O.P. No. 1820 of 2006, dated 12.10.2007, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Special Court for E.C. Act Cases, Coimbatore.

2. The short facts of the case are as follows:

On 05.06.2006, at around 4.00 p.m., the deceased Nagarajan accompanied by his son N. Madeswaran as pillion rider, was riding his motorcycle (Hero Honda Splendor) bearing Registration No. TN38-F-9558 from Teacher's Colony, 1st Street from East to West and when the vehicle was near the third street junction, the "yamaha" motorcycle bearing Registration No. TN30-2300, coming from North to South and ridden by its rider in a rash and negligent manner violently hit against the motorcycle bearing Registration No. TN38-F-9558. Due to the impact, the (deceased) Nagarajan sustained grievous injuries and was admitted at K.G. Hospital, wherein he received treatment from 05.06.2006 to 06.07.2006 but on 06.07.2006, the (deceased) Nagarajan died during treatment. The deceased Nagarajan was aged about 43 years and was active hale and healthy at

the time of accident. He was employed as Supervisor at Prestech Engineering India (P) Ltd., and was earning a salary of Rs. 10,000/- per month. Hence, the Petitioners, who are the legal-heirs of the deceased have filed the claim for Rs. 30,00,000/- against the Respondents. The first Respondent is the rider of the "yamaha" motorcycle, the second Respondent is its owner and the third Respondent is its insurer.

3. The third Respondent, in his counter has resisted the claim denying the averments in the claim regarding the manner of accident. It has been stated that the accident had been caused by the rash and negligent riding by the rider of the motorcycle bearing Registration No. TN38-F-9558. It was stated that the first Respondent had only a Learner's licence at the time of accident. Further, there is no indication in the Motor Vehicle Inspector's Report for the vehicle No. TN30-2300 that the symbol "L" was displayed on the vehicle as is required by law. As such it was stated that the first Respondent had no valid effective licence to drive the motorcycle with gear on the date of accident. The second Respondent having permitted the first Respondent to ride his motorcycle without a valid and effective licence, the second Respondent has violated the explicit conditions incorporated in the policy. The third Respondent has also denied the averments in the claim regarding the age, income and occupation of the deceased Nagarajan. It was also stated that the claim was excessive.

4. The first Respondent has stated that he has a valid driving licence to drive the motorcycle and that the (deceased) Nagarajan did not follow traffic rules and hence the accident had occurred.

5. After hearing the averments of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Whether the accident was caused due to the rash and negligent driving of the yamaha motorcycle bearing Registration No. TN-30-2300 by the first Respondent?

(ii) Whether the Petitioners are entitled for compensation, if so, what amount?

6. The first Petitioner, Kalarani wife of deceased was examined as PW1 and her son was examined as PW2 and 14 documents were marked as Exs. P1 to P14. PW1 adduced evidence that was in consonance with the version of accident as mentioned in the claim. The First Information Report was given by one Tamilarasan and the final report is marked as Ex.P2. The Motor Vehicle Inspector's Report for both the vehicles were marked as Ex.P3 and Ex.P4. The rough sketch had been marked as Ex.P5. PW2, the son of the deceased, who had been travelling along with the deceased adduced evidence that his father drove the vehicle on the left side of street at a slow speed. Though the first Respondent, the rider of the vehicle has stated that he had not been negligent, he had not come forward to give evidence as a witness, in support of his contention. The Tribunal were not inclined to accept the contention of the third Respondent that contributory negligence must be taken as a factor as the accident had occurred at the junction of two streets. The Tribunal was of the

opinion that if a accident happens at a junction, it does not mean that the drivers of both vehicles involved in the accident had been negligent. As no contra evidence had been let in by the Respondents side to disprove the evidence of PW2, the Tribunal held that the accident was caused due to rash and negligent driving of the first Respondent.

7. The Tribunal after scrutiny of documentary evidence were of the opinion that the first and second Respondents had violated the conditions of insurance policy marked Ex.R1 as the first Respondent's vehicle did not carry a "L" board which was mandatory as the rider of the first Respondent's vehicle only had a learners licence. Hence, the Tribunal held that the compensation assessed should be paid by the third opposite party, which he can recover from the first and second opposite parties by filing execution petition with the Tribunal. Though PW1 had stated that the monthly salary of her deceased husband was Rs. 10,000/- there was no documentary evidence to back this claim. However, the Tribunal considering Ex.P12, which shows that the deceased had been appointed as umpire in a cricket match by the Tamil Nadu Cricket Association and also considering Ex.P9, the expenditure bills given by K.G. Hospital, wherein it is shown that the total expenditure incurred for medical treatment for the deceased for one month comes to Rs. 4,51,713/- which includes the medical bills for Rs. 3,56,930/-, were of the opinion that the Petitioners had the financial capacity to spend a sum of Rs. 4,51,713/- towards medical expenses in a short span of time i.e., one month. Hence, the Tribunal held that the deceased would have earned Rs. 7,500/- per month. Adopting a multiplier of "15" relevant to the age of the deceased (42/43 years), the Tribunal awarded a compensation of Rs. 9,00,000/- as loss of income sustained by the Petitioners. (Rs. 7,500 $\times$ 2/3 $\times$ 12 $\times$ 15). The Tribunal further awarded Rs. 4,60,000/- towards medical expenses including nourishment, Rs. 5,000/- for transport expenses, Rs. 5,000/- for funeral expenses, Rs. 10,000/- for loss of consortium, Rs. 5,000/- for loss of love and affection.

In total, the Tribunal awarded a compensation of Rs. 13,85,000/-together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and directed the third Respondent to deposit the amount. The third Respondent was permitted to recover the amount from the second Respondent by filing execution petition directly before the Tribunal.

8. Aggrieved with the award passed by the Tribunal, the third Respondent, Iffco-Tokio General Insurance Co. Ltd., Coimbatore has filed the present appeal to set aside the order passed by the Tribunal.

9. The learned Counsel for the Appellant has argued that the lower Court has grossly erred in fixing the income of the deceased at Rs. 7,500/- per month and dependency at Rs. 5,000/- per month without any credible evidence for such amounts. It was also pointed out that the lower Court had erred in assuming that such income was possible because of proof of medical expenses. It was also pointed out that the multiplier of "15" adopted by the Tribunal is erroneous and

the compensation granted was in excess of what may be justified in the circumstances of the case.

10. The learned Counsel for the claimants argued that medical expenses of a sum of Rs. 4,51,713/- had been incurred. The balance compensation amount of a sum of Rs. 9,00,000/- is not an excessive compensation since the deceased age was 43 years and his income was Rs. 10,000/- per month. In order to prove the same, SSLC certificate was marked as Ex.P11 and salary certificate was marked as Ex.P14. The deceased was a healthy person and in order to prove the same, the Tamil Nadu Cricket Association has issued Sports Certificate to the deceased. The learned Tribunal on considering all aspects, had assessed the compensation and hence it is reasonable.

11. In view of the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the compensation granted under the head of loss of income is on the higher side. Therefore, this Court grants the compensation as follows:

Rs. 8,40,000/- towards loss of income;

(Rs. 7,000 ? 2/3 ? 12 ? 15)

Rs. 10,000/- towards consortium;

Rs. 5,000/- towards funeral expenses;

Rs. 5,000/- towards love and affections for the third claimant;

Rs. 10,000/- towards love and affection for the second claimant;

Rs. 4,30,000/- towards medical expenses;

In total, this Court awards Rs. 13,00,000/- as compensation. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

12. On 25.03.2008, this Court imposed a condition on the Appellant/Insurance Company to deposit a sum of Rs. 10,00,000/- with accrued interest to the credit of M.C.O.P. No. 1820 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Special Court for E.C. Act Cases, Coimbatore. Now, this Court directs the Appellant/Insurance Company to deposit the balance compensation, as per this Court's findings i.e., a sum of Rs. 3,00,000/- with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, which is fair and justifiable. Therefore, this Court scales down the compensation from Rs. 13,85,000/- to Rs. 13,00,000/-. The said compensation amounts are to be apportioned to the claimants as mentioned below:

The first claimant is apportioned a sum of Rs. 7,50,000/- and the second claimant is apportioned a sum of Rs. 4,00,000/- and the third claimant is

awarded a sum of Rs. 1,50,000/-. It is open to the claimants to withdraw their apportioned share amount with accrued interest thereon lying in the credit of M.C.O.P. No. 1820 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Special Court for E.C. Act Cases, Coimbatore, after filing a Memo along with this order. Subject to deduction of withdrawals if any made already.

13. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.C.O.P. No. 1820 of 2006, dated 12.10.2007 on the file of the Motor Vehicles Accident Claims Tribunal, Additional District and Sessions Court, Special Court for E.C. Act Cases, Coimbatore is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.