
(2010) 03 MAD CK 0006
In the Madras High Court
Case No : C.M.A. No. 3938 of 2004

Jauaraman

APPELLANT

Vs

Chandra and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(46)

Citation : (2010) 3 LW 630

Hon'ble Judges : A. Arumughaswamy, J

Bench : Single Bench

Advocate : Mythili Srinivas, for the Appellant; Vijayaraghavan, for R6, for the Respondent

Final Decision : Allowed

Judgement

1. The appeal is preferred by owner of the vehicle against the award of the Motor Accidents Claims Tribunal/Additional District Court,

Chidambaram passed in MACT.OP. No. 473 of 2003 dated 03.03.2004.

2. The brief facts leading to the appeal are: The wife and her sons filed the claim petition in MCOP. No. 188 of 2001 claiming compensation of

Rs. 7,00,000/- for the death of Swamikannu. It is stated in the claim petition that the deceased Swamikannu was an agriculturist and was earning a

sum of Rs. 200/-per day; On 06.02.2001 at about 5 p.m., in Vadakkumangudi Village, the deceased was attending his agricultural work and

owing to the rash and negligent act of the driver, the trailer hit against the deceased, he fell down and was run over by the trailer and died at the spot.

3. After the analysis of records, the learned Judge of the Tribunal has fastened the liability for causing the accident on the Respondents 1 and 2

therein/5th Respondent and Appellant herein and consequently directed them to pay the compensation of Rs. 3,85,000/- with interest at the rate of 9% per annum.

4. Learned Counsel for the Appellant would submit that the vehicle was insured with the United India Insurance Co. Ltd.,/6th Respondent herein and hence the liability has to be fastened against them and prayed for allowing the appeal.

5. Learned Counsel appearing for the 6th Respondent would submit that the trailer alone has been insured with them and not the tractor. He would further submit that at the time of accident the tractor was only used to pull the trailer and he relied on the judgment of this Court in Ramesh and Anr. v. Kamatchi Ammal and 4 others reported in 2000 1 L.W.705, wherein, in paragraph 6, it was held as follows:

6. As regards the contention raised with regard to the Insurance Company being exonerated, the facts to be noticed are that during the relevant time the trailer attached to the tractor was not insured. It has been held in The Oriental Insurance Co. Ltd. Vs. N. Chandrashekar and Others, relied on by the learned Counsel for the Insurance Company that in such a situation only if both the vehicles are insured, the Insurance Company would be liable to indemnify the owner against the claims arising out of the use of tractor and trailer. The facts in the case decided by the Karnataka High Court are identical to the facts of the case on hand. The non-insurance of the trailer during the relevant time would indeed absolve the Insurance Company of its liability. This point is also answered against the Appellants.

and submitted that the insurance company is not liable to pay the compensation.

6. On a perusal of the records, it is seen that on the fateful day i.e., on 06.03.2001, Swamikannu after completing his agricultural work, while he was returning from his field work, in the curve, the trailer which came behind the tractor hit the deceased and due to this sudden impact, he fell down and the wheel of the trailer ran over him and he died. In the judgment relied on by the learned Counsel for the Respondent, the trailer was not insured. However, in the case on hand, the trailer was insured with the 6th Respondent, which was involved in the accident. Hence, the judgment relied on by him is not applicable to the facts of the present case.

7. The counsel appearing for the Appellant contended that the trailer has been admittedly insured with the 6th Respondent, hence, the liability should be fastened on them.

8. The counsel appearing for the 6th Respondent contended that since the tractor was not insured, the 6th Respondent is not liable to pay the compensation.

9. As already discussed, the trailer has been insured as per Ex.A1. The body of the trailer alone hit the Swamikannu due to which, he died. While considering the plea of the 6th Respondent that the policy covers only the trailer, at that time they knew that the trailer has to be pulled by the tractor. Further as per Section 2(46) of the Motor Vehicles Act, trailer means it is intended to be drawn by a motor vehicle. In the case cited by the learned Counsel appearing for the 6th Respondent the policy must have been issued by the Insurance Company in such a manner. In this case, trailer alone was insured without any condition.

10. Considering the facts and circumstances of the case, it is crystal clear that the trailer alone caused the accident and hence, the liability of paying compensation has to be fastened against the 6th Respondent only and therefore, I am of the considered view that the liability fixed on the owner of the vehicle by the Tribunal is not sustainable. Hence, the award made by the Tribunal in respect of fixing the liability on the Appellant is set aside.

Accordingly, the 6th Respondent is directed to pay the compensation of Rs. 3,85,000/- with interest at the rate of 9% per annum before the Tribunal within a period of six weeks from the date of receipt of a copy of this order. As far as quantum of compensation is concerned, the same is not disputed. I am also of the view that the same is just and reasonable. Therefore, the compensation fixed by the Tribunal is confirmed.

11. It is seen that a sum of Rs. 2,00,000/- has been deposited by the Appellant before the Tribunal. Hence, the Appellant is at liberty to withdraw the amount deposited by him. The first Respondent/first claimant is entitled to withdraw her share as per the apportionment fixed by the Tribunal.

As far as minor's share is concerned, the same shall be deposited in a Nationalised Bank in fixed deposit in the names of the minor claimants/

Respondents 2 to 4 initially for a period of three years, renewable thereafter from time to time till they attain majority and the interest accrued

thereon shall be paid out to the first Respondent/first claimant, the natural guardian/mother, once in three months for maintenance of minor claimants.

12. In the result, the civil miscellaneous appeal is allowed on the above terms. No costs.