
(2013) 07 MAD CK 0204
In the Madras High Court
Case No : C.M.A. No. 65 of 2008

Mayilathal and Others

APPELLANT

Vs

V. Mohan Babu, V. Rajammal and M/s. New India Assurance
Co. Ltd.

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 07 MAD CK 0204

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

Bench : Single Bench

Advocate : P.M. Duraiswamy, for the Appellant; N. Vijayaraghavan for R3 and
Mr. L. Mouli for R1, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. karnan, J.—The appellants / claimants have filed claim petition against the Insurance Company and owner of the vehicle stating that

when the 1st claimant's husband namely, Marimuthu was proceeding on the Trichy Main Road, the rider of the motorcycle bearing Registration

No. TN-37-M-5346, rode it in a reckless manner and dashed against him. As a result, the deceased had succumbed to his injuries. Hence, the

claimants have filed the claim petition in M.C.O.P. No. 1234 of 2005 and claimed compensation of a sum of Rs. 1,00,000. The New India

Assurance Company has filed counter statement and rebutted the claim petition. The respondent stated that the accident had not been committed

by the rider of the motorcycle. Further, the accident took place on 19.12.2002, but the complaint was lodged on 24.12.2002. Further, the 2nd

respondent, who was the erstwhile owner had sold the vehicle in favour of one Nagarajan and therefore the present owner of the motorcycle is a

necessary party in the claim petition. The respondent decided the averments in the claim regarding age, income and occupation of the deceased and the dependency of claimants on the income of deceased.

2. On verifying the averments made by both the parties, the Tribunal had framed two issues namely, (1) Whether the 1st respondent had ridden the motorcycle in a rash and negligent manner and caused the said accident or whether the motorcycle bearing Registration No. TN-37-M-5346 was involved? and (2) Whether the claimants are entitled to receive compensation? If so, what is the quantum of compensation?

3. On the side of the claimants, one witness namely, 6th claimant was examined and 6 documents were marked as Exhibits P1 to P6 namely, Ex.

P1-F.I.R.; Ex. P2-Charge sheet; Ex. P3-Criminal Court judgment; Ex. P4-Motor Vehicle Inspector's report; Ex. P5-Death Certificate; and Ex.

P6-Legal heir certificate. On the side of the respondents, two witnesses were examined as RW1 and RW2 and 7 documents were marked as

Exhibits R1 to R7 namely, Ex. R1-Investigation report; Ex. R2-Letter sent by Insurance Company to 2nd respondent; Ex. R3-2nd respondents

reply; Ex. R4-3rd respondent's letter to one Mohan Babu; Ex. R5-Acknowledgment cards; and Ex. R6-Accident register.

5. PW1, had adduced evidence that his father Marimuthu was crossing the road on 19.12.2002 at about 2.00 p.m. along with his brother and at

that point of time, the rider of the motorcycle bearing Registration No. TN-37-M-5346, rode it in a rash and negligent manner and dashed against

his father. Immediately, he was admitted at Coimbatore Medical College Hospital, wherein he underwent treatment till 25.12.2002. Therefore, he

underwent treatment as an outpatient, but in spite of treatment, he succumbed to his injuries. PW1 further adduced evidence that his father was a

vegetable vendor and used to sell it by carrying it in bi-cycle and earning Rs. 3,000/- per month. He further stated that his father had sustained

grievous injuries all over his body including head injury. These injuries had led to his death.

5. RW1, had adduced evidence that he had conducted enquiry with the 2nd respondent namely, Rajammal, who informed him that he had sold the

vehicle to Sunrise Auto Consultancy, who informed it had sold the vehicle to Lucky Auto Consultancy. Further, on enquiry made with the 1st

respondent herein, the 1st respondent herein admitted that he had ridden the motorcycle. RW1 further stated that the F.I.R. had been lodged on

25.12.2002. The claimant had expired after 6 months from the date of accident. RW2, had adduced evidence that the said motorcycle had not

been involved in the said accident.

6. On considering the evidence of the witnesses and on perusing the documents marked by them, the Tribunal had observed that the 1st

respondent had not committed the said accident in a negligent manner. Therefore, the claim petition was dismissed.

7. Aggrieved by the dismissal order passed by the Tribunal, the claimants had filed the above appeal. The highly competent counsel vehemently

argued that the 1st claimant's father Marimuthu had sustained head injuries in the accident and sustained injuries all over his body on 19.12.2002.

Immediately, he was admitted at Government Medical College Hospital, Coimbatore, wherein he underwent treatment upto 25.12.2002, as an

inpatient. Thereafter, he underwent treatment as an outpatient. In spite of medical treatment, the injured expired on 04.06.2003. The very

competent counsel pointed out that the F.I.R. had been registered against the rider of the motorcycle and subsequently the rider had pleaded guilty

and paid penalty before the Criminal Court. In order to prove the same, F.I.R., Charge sheet and Copy of judgment were filed before the trial

Court. The claim petition had been well established against the respondents. At the time of accident, the Insurance policy was in force. Therefore,

the Insurance Company is liable to pay compensation. The highly competent counsel further argued that the alienation of the offending vehicle is

immaterial, but the vehicle has been insured with the 3rd respondent, namely, New India Assurance Company. Therefore, there is a prima facie

case on the side of the claimants, who are aggrieved persons seeking compensation that too also for a sum of only Rs. 1,00,000/- which is a

meagre compensation.

8. The very competent counsel for the Insurance Company vehemently argued that the deceased had crossed the road, unmindfully of the traffic,

without noticing the oncoming vehicle. Further, the claimant's evidence is inconsistent and there is no clarity regarding vehicle model and owner of

the vehicle involved in the accident. The highly competent counsel further

contended that there was a delay in filing of F.I.R. As per the contentions in the F.I.R., the accident took place on 19.12.2002, but the (deceased) was discharged from the hospital on 25.12.2002 after his normal health was restored. Thereafter, the injured expired on 04.06.2003, due to natural causes as the age of the deceased was 78 years. Therefore, there is no nexus to prove that the deceased had died only due to injuries sustained by him in the said accident.

9. Per contra, the learned counsel for the claimants argued that it was an admitted fact that the accident had been committed by the rider of the motorcycle. Hence, he was punished by the Criminal Court. Without considering the oral and documentary evidence, the trial Court had rejected the claim. The deceased was an earning member and doing vegetable business.

10. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned order of the trial Court, this Court is of the view that the accident had been committed by the rider of the motorcycle. As such, the F.I.R.

has been levelled against him and he was punished by the Criminal Court as is evident from the exhibits marked by the claimant. As per the

evidence of the claimants, the deceased had sustained grievous injuries on his skull. Therefore, the claim petition is a bonafide one. Further, this

Court is of the view that the claimants lack legal knowledge and as such they have not arranged to conduct postmortem of the deceased. Further,

after the death of a dear member of the family, they would have been involved in following the religious rituals involved before funeral and at such a

point of time it is not right to expect that they should prove all the medico legal formalities. Hence, this Court is inclined to grant a sum of Rs.

90,000/- as compensation, 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 claim petition till date of payment of compensation. This Court further directs the New India Assurance Company to deposit

the said compensation amount within a period of 4 weeks from the date of receipt of this order.

11. After such a deposit having been made, it is open to all the claimants to withdraw the said compensation amount with interest, equally among

themselves, lying into the credit of M.C.O.P. No. 1234 of 2005, on the file of the

Motor Accident Claims Tribunal, Subordinate Court,
Coimbatore, after filing a memo, along with a copy of this order. In the result,
the above appeal is partly allowed. Consequently, the award and
decree passed in M.C.O.P. No. 1234 of 2005, on the file of the Motor Accident
Claims Tribunal, Subordinate Court, Coimbatore, dated
23.11.2006, is modified. No costs.