

(2013) 09 MAD CK 0252

In the Madras High Court

Case No : C.M.A. No. 666 of 2007 and M.P. No. 1 of 2007

M/s. National Insurance Co. Ltd.

APPELLANT

Vs

P. Ramasamy and Others

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0252

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

Bench : Single Bench

Advocate : S. Arun Kumar, for the Appellant; P.M. Duraiswamy for R1 to R4, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The claimants have filed the claim petition in M.C.O.P. No. 404 of 2005, on the file of the Motor Accidents Claims

Tribunal, Principal Subordinate Judge, Coimbatore, against the owner and insurer of the motorcycle bearing Registration No. TN-37-AD-9573,

stating that when the 1st claimant's wife, namely Shanthi, was travelling as a pillion rider, on the said motorcycle on 31.08.2004, on the Pattinam

Main Road, the rider of the motorcycle i.e. the 1st respondent herein had applied sudden brake, as a result of which the said Shanthi fell down and

sustained injuries and succumbed to it. The National Insurance Company had filed counter statement and resisted the claim petition. The

respondent submitted that the F.I.R. has been lodged after two days and that the 1st respondent, who is the brother-in-law of the deceased and

who had ridden the motorcycle and committed the accident had colluded with the claimants. Further, the rider of the motorcycle had been

acquitted in the Criminal case. In order to make wrongful gain, the claim petition has been filed. Further, the deceased was not an earning member.

The 1st and 2nd respondents have filed counter statement stating that the deceased had lost her balance and fallen down, while the motorcycle was proceeding on the road. The said vehicle had been insured with the 3rd respondent.

2. On considering the averments of all parties, the Tribunal had framed two issues namely: (1) Due to whose negligence was the accident caused?

and (2) Whether the claimants are entitled to receive compensation? If so, what is the quantum of compensation and from whom they are entitled

to receive compensation?

3. On the side of the claimants, the 1st claimant was examined as PW 1 and 10 documents were marked as Exhibits P1 to P10 namely: Ex. P1-

F.I.R.; Ex. P2-Motor Vehicle Inspector's report; Ex. P3-Charge sheet; Ex. P4-Postmortem report; Ex. P5-Death Certificate; Ex. P6-Legal heir

certificate; Ex. P7-Copy of the complaint; Ex. P8-Medical bills; Ex. P9-Ambulance fare receipts; and Ex. P10-Rough sketch. On the side of the

respondents, one witness was examined as RW 1 and two documents were marked namely Deposition and Judgment of the Criminal Court. PW

1 had adduced evidence that on 31.08.2004, when his wife Shanthi was proceeding on the motorcycle bearing Registration No. TN-37-AD-9573

as a pillion rider, on the Pattinam Main Road, in order to attend a marriage, the motorcycle had been ridden by its rider i.e. 1st respondent herein.

The rider of the motorcycle had ridden it on the unlevelled road at high speed, as a result of which his wife had fallen down and sustained injuries

and succumbed to it. He further stated that his wife was aged 40 years and she was earning Rs. 2,000/- per month, as a Vegetable vendor.

4. RW 1, who is an officer attached to the Insurance Company had adduced evidence that the accident had not been committed by the rider of the

motorcycle in a rash and negligent manner as alleged. Initially, a criminal case had been registered against him, but subsequently, he was acquitted

from the case.

5. On considering the evidence of the witnesses and on scrutinising the documents marked by them, the trial Court had awarded a sum of Rs.

2,44,300/- with interest at the rate of 7.5% per annum. The highly competent

counsel argued that the deceased and the rider of the motorcycle are sister and brother and as such, the claim petition had been misconstrued. The same has been admitted by the 1st claimant in his evidence. In order to prove the said accident, no eye witness was examined. Further, the rider of the motorcycle had been discharged from the criminal case and as such the ground of negligence had not been proved against the rider of the motorcycle. Therefore, the issue of liability and quantum of compensation does not arise.

6. The very competent counsel for the claimants argued that the F.I.R. had been levelled against the rider of the motorcycle and it clearly reveals that the deceased had expired due to the accident. In order to prove the same, postmortem report and connected medical records and rough sketch have been marked. The offending vehicle had been insured with the Insurance Company i.e. the appellant herein. The quantum of compensation is not on the higher side. Further, the Tribunal had not granted adequate compensation under the relevant heads namely loss of consortium, loss of love and affection, transport and loss of earning.

7. On considering 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 it is an admitted fact that the deceased was travelling as a pillion rider on the motorcycle and she fell down while she was travelling on the motorcycle, as per the documents namely the F.I.R. and Postmortem Certificate and Rough sketch.

8. Further, the said motorcycle had been insured with the Insurance Company. The Tribunal, on the basis of age, occupation and income had assessed the compensation in an appropriate manner. Hence, this Court is not inclined to entertain the above appeal. This Court directed the appellant to deposit 50% of the award amount. Now, this Court directs the appellant to execute the trial Court award by way of depositing the balance compensation amount, with accrued interest thereon, within a period of 4 weeks from the date of receipt of this order.

9. After such a deposit having been made, it is open to the claimants 1 and 2 & 3 and 4 (since attained majority) to withdraw their apportioned

share amount, with accrued interest thereon, lying in the credit of M.C.O.P. No. 404 of 2005, on the file of the Motor Accidents Claims Tribunal,

Principal Subordinate Judge, Coimbatore, after filing a memo., along with a copy of this order. In the result, the above appeal is dismissed.

Consequently, the award passed in M.C.O.P. No. 404 of 2005, on the file of Motor Accidents Claims Tribunal, Principal Subordinate Judge,

Coimbatore, dated 17.01.2006, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.