

(2008) 09 MAD CK 0200

In the Madras High Court

Case No : C.M.A. (MD) No. 195 of 2004

M/s. Oriental Insurance Co., Ltd. City Branch Office II Floor,
Ganesh Complex, No. 6-1, Lawsons Road, Cantonment,
Tiruchirappalli

APPELLANT

Vs

Rajamani and 6 others (Minors RR3 to 5 are declared as
major and mother and guardian discharged from
guardianship as per order of this Court dated 27.04.2007
made in M.P. No. 1, 2, 4 and 5 of 2007)

RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

Citation : (2008) 09 MAD CK 0200

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

**Advocate : C. Ramachandran, for the Appellant; K. Govindarajan for
Respondents 1-6 and Mr. Raj and Pathy for 7th Respondent, for the Respondent**

Judgement

R. Subbiah, J.—Aggrieved by the award dated 29.04.1998 passed in MCOP. No. 2761 of 1995 by the Motor Accident Claims Tribunal (First Additional District Judge and Chief Judicial Magistrate), Tiruchirappalli, this appeal is filed by the appellant insurance company, who was the second respondent in the said O.P. The respondents 1 to 6 herein are the legal heirs of one Sakthimohan who had died in a motor accident that had occurred on 26.6.1995 made a claim before the Tribunal claiming a sum of Rs. 7,00,000/- as compensation as against the 7th respondent, the owner of the vehicle involved in the accident viz., TVS Suzuki bearing Registration No. TN-45-Y-8640 and the appellant insurance company who is the insurer of the said vehicle.

2. The present appeal is filed by the appellant insurance company challenging the award on the ground of their liability to pay the compensation as well as questioning the quantum of compensation awarded by the Tribunal.

3. It is the case of the respondents 1 to 6 that on 26.06.1995 at about 9.00 p.m.

while the deceased Sakthimohan was proceeding from east to west direction by pushing his cycle, a TVS-Suzuki came in a rash and negligent manner from west to east direction and dashed against him and as a result of which he had sustained multiple injuries all over his body and immediately he was taken to a Private Hospital, at Tiruchy and thereafter, the victim was taken to the Government Hospital, at Thuraiyur wherein he had died on 28.06.1995, in spite of the treatment given to him. Hence, the respondents made a claim for a sum of Rs. 7,00,000/- as compensation against the owner of the vehicle, the 7th respondent and the appellant insurance company, i.e., the insurer of the vehicle.

4. Before the Tribunal, the appellant insurance company filed a counter stating that at the time of accident, the two wheeler was driven by one Ramakrishnan, who had only a learner's licence and no pillion rider with the valid driving licence was accompanying him at the time of the accident. Hence, there is a violation to the condition of the policy, and as such, the appellant insurance company is not liable to pay the compensation.

5. In order to prove the case of the respondents 1 to 6, totally three witnesses were examined and 13 documents were marked as Exs.P.1 to P-13. On the side of the appellant insurance company, Senior Assistant of the appellant insurance company was examined as R.W.1 to speak about the defence taken by the appellant insurance company.

6. After analysing the entire evidence available on record, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the two wheeler. That apart, the Tribunal by placing reliance upon the judgment reported in AIR 1974 Gujarat-145 (Rajamani and others Vs. Rajagopal and another) has come to the conclusion that it was not proved by the insurance company that the rider of the vehicle was not disqualified for holding or obtaining driving licence by producing necessary certificate from the RTO Office and thereby the Tribunal, has negated the defence taken by the appellant insurance company and directed the appellant insurance company to indemnify the owner of the vehicle.

7. Aggrieved over the same, the appellant insurance company has preferred the present appeal.

8. Learned Counsel appearing for the appellant vehemently contended that the finding arrived at by the Tribunal by placing reliance on the above said judgment is not proper when the evidence on record clearly shows that on the date of accident, the rider of the vehicle was not accompanied by any pillion rider holding a valid licence, and therefore, there is a violation of Rule 3 of Central Motor Vehicle Rules. Under such circumstances, the Tribunal ought to have exonerated the appellant insurance company, from the liability.

9. Per contra, the Learned Counsel appearing for the 7th respondent, owner of the vehicle submitted that the appellant insurance company has miserably failed to prove their defence by examining the rider of the two wheeler. In the said

circumstances, it cannot be taken as if the defence of the appellant insurance company was proved before the Tribunal. Under such circumstances, there is no error in the finding arrived at by the Tribunal based on the judgment reported in AIR 1974 Gujarat-145 (Rajamani and others Vs. Rajagopal and another) cited supra. Therefore, the appeal is liable to be dismissed.

10. Heard the Learned Counsel appearing for the parties concerned and perused the entire records.

11. On going through the discussion made in the award, I find that before the Tribunal, on the side of the appellant insurance company the Senior Assistant was examined as R.W.1. But he is not a competent authority to speak about the non-accompanying of the pillion rider in the two wheeler which met with an accident. As pointed out by the Learned Counsel for the respondents, the proper person to speak as to whether any pillion rider with qualified licence accompanied the rider at the time of the accident could be only the rider of the two wheeler but the appellant insurance company has not taken any step to summon him. Moreover, on the side of the respondents one Rajmohan was examined as P.W. 2 who is an eye witness to the accident. From the discussion made in the award, I find that even in his cross examination, no suggestion was put forth by the appellant insurance company that at the time of accident, the vehicle was driven by the rider without being accompanied by a pillion rider holding a qualified licence. Under such circumstances, it cannot be said that the insurance company has proved their case that the vehicle was driven by the rider namely Ramakrishnan who was having learner's licence, violated the condition of the policy by riding the two wheeler without being accompanied by a pillion rider possessing a qualified licence. Under such circumstances, in my considered opinion, there is no error in the finding arrived at by the Tribunal in rejecting the defence taken by the appellant insurance company.

12. So far as the quantum of compensation is concerned, it is the grievance of the Learned Counsel appearing for the appellant that no proper document was produced on behalf of the respondents 1 to 6 to show that the deceased was earning a sum of Rs. 4,500/- per month. Under such circumstances, the calculation made by the Tribunal by taking Rs. 4,500/- as monthly income of the deceased is not proper and the same is liable to be set aside.

13. On going through the entire evidence available on record, I find that it is the case of the respondents 1 to 6 that the deceased was the owner and driver of a van and he was earning a sum of Rs. 15,000/- per month. In fact, it has been proved by the respondents by producing Exs.P.11 and P. 12, that the deceased had owned a van but no documents were produced by the respondents to show that the deceased was earning a sum of Rs. 15,000/- per month. Under such circumstances, the Tribunal had fixed only a sum of Rs. 4,500/- as the income of the deceased. Thereafter, the Tribunal after deducting 1/3rd of the amount towards his personal expenses has fixed a sum of Rs. 3,000/- as contribution to the family and taking the age of the first respondent, wife of the deceased as 45

years, applied the multiplier "15" and arrived at a sum of Rs. 5,50,000/- as total compensation. In my considered opinion, the calculation made by the Tribunal, cannot be said to be wrong and infact, the calculation made by the Tribunal is in accordance with the principles laid down by the Apex Court in various decisions. However, in my considered opinion, the rate of interest awarded by the Tribunal at 12% is liable to be reduced to 9%. Hence, the rate of interest awarded by the Tribunal is hereby reduced to 9%. Except for the above modification, the award passed by the Tribunal stands confirmed, in all other aspects. The appellant insurance company is permitted to withdraw the amount already deposited by them more than that of 9% interest for the entire award amount from the date of the claim. Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs.