

(2010) 08 MAD CK 0286

In the Madras High Court

Case No : C.M.A. No's. 1835 of 2007 and M.P. No's. 1 of 2007 and 1 and 2 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

Mrs. Pooja Manoj Singh and Others

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2010) 08 MAD CK 0286

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : K.S. Narasimhan, in C.M.A. No. 1835/07 and Rita Chandrasekaran, in C.M.A. No. 1235/08, for the Appellant; K.S. Narasimhan, for R7 in C.M.A. No. 1235/08, Jayesh B. Dolia, for R6 in C.M.A. No. 1835/07 and S. Ganga Ram Prasad, for R1 to R5, for the Respondent

Judgement

M.Y. Eqbal, C.J.—In these two appeals the appellants are aggrieved by the judgment and award dated 4th September, 2006 passed by the Motor Accident Claims Tribunal, Chennai (III Judge, Court of Small Causes, Chennai) in M.C.O.P. No. 4904 of 2003, whereby a sum of Rs. 61,92,500/- has been awarded as compensation in a death case and held that both the appellants are jointly and severally liable to pay the compensation amount.

2. In C.M.A. No. 1835 of 2007 the appellant is the insurer of the car namely, M/s. National Insurance Company Limited, Chennai whereas in C.M.A. No. 1235 of 2008 the appellant is the owner of the bus namely, the Tamil Nadu State Transport Corporation.

3. The claimants/respondents filed a Claim Petition for the grant of compensation for the loss of life of one Manoj Singh caused in a motor vehicle accident. The claimants' case was that on 14.08.2003 at about 16.30 hours when the deceased was traveling in a Maruti Zen Car bearing Registration No. TN-02-D-8509 along with other co-passengers from Chennai to Madurai on Madurai

Trichy National Highway from North to South at Soorapettai Othakadi the driver of the transport corporation bus bearing Registration No. TN-55-N-0239 driven the bus in a rash and negligent manner and dashed the Maruti Car resulting grievous injuries to the occupants of the car. The deceased sustained grievous injuries and later on succumbed to the injuries. The Inspector of Police Kottampatti registered a case in Crime No. 169 of 2003. The claimants' further case is that the deceased Manoj Singh was 34 years old at the time of the accident and was a qualified Civil Engineer and Managing Director of Nevadha Engineering Constructions Private Limited, Chennai, and was earning a sum of Rs. 40,000/- with perks and future prospects.

4. The claimants are the widow, parents and children of the deceased. They claimed a sum of Rs. 1,50,00,000/- as compensation. The appellant - Transport Corporation contested the claim petition and denied the factum and manner of the accident. It was denied that the deceased was traveling in a Maruti Car which was dashed by the bus in question. According to the appellant - Transport Corporation the accident took place due to the rash and negligent driving of the Zen Car by the deceased. The appellant - Transport Corporation also disputed the monthly income of the deceased.

5. The appellant - Insurance Company, who was impleaded as respondent in the Claim Petition at the instance of the Transport Corporation also contested the case on various grounds. The specific case of the Insurance Company is that there was a valid policy of insurance of the Zen Car at the time of the accident. But the car was insured as a private car. It was an "Act Policy" and no additional premium was paid covering the risk of the occupants of the car. Hence, the Insurance Company has no liability for payment of compensation. The Insurance Company further denied and disputed the averments made in the Claim Petition with regard to the age and income of the deceased.

6. On the basis of the averments made in the Claim Petition and in the counter affidavits filed by the respondents, the Tribunal formulated the following points for its consideration:

1. Whether the deceased Manoj Singh met with a road traffic accident happened on 14.08.2003 involving Tamil Nadu State Transport Corporation Bus bearing Registration No. TN-55-N-0239 and a Maruti Zen Car bearing Registration No. TN-02-D-8509 driven by its respective drivers and on whose negligence?

2. Whether the Maruti Zen Car bearing Registration No. TN-02-D-8509 was insured with the third respondent?

3. Whether the petitioners entitled for compensation? If so, what is the quantum?

4. To what relief the petitioners are entitled to?

7. While deciding Point No. 1 the Tribunal although found that the accident took place due to the fault of the driver of the bus, but at the same time, the Tribunal held that since admittedly this is a case of head on collision between the bus and

the car, the liability to be fixed at the ratio of 2:1. On the question of liability, the Tribunal after referring to various decisions arrived at the conclusion that there was a valid policy of insurance of the car at the time of the accident. Curiously, no finding has been recorded by the Tribunal as to the liability of the Insurance Company. When a specific defense was taken that the policy being an "Act Policy" and no additional premium was paid, the Insurance Company has no liability to pay any amount of compensation.

8. On the question of quantum of compensation the Tribunal relying upon the salary certificate of the deceased held that the monthly salary of the deceased was Rs. 33,750/- excluding perks, sumptuary allowance and Rs. 11,250/- as the future prospects, etc. In this way, a sum of Rs. 45,000/- was considered as monthly income of the deceased. Taking a sum of Rs. 30,000/- as monthly dependency a sum of Rs. 61,92,500/- has been awarded as compensation.

9. We have heard learned Counsel for the parties. It has not been disputed that originally the Insurance Company was not impleaded as party respondent in the Claim Petition. It was at the instance of the Transport Corporation, the Tribunal by its order impleaded the Insurance Company. The appellant - Insurance Company took a very specific and categorical defense that although the Zen Car was insured, but the policy was an "Act Policy", and no additional premium was paid for covering the risk of occupants of the car. In spite of the above said admitted position, the Tribunal without recording any finding with regard to the liability of the Insurance Company proceeded on the basis that since there was head on collision between the bus and the car, the liability should be apportioned at the ratio of 2:1. We are of the view that the Tribunal committed error of law in holding the Insurance Company liable to pay the compensation amount. As noticed above, the insurance policy of the car, which was a private car, was an "Act Policy", and therefore, the occupants of the car were not covered under the policy. In the case of Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, , the fact of the case was that the deceased was the owner of the vehicle, a Maruti Van. While he was driving the said vehicle, it dashed with a tree and the owner of the vehicle succumbed to the injuries. A claim case was filed by the legal representatives of the deceased for compensation. The insurance company contested the claim and denied its liability on the ground that no additional premium was paid covering the risk of the owner of the vehicle. The Apex Court observed:

13. The additional premium was not paid in respect of the entire risk of death of or bodily injury to the owner of the vehicle. If that be so, Section 147(1)(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case.

Hence, in the facts of the case, it can safely be couched that the appellant - Insurance Company has no liability to pay the compensation.

10. So far as the quantum of compensation is concerned, learned Counsel

appearing for the Transport Corporation has strenuously argued that the quantum of compensation assessed by the Tribunal is erroneous and without any basis. Learned Counsel submitted that without taking into consideration the Income Tax payable by the deceased on his annual income and erroneously taking an additional amount as future income, compensation has been assessed. We find force in the submission of the learned Counsel.

11. Admittedly, as per the Income Tax Returns Exhibits P-13 to P-16 the monthly income of the deceased was Rs. 33,750/-. If 1/3rd out of the said amount is deducted, the monthly income would be about Rs. 22,500/-. Hence, the annual dependency will come to Rs. 2,70,000/-. By taking a multiplier of 17 the amount comes to about Rs. 45,90,000/-. In our view, therefore, the amount of compensation assessed by the Tribunal is highly exorbitant, excessive and on a very higher side. The just and reasonable compensation cannot and shall not be more than Rs. 46,00,000/-.

12. For the reasons above stated, the C.M.A. No. 1835 of 2007 filed by the Insurance Company is allowed. The C.M.A. No. 1235 of 2008 filed by the Transport Corporation is allowed in part and the amount of compensation is reduced to Rs. 46,00,000/- (Rupees forty six lakhs only) which shall carry interest as awarded by the Tribunal. There shall be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.