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(2011) 06 MAD CK 0303

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 855 of 2010 and M.P. No. 1 of 2010

National Insurance Co. Ltd. — APPELLANT

Vs

Thangavelu , Chellappu and A. Munuswami — RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0303

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

Bench : Single Bench

Advocate : K.S. Narasimhan, in C.M.A. No. 855 of 2010 and M. Malar, in Cross Objection No. 136 of 2010, for the Appellant; M. Malar, for R1 and R2 in C.M.A. No. 855 of 2010 and K.S. Narasimhan, for R1 in Cross Objection No. 136 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The Civil Miscellaneous Appeal has been filed by the Appellant/ National Insurance Company Limited against the judgment and decree dated 30.09.2009 made in M.C.O.P. No. 746 of 2007, on the file of the Motor Accidents Claims Tribunal, Fast Track Court-II, Poonamalle.

2. Not being satisfied with the award and decree passed by the Tribunal, the Respondents/claimants have filed the Cross Objection No. 136 of 2010 for enhancement of a sum of Rs. 2,00,000/-.

3. The short facts of the case are as follows:

On 26.02.2007, the deceased T. Ravi was travelling as a pillion rider in the motorcycle bearing Registration No. TN-02-P-6054, from Veppampattu to Mogappair on the C.T.H. Road. At about 3.10 p.m., when the motorcycle was near Royal Timber Depot at Thirumullaivoyal, the first Respondent''s Mahindra Van bearing Registration No. TN-02-P-0280, driven by its driver in a rash and negligent manner, dashed against the motorcycle. The (deceased) Ravi sustained multiple grievous injuries and was taken to Apollo Hospital. In spite of treatment

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given there, he succumbed to his injuries. Hence, the legal-heirs of the deceased Ravi have filed a claim for Rs. 8,00,000/-against the Respondents. The first Respondent is the owner of the Mahindra van and the second Respondent is its insurer.

4. The second Respondent, in his counter has resisted the claim and denied the averments in the claim regarding the age, income and occupation of the deceased as well as the manner of accident. It was stated that the rider of the motorcycle, under the influence of alcohol and without having a valid driving licence to drive the motorcycle was proceeding on the C.T.H. Road and when the vehicle was near Thirumullaivoyal, the rider had suddenly overtaken vehicles in a rash and negligent manner, unmindful of the traffic and as a result, the (deceased) had lost his balance, fell down and died. As such, the first Respondent''s vehicle is not at all involved in the accident. The delayed filing of F.I.R., against the Respondent''s vehicle is a fabricated one with the collusion of police. There is no criminal prosecution against the first Respondent''s driver. Further, as the owner of the motorcycle bearing Registration No. TN-02-P-6054 has not been included as a necessary party in the claim, it renders the claim not maintainable. It was also stated that the claim was excessive.

5. Another claim petition was filed in M.C.O.P. No. 753 of 2007 by another petition claiming a compensation, for the death of her son, Suresh, who had travelled as rider of the motorcycle bearing Registration No. TN-02-P-6054, against the same Respondents as in the instant case. Based on a Memo filed by the claimants for a joint trial, the Tribunal took both the cases jointly, collected common evidence and delivered a common order.

6. On considering the averments in the petition and the counter of the second Respondent, the Tribunal had framed three issues for consideration in this case, namely;

(i) Whether the accident occurred due to the rash and negligent driving of the first Respondent''s driver?

(ii) Whether the claimants are entitled to get compensation from the second Respondent? If so, what is the quantum of compensation.

(ii) To what relief the claimants are entitled to get?

7. On the Petitioners side, four witnesses were examined and eight documents were marked as Exs.P1 to P8, viz., First Information Report, Post-mortem Certificate, Legal-heir Certificate, Medical bills, Salary Certificate and etc., On the Respondents side, one witness was examined and two documents were marked viz., Motor Vehicle Reports marked as Exs.R1 and R2.

8.PW1, the father of the deceased Ravi adduced evidence which was in consonance with the averments made in the claim regarding manner of accident. PW3, the eyewitness of the accident had also adduced evidence which was in consonance with evidence of PW1 regarding manner of accident. Hence, the

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Tribunal, after scrutiny of documentary evidence viz., F.I.R., as well as the evidence given by PW1 and PW3, held that the accident had been caused by the rash and negligent driving of the first Respondent''s driver.

9. The owner of the shop, where the deceased had worked was examined as PW4. He had adduced evidence stating that the deceased was an employee under him and earning a sum of Rs. 13,000/-per month and had marked Ex.P7, Salary Certificate. But, the tribunal on holding that no documentary evidence had been submitted by the claimants with regard to experience of the deceased and considering that the deceased had only studied upto 8th standard, held that his salary could be taken as Rs. 5,000/-per month and adopted a multiplier of "17" and awarded compensation a sum of Rs. 5,10,000/-(Rs. 5,000 x 1/2 x 12 x 17) under the head of loss of income. (Contribution by deceased to his family every month was taken as 50% of his monthly income). Further the Tribunal awarded a sum of Rs. 10,000/-under the head of funeral expenses and Rs. 10,000/-towards loss of love and affection. In total, the Tribunal had awarded a sum of Rs. 5,30,000/-together with interest at the rate of 7.5% per annum, from the date of filing the petition till the date of deposit and directed the Insurance Company to deposit the award with interest within a period of one month from the date of its order.

10. Aggrieved by the said award passed by the Tribunal, the Appellant /National Insurance Company Ltd., has filed the present appeal to scale down the compensation.

11. The learned Counsel for the Appellant has argued that the Tribunal had failed to note that PW3 had admitted in his cross examination that the accident had occurred on the middle of the road, and the evidence of RW1, corroborated by the Motor Vehicle Inspector''s report marked as Exs.R1 and R2, reveal the respective damages caused to the two-wheeler and the van which belive the case of the claimants. As such, the learned Tribunal ought to have apportioned the liability equally, if not rejecting the claim altogether. It was also argued that the Tribunal should have taken the age of the mother of deceased and adopted multiplier and should not have taken the age of deceased for choosing multiplier and in the instant case, the multiplier of "12" should have been adopted as the age of the deceased''s mother was 45 years. Further, it was argued that the notional income of Rs. 5,000/-taken by the Tribunal as the income of the deceased has been done without any evidence and hence only a notional income of Rs. 3,000/-should have been taken by the Tribunal to assess compensation. As such, the learned Counsel for the Appellant has prayed this Court to at least scale down award of the Tribunal.

12. The learned Counsel for the claimants argued that the deceased was 20 years old and he was an employee in a private concern and was earning a sum of Rs. 13,000/-per month. In order to prove the same, salary certificate was marked. The deceased was the only son to the claimants. The Tribunal, after considering the age of the deceased and the income of the deceased had

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assessed the compensation and granted the award to the claimants. Actually, the compensation amount granted is not satisfactory. Hence, the claimants have filed a Cross Objection 136 of 2010 for additional compensation of a sum of Rs. 2,00,000/-. The learned Tribunal had fixed the income of the deceased as Rs. 5,000/-. Actually, his earning was Rs. 13,000/-per month. As such, the claimants should be awarded additional / adequate compensation.

13. On considering the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the learned Tribunal had fixed the income of the deceased as Rs. 5,000/-per month, adopted a multiplier of "17" and awarded compensation a sum of Rs. 5,10,000/-under the head of loss of income. Further the Tribunal awarded a sum of Rs. 10,000/-under the head of funeral expenses and Rs. 10,000/-towards loss of love and affection. In total, the Tribunal had awarded a sum of Rs. 5,30,000/-together with interest at the rate of 7.5% per annum, which is found to be fair and equitable. Even though the claimants have marked salary certificate and the employer was examined in order to prove that the income of the deceased was Rs. 13,000/-, this evidence is not sufficient as the said owner''s firm was not a registered one. Besides, no attendance and pay acquittance had been marked to prove the employment of the deceased. Therefore, this Court confirms the said award.

14. On 23.04.2010, this Court imposed a condition on the Appellant / Insurance Company to deposit the entire compensation amount with proportionate accrued interest to the credit of M.C.O.P. No. 746 of 2007, on the file of the Motor Accidents Claims Tribunal, Fast Track Court-II, Poonamalle. Further, this Court permitted the claimants to withdraw the 50% of the award amount with proportionate accrued interest lying in the credit of M.C.O.P. No. 746 of 2007, on the file of the Motor Accidents Claims Tribunal, Fast Track Court-II, Poonamalle. Now, it is open to the claimants to withdraw the balance compensation amount with proportionate accrued interest lying in the credit of M.C.O.P. No. 746 of 2007, on the file of the Motor Accidents Claims Tribunal, Fast Track Court-II, Poonamalle, after filing a Memo along with this order, subject to withdrawals, if any, made already.

15. Resultantly, the Civil Miscellaneous Appeal filed by the Appellant / National Insurance Company in C.M.A. No. 855 of 2010 is dismissed and the Cross Appeal filed by the claimants in Cross Objection No. 136 of 2010 is also dismissed. Consequently, the award and decree passed by the learned Motor Accident Claims Tribunal, Fast Track Court-II, Poonamalle made in M.C.O.P. No. 746 of 2007, dated 30.09.2009 is confirmed. There is no order as to costs. Connected miscellaneous petition is closed.

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