

(2010) 09 MAD CK 0382
In the Madras High Court
Case No : C.M.A. No. 2547 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

A. Mani, Bhargavi @ Bharathi, R. Murugesan and N.
Palanisamy

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 170
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2010) 09 MAD CK 0382

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

Bench : Single Bench

Advocate : K.S. Narasimhan, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellants/respondents 3 and 4, against the Award and Decree, dated 10.08.2004, made in M.C.O.P. No. 298 of 2003, on the file of the Motor Accident Claims Tribunal (Subordinate Judge-cum-Chief Judicial Magistrate), Coimbatore, awarding a compensation of Rs. 4,64,000/- together with 9% interest per annum, from the date of filing the claim petition till the date of payment of compensation.

2. Aggrieved by that award and decree, the Appellants/respondents 3 and 4 have filed the above appeal praying to set aside the award and decree passed by the Tribunal.

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

On 15.05.2000, at about 07.00 p.m. at Mettupalayam main road of Periyanaickenpalayam at the bus stop opposite the Petrol Company, a private bus, which had come from the north direction was stopping at the said bus stop

to drop the passengers. Since the said bus had been stopped, the Tempo Traveller which was following the said bus also had been stopped behind the said bus. At that time the deceased Krishna Prasad was riding his Suzuki Motor Cycle bearing registration No. TN37 F8518 following the said Tempo traveller stopped his motorcycle behind back of the said Tempo traveller. But, at the same time, a lorry bearing registration No. TN38 A6799, which was immediately following the said motorcycle coming from the north direction at a very high speed in a rash and negligent manner without sounding the horn and not keeping the traffic rules and without stopping the lorry at the spot rushed and hit the back of the said motor cycle and the deceased was thrown and hit against the back of the said Tempo traveller and thrown on the road and sustained severe injuries and succumbed to death at the spot itself. The said accident took place only by the rash and negligent driving of the said lorry driver, who is the first Respondent and regarding the said accident a criminal case had been registered by the Periyanaickenpalayam Police Station in Crime No. 193/2000, under Sections 279 and 304(A) of I.P.C. The deceased had obtained Bachelor Degree in Bio-Chemistry in the year 1998 with first grade and had completed Post graduate course in Micro Biology in the year 2000 at Srimad Andavan Arts and Science College, Bharathithasan University. While he was awaiting the result of final semester, he met with the said accident. Besides he had undergone the project work on Development of oral Tetanus Toxoid Vaccines Using Chitosan at Pasteur Institute of India, Coonnoor and had undergone Industrial/Hospital Training at Paster Institute of India, K.G. Hospital, Bonzer Labs and had submitted papers in a number of seminars. The deceased had got such an academic qualification and he was a brilliant super personality and about to hold super employer which would attract a monthly salary of about Rs. 10,000/- to Rs. 15,000/-. He had been called to attend an interview on 19.06.2000 by the Research and Development Department, Hydrebad. He and the Petitioners were in fond hope that he will succeed in the said interview and will get the highly valuable employment in a Central Government Department. But to the great shock and surprise to the Petitioners, they have lost their son by the said accident just one month before the said interview. At the time of accident the deceased was aged about 23 years and he was hale and healthy. If the said accident had not happened he would have got the said employment or such other employment and earn atleast Rs. 15,000/- per month. But, due to the said accident, the Petitioners lost the earnings and dependency of the deceased. As such, the Petitioners claimed a compensation of Rs. 21,00,000/- before the Tribunal.

4. The Respondents 3rd and 4th in their Counter has resisted the claim petition, which reads as follows:

The compensation claimed is legally unsustainable as against the Respondents 3 and 4 herein since the claim petition as against the Respondents 1 and 2 has been dismissed by this Hon'ble Court. The Respondents herein respectfully submit that the claim petition as against the insured has been dismissed. The liability of the Insurer coexists with that of the insured. As the claim against the

insured/second Respondent has been dismissed, the question of indemnification by the third Respondent does not arise at all. Therefore, the claim petition as against the Respondents 3 and 4 is liable to be dismissed.

Except the matters that are specifically admitted herein by these Respondents, all other averments and allegations contained in the petition are denied as false by the Respondents herein and the Petitioners are put to strict proof of the same.

The Respondents 3 and 4 reserve their right to file additional counter statement at a latter stage if necessary in the interests of justice. The Respondents herein crave leave of this Hon'ble Court to permit them to take all the defences of the insured also as per Section 170 of the Motor Vehicles Act, in case, the insured remains exparte or fails to contest the claim effectively or colludes with the Petitioners.

The entire averments contained in Para 1 under Column 23 of the petition are denied as false. The narration of the accident by the Petitioners is false. The Petitioners have not given the true and correct picture as to how the alleged accident occurred. The allegation that the accident occurred due to the rash and negligent driving of the lorry bearing registration No. TN38 A6799 by the first Respondent is stoutly and emphatically denied as false. The Respondents 3 and 4 herein respectfully submit that there was absolutely no rashness or negligence on the part of the first Respondent in driving the lorry bearing registration No. TN38 A6799. The Petitioners alleged negligence on the part of the first Respondent only with the sole aim of claiming an exorbitant amount by way of compensation.

The Respondents 3 and 4 understand that the unfortunate accident occurred solely due to rash and negligent driving of the Motor Cycle bearing registration No. TN37 F8518 by the deceased Krishna Prasad. Even otherwise, the place of accident and the manner of accident would clearly establish that the deceased substantially contributed to the accident and as such the deceased is guilty of contributory negligence.

The entire averments contained in Paras 3 to 6 under Col 23 of the petition are all self serving and as such the Petitioners are strictly bound to prove the same. The deceased was unemployed and unmarried. The Petitioners are the parents of the deceased. The compensation has been claimed without any legal or factual basis. The claims of compensation made under Column-21(a) of the petition are untenable. The claim of compensation for loss of consortium, pain and suffering, mental agony etc. unsustainable in law. The claim of Rs. 18,00,000/- by way of loss of earning power and dependency for the death of a 23 year old unemployed bachelor is untenable in law.

The quantum of compensation has not been computed and claimed in accordance with the settled principles of law. The Respondents herein stoutly and emphatically dispute the quantum of compensation as highly excessive, exaggerated, exorbitant, speculative and imaginary. The Petitioners are

attempting to capitalize the loss and enrich themselves. The quantum of compensation claimed is seriously disputed by the Respondents.

5. The learned Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Whether the accident had occurred only due to the rash and negligent driving of the first Respondent?

(ii) Whether the Petitioners are entitled for compensation, If so to what is the quantum of compensation?

(iii) What other reliefs the Petitioners are entitled to?

6. On the Petitioners' side, the first Petitioner was examined as PW1 and one Kuttiraman was examined as PW2 and fourteen documents were marked as Exs.P1 to P14 namely Ex.P1-Xerox copy of the FIR, Ex.P2-Xerox copy of the Motor Vehicle Inspector's Report, Ex.P3-Xerox copy of the Post-mortem Report, Ex.P4-Xerox copy of the Charge Sheet, Ex.P5-Copy of the judgment of the Lower Court, Ex.P6-Death Certificate, Ex.P7-Legal Heir Certificate, Ex.P8-Driving licence of the deceased, Ex.P9-Fees receipts of the deceased for educational purpose, Ex.P10-Certificate issued by K.G. Hospital to the deceased for training course, Ex.P11-Transfer Certificate of the deceased, Ex.P12-Xerox copy of the Telegram for the interview to the deceased, Ex.P13-Mark sheets of the deceased and Ex.P14-Degree Certificate issued by the Bharathiar University. On the Respondents' side no one was examined and no documents were marked.

7. PW1 had adduced evidence stating that the first Respondent was the cause for the accident. PW2-eye witness had adduced evidence that a bus was standing at the Pirigal bus stop, behind the bus a tempo vehicle was stationed, behind that the motorcycle of the deceased was stationed, at that point of time the lorry bearing registration No. TN38 A6799 came at high speed and in a rash and negligent manner, dashed against the motorcyclist and his vehicle. The said accident case was registered by the Police and the FIR was marked as Ex.P1. This culminated in the death of the motorcyclist. Ex.P4-Charge Sheet and Ex.P5-Judgment copy of the criminal court. Considering the evidence of the PW1 and PW2 and the documents marked as exhibits, the learned Motor Accident Claims Tribunal had come to the conclusion that the offending vehicle driver had caused the accident, as such, the Appellants/respondents 1 to 3 are liable to pay compensation.

8. PW1 further adduced evidence stating that he is the father of the deceased, second claimant is the mother of the deceased. To prove the relationship Ex.P7-Legal Heir Certificate was marked. PW2, further adduced evidence that the deceased obtained a Master's Degree in Science and his date of birth is 05.03.1977. At the time of the accident, he was called for an interview by a reputed concern at Hyderabad. Further, the deceased was a qualified person with the potential to earn substantially.

9. Considering the evidence of the PW1 and the age, income, qualification of the claimants, the Tribunal awarded a sum of Rs. 1,92,000/- to the first claimant under the head of loss of income (basic formula method $\text{Rs. } 2,000/- \times 12 \times 8 = \text{Rs. } 1,92,000/-$); Rs. 2,40,000/- was awarded to the second claimant under the head of loss of income (basic formula method - $\text{Rs. } 2,000/- \times 12 \times 10 = \text{Rs. } 2,40,000/-$; Rs. 2,000/- awarded under the head of transport; Rs. 10,000/- under the head of funeral expenses; Rs. 20,000/- awarded under the head of loss of love and affection to the claimants. Further, the Tribunal directed the Respondents to deposit the compensation amount of Rs.2,08,000/- and Rs. 2,56,000/- together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, to the first and second claimants respectively within a period of 60 days. After such deposit being made, the first and second claimants were permitted to withdraw 50% of their apportioned share amount. The remaining 50% of their apportioned share amount to be deposited in a nationalised bank for a period of three years under the fixed deposit scheme and the claimants were permitted to withdraw the interest from their apportioned share, once in six months, accordingly ordered.

10. Aggrieved by that award and decree, the Appellants/respondents 3 and 4 have filed the above appeal praying to set aside the award and decree passed by the Tribunal.

11. The learned Counsel appearing for the Appellant argued that in the absence of the income proof the learned Tribunal fixed the income of the deceased as Rs. 7,000/- per month. The Tribunal ought to have adopted a multiplier of 10 years in this case. Hence, the learned Counsel seeks to scale down the compensation. Further, the learned Counsel submitted a synopsis, in which he suggested the compensation as follows:

- i. Rs. 3,90,000/- under the head of loss of income,
- ii. Rs. 10,000/- to each claimants under the head of loss of love and affection, and
- iii. Rs. 5,000/- under the head of funeral expenses,

12. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing for the Appellants and the award and decree passed by the Tribunal, this Court is of the view to restructure the compensation amount as follows:

- i. Rs. 3,90,000/- under the head of loss of income,
- ii. Rs. 20,000/- to each of the claimants towards loss of love and affection, since the deceased was highly educated upto Master Degree,
- iii. Rs. 2,000/- awarded under the head of transport by the Tribunal, now this Court enhances it to Rs. 5,000/-,
- iv. Rs. 5,000/- awarded under the head of funeral expenses by the Tribunal, now

this Court enhances it to Rs. 10,000/-,

v. This Court awards a sum of Rs. 25,000/-under the head of loss of estate,

In total, this Court awards a sum of Rs. 4,50,000/- as compensation to the claimants. The Tribunal fixed the rate of interest at 9% per annum, this Court confirms the same, which is fair and equitable.

13. As the accident had happened in the year 2000, this Court permits the claimants to withdraw their apportioned share amount ie.the first claimant is entitled to withdraw Rs. 2,00,500/-with accrued interest and the second claimant is entitled to withdraw Rs. 2,49,500/- with accrued interest thereon, lying in the credit of the M.C.O.P. No. 298 of 2003, on the file of the Motor Accident Claims Tribunal (Subordinate Judge-cum-Chief Judicial Magistrate), Coimbatore, after filing necessary payment out application in accordance with law, subject to deductions, if any.

Likewise the Appellants are at liberty to withdraw the excess compensation amount with accrued interest thereon, after observing necessary formalities in accordance with law.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 10.08.2004, made in M.C.O.P. No. 298 of 2003, on the file of the Motor Accident Claims Tribunal (Subordinate Judge-cum-Chief Judicial Magistrate), Coimbatore, is modified. No costs.