

(2013) 09 MAD CK 0185

In the Madras High Court

Case No : C.M.A. No. 3462 of 2004 and C.M.P. No. 18873 of 2004

New India Assurance Co. Ltd.

APPELLANT

Vs

Arumugam Asari and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0185

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

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; K. Kalyanasundaram for R1 to R4, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The claimants had filed M.C.O.P. No. 147 of 2003, on the file of the Motor Accidents Claims Tribunal-cum-Subordinate Judge, Udumalpet, stating that when the wife of the 1st claimant namely Sarojini, aged about 55 years, was proceeding on the Udumalpet Main road, the lorry bearing Registration No. TMQ-3864, coming in the same direction and driven in a rash and negligent manner had hit behind her. As a result, the said Sarojini had succumbed to her injuries. Hence, the claim has been filed by the legal heirs of the deceased. The Insurance Company has filed counter statement and resisted the claim petition. The respondent stated that the driver of the lorry was not possessing valid driving licence to operate the lorry. Further, there was no proof to show that the lorry was insured with the Insurance Company. The said lorry had not been covered under valid documents to operate on the public road. The averments in the claim regarding age, income and occupation of the deceased was not admitted.

2. On considering the averments of both parties, the Tribunal had framed two issues namely: (1) Whether the accident had been committed by the 1st respondent in a negligent manner? and (2) Whether the claimants are entitled to receive compensation? If so, what is the quantum of compensation? Who is liable

to pay compensation? In the said accident, one other claim has also been filed in M.C.O.P. No. 146 of 2003, against the same respondents and hence joint trial was conducted.

3. On the side of the claimants, the 1st claimant was examined as PW1 and two other witnesses were examined and following documents were marked for this case namely: F.I.R.; Motor Vehicle Inspector's report; Rough sketch; Charge sheet; Postmortem report; Death Certificate; and legal heir certificate. On the side of the respondent, no witnesses was examined and no document was marked.

4. PW1, the claimant in M.C.O.P. No. 146 of 2003 had adduced evidence that on 13.04.2003, at about 9.00 p.m., when his wife Sathyavani and deceased Sarojini and others were proceeding on the Udumalai Main Road towards Palani temple and when they were proceeding on the mud road, the 1st respondent/driver had driven the lorry bearing Registration No. TMQ-3864, in a negligent manner and dashed against them. Both had sustained injuries and succumbed to it. PW2, 1st claimant in M.C.O.P. No. 147 of 2003, had adduced evidence on the same lines of PW1 regarding mode of accident. PW2 further adduced evidence that his wife was aged about 35 years and she was a coolie earning Rs. 3,500/- per month.

5. On considering the evidence of the witnesses and on perusing the documents marked by the claimant, the Tribunal had awarded a sum of Rs. 3,91,000/- with interest at the rate of 9% per annum and directed the Insurance Company to deposit the said amount. Against the said award, the New India Assurance Company Limited has filed the above appeal. The highly competent counsel submits that the deceased had suddenly crossed the road and as such the accident had occurred and therefore negligence has to be laid on the side of the deceased. The Tribunal had awarded compensation of a sum of Rs. 2,64,000/- under the head of loss of earning without any income proof and age proof. The multiplier also is on the higher side. The very competent counsel further submits that the 2nd and 3rd claimants are married and living separately and as such they are not dependents on the income of the deceased and the other claimants are also not dependents. Therefore, the learned counsel entreats the Court to set aside the award.

6. On verifying 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 shortcomings in the conclusions arrived at regarding negligence, liability and quantum of compensation. All the three aspects have been decided by the Tribunal after recording evidence of the witnesses and on scrutinising the documents namely F.I.R., Sketch, Postmortem report and Criminal Court judgment, etc. As such, the award passed by the Tribunal is an appropriate one. Hence, this Court is not inclined to entertain the above appeal since there is no lacuna in the said award. This Court directed the appellant to deposit the entire compensation amount and also permitted the claimants to withdraw 50% of the deposited amount of their share.

7. Now, it is open to the claimants to withdraw their balance of apportioned share amount, with accrued interest thereon, lying in the credit of M.C.O.P. No. 147 of 2003, on the file of Motor Accidents Claims Tribunal-cum-Subordinate Judge, Udumalpet, after filing a memo along with a copy of this order. In the result, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed in M.C.O.P. No. 147 of 2003, dated 15.03.2004, on the file of the Motor Accidents Claims Tribunal-cum-Subordinate Judge, Udumalpet, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.