
(2013) 10 MAD CK 0090

In the Madras High Court

Case No : C.M.A. No. 3700 of 2008 and M.P. No. 1 of 2008

New India Insurance Company Limited.

APPELLANT

Vs

S. Jeyanthi and Others

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0090

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

Bench : Single Bench

Advocate : R. Sivakumar, for the Appellant; V. Thillaisamy (R1 and R2) R-4, 5 and 7 served R-3 and R-6 given up, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/5th respondent has preferred the present appeal in CMA(MD). No. 3700 of 2008, against the Judgment and Decree dated 30.12.2005 and made in MCOP No. 843 of 2003 on the file of the Motor Accident Claims Tribunal, (I Additional District Judge) at Coimbatore. The short facts of the case are as follows:-

The petitioners, who are the wife and minor daughter of the (deceased) Selvan have filed the claim in MCOP No. 843 of 2003, claiming compensation of a sum of Rs. 10,00,000/- from the respondents for the death of the said Selvan in a Motor Vehicles accident. It was submitted that on 06.05.2001 at about 9.00 p.m. when the (deceased) Selvan was driving the Maruthi car bearing registration No. TN 39 D 7585 from Puliankudi to Coimbatore and when the vehicle was nearing Rajapalayam Aishwarya motor Company, the second respondent's lorry bearing registration No. KLL 2A 779, coming in the opposite direction and driven in a rash and negligent manner by the first respondent dashed against the Maruthi car and caused the accident. As a result, the (deceased) Selvan sustained multiple fracture on his hand and over his body and succumbed to his injuries, while being taken to Government Hospital, Rajapalayam. At the time of accident, the deceased was aged 37 years and was doing business in the name and style of

"Sri Narayana Industries, Textiles and Spares" and earning Rs. 10,000/- per month. Hence, the petitioners have filed the claim against the respondents 1 to 5. The 1st, 2nd and 3rd respondents are the driver, owner and insurer of the lorry bearing registration No. KLH 2A 779 and the fourth and fifth respondents are the owner and insurer of the car bearing registration No. TN 39 D 7585.

2. The second respondent, in his counter, adopted by the first respondent, had submitted that the accident was caused only due to the rash and negligent driving of the deceased and that he had driven the car in a rash and negligent manner and dashed it against the lorry. It was submitted that one of the friends of the deceased, who was travelling in the car had also given the First Information Report before the Rajapalayam South Police Station and had stated that the accident was caused due to rash and negligent driving of the deceased and as such the first and second respondents cannot be held liable to pay compensation.

3. The fifth respondent, in his counter, has submitted that the petitioners have to prove the age, income of the deceased, manner of accident and legal-heirship of the deceased through documentary evidence. It was submitted that the claim was excessive.

4. The sixth respondent, who is the father of the deceased had submitted in his counter that due to the ill-health, he had quit his employment from M/s. Ramakrishna Mill, Coimbatore and also sold his immoveable properties in order to help and develop the business career of his son. It was submitted that his deceased son, developed his textile business form and out of the sale proceeds. It was submitted that as his wife had pre-deceased her son, this respondent, who is aged 65 years has become helpless and is at the mercy of his son-in-law and relatives for his day to day expenses. Hence, the respondent had claimed a compensation of Rs. 4,00,000/-.

5. The Motor Accident Claims Tribunal framed three issues for consideration in the case, namely, (1) was the accident caused by the rash and negligent driving of the lorry by the first respondent? (2) whether the deceased, who drove the Maruthi car, had in any manner contributed to the cause of accident? (3) whether the petitioners are entitled to get compensation as prayed for?

6. The petition was originally filed u/s 166 of the M.V. act and the same was subsequently, amended as one u/s 163(a) of the M.V. Act, at the instance of the petitioners, thereby claiming compensation under the no fault liability.

7. P.W. 1 and P.W. 2 had adduced evidence, that the accident had been caused by the rash and negligent driving of the first respondent. P.W. 1, in support of her evidence had marked Ex. P.1 to Ex. P.21 were marked. On the respondents' side one witness was examined and no document was marked.

8. The Tribunal observed that both parties had admitted the involvement of the said car and lorry in the accident. The Tribunal, on scrutiny of Ex. P.4 observed

that the deceased died due to shock and multiple fracture and head injuries sustained by him in the accident and hence, held the insurer of both the vehicles equally liable to pay compensation.

9. P.W. 1 had further adduced evidence that the deceased was aged 37 years and was running a business in the name and style of "Sri Narayana Industries and textiles Spares" and earning Rs. 10,000/- p.m. and in support of her evidence, she had marked Ex. P.5, P.8, P.9, P.10, P.11, P.12 to P.20. The Tribunal, on scrutiny of Ex. P.12 observed that the deceased was indebted to south Indian Bank and in his failure to repay the amount, the bank has taken legal steps to recover the sale of machinery etc. Further, the perusal of the pass-book also does not reveal heavy financial transaction during the relevant period. Hence, the Tribunal held that the notional income of the deceased could only be taken as Rs. 5,000/- p.m. and as per the second schedule, restricted the said income of the deceased at Rs. 40,000/- per year. The Tribunal, on adopting a multiplier of 16, awarded a sum of Rs. 4,24,000/- as compensation under the head of loss of income ($40,000 \times \frac{2}{3} \times 16$); Rs. 6000/- was awarded for transport expenses and funeral expenses, Rs. 20,000/- was awarded to the first petitioner under the head of loss of consortium; Rs. 10,000/- and Rs. 5000/- was awarded to the minor second petitioner and the 6th respondent under the head of loss of love and affection. In total, the tribunal awarded a sum of Rs. 4,65,000/- as compensation to the petitioner and directed each of the third and fifth respondents to deposit 50% of the compensation, together with interest at the rate of 7.5% per annum from the date of filing the claim till the date of payment of compensation, with cost, within two months from the date of its order.

10. Aggrieved by the award passed by the Tribunal, the 5th respondent/New India Assurance Company Limited, Coimbatore has preferred the present appeal. It was contended that the Tribunal erred in coming to the conclusion that since the petition has been filed u/s 163 of the M.V. Act, both the Insurance Companies are liable to pay compensation. It was contended that the Tribunal, without discussing the negligence aspect, erroneously came to the conclusion that both insurance companies are liable to pay compensation to the first and second respondents herein since the petition has been amended u/s 163A of the M.V. Act. It was contended that the Tribunal failed to note that as per the First Information Report, the deceased, who drove the Maruthi Car, was responsible for the accident and that the police after investigation had filed the charge sheet against him. It was contended that the Tribunal failed to note that as per the policy, the appellant is not liable to pay any compensation for the death of the deceased, who was responsible for the accident. It was also contended that the Tribunal failed to note that the respondents 1 and 2 herein have not established that the deceased was earning Rs. 40,000/- per year and also erred in adopting a multiplier of 16, as the deceased was aged 37 years at the time of accident. It was contended that the award passed under the various heads were excessive and hence, it was prayed to set aside the award.

11. The learned counsel for the claimants argued that even though the First Information Report and charge sheet had been registered against the deceased, the accident had been committed by the driver of the lorry. In order to prove the negligence and liability, no one was examined and no document was marked on the respondents side. However, on the basis of available records and evidence of the claimants, the learned Judge had apportioned the negligence equally on the drivers of both the vehicles, which had been involved in the accident. The appellant herein is equally responsible to produce rough sketch, to determine the tyre marks and to find out the truth regarding negligence of the drivers. Further, the Tribunal had not granted adequate compensation to the claimants under the relevant heads. Therefore, the compensation awarded is also on the lower side.

12. On considering the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation. This court is of the view that the learned Judge had fastened the liability on the insurers of both vehicles, since both vehicles were involved in the said accident. This Court is of the further view that the deceased was aged about 37 years and the dependents are three in numbers. Therefore, the quantum of compensation is not on the higher side. Though First Information Report has been registered against the driver of car i.e., deceased by the investigation officer, it is seen that the investigation officer had not come forward to establish the negligence of the deceased before the Tribunal.

13. The learned counsel for the appellant submits that the appellant's liability amount, with interest as per the Trial Court's order had been deposited. Now, it is open to the major claimants to withdraw their apportioned share amount, with proportionate interest thereon, lying in the credit of MCOP No. 843 of 2003, on the file of Motor Accident Claims Tribunal, I Additional District Judge, Coimbatore, after filing a memo, along with a copy of this order. This Court directs the learned Judge to deposit the minor claimant's apportioned share amount, with proportionate interest in a Nationalised Bank, as fixed deposit, in the cumulative deposit scheme until such time, she attains the age of a major, and handover the fixed deposit certificate to the mother of the minor. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, the Judgment and Decree dated 30.12.2005 and made in MCOP No. 843 of 2003 on the file of the Motor Accident Claims Tribunal, (I Additional District Judge) at Coimbatore is confirmed. Consequently, connected miscellaneous petition is closed. No costs.