
(2010) 03 MAD CK 0177
In the Madras High Court
Case No : C.M.A. No. 666 of 2006

Sakunthala and Jayasankaran

APPELLANT

Vs

Viramani, United India Insurance Co. Ltd., Arumugham and
National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Citation : (2010) 03 MAD CK 0177

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

Bench : Single Bench

Advocate : K. Kuppuswamy, for the Appellant; K.S. Narasimhan, for R2, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellants/petitioners against the Award and Decree, dated 03.01.2005, made in M.C.O.P. No. 1182 of 2002, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem, awarding a compensation of Rs. 2,02,000/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation.

2. Having not been satisfied with the said Award and Decree, the appellants/petitioners have filed the above appeal praying for additional compensation amount of Rs. 1,00,000/-.

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

The petitioners are the mother and brother of the deceased. They have filed a claim petition stating that on 09.05.2002, at about 08.30 p.m. the deceased Jayaprakash was riding his TVS 50 motorcycle bearing registration No. TN27 8715 towards Junction in Omalur Main road. When he was nearing Kalpana Theatre, a Maruthi car bearing registration No. TN30 A5523 came behind the deceased at a high speed and in a rash and negligent manner dashed against the

deceased and the deceased fell over towards the left side of the road. At that time a bus bearing registration No. TN27 D3456 ran over his head. Resultantly he died on the spot itself.

4. Regarding the said accident, a criminal case was registered against the drivers of the bus and the car, by the Traffic Investigation Wing, Salem, in Crime No. 296/2001,.

5. The deceased was doing silver leg chain business and was earning not less than Rs. 8,000/- per month. He was hale and healthy at the time of the said accident. He is the only earning member in the family. Further, the petitioners submitted that at the time of accident he was aged about 25 years and the first and third respondents are the owners of the vehicles, and the second and fourth respondents are the insurers of the vehicle. All are jointly and severally liable to pay a compensation of Rs. 10,00,000/- with interest and costs to the petitioners.

6. The second respondent/United India Insurance Co., Ltd., has filed a counter statement and resisted the claim petition stating that the deceased was aged more than 25 years and not 25 years as alleged. Further the deceased's employment as leg chain business is also false and there is no documentary evidence for that. The monthly income of the deceased at Rs. 8,000/- is totally false. At the time of the said accident, the deceased was earning a sum of Rs. 1,000/- only. The second petitioner is not depending upon the deceased and he is living independently from his own earnings. As such, the second petitioner is not entitled to any compensation. Further, the claim amount of Rs. 10,00,000/- is on the higher side. Further the second respondent submitted that the accident had happened due to the negligence of the deceased himself and not otherwise. On 09.05.2002 at about 08.30 p.m. when it was raining heavily the deceased riding the TVS 50 motorcycle in a negligent manner over took the Maruthi car by its left side, was further trying to over take the parked bus, fell near the rear wheel of the bus. At that time the bus was started and it ran over the deceased. As such, this is how the said accident had happened. The second respondent further submitted that the accident had happened only due to the negligence of the deceased.

7. The fourth respondent/National Insurance Co., Ltd., has filed a counter statement and opposed the claim petition stating that the accident had happened only due to the rash and negligent driving of the driver of the maruthi car owned by the first respondent and insured with the second respondent. But for the rash and negligent driving of the above said first respondent's Maruthi car, the accident would not have taken place at all. This respondent's insured vehicle viz. TN27 D3456 is not at all at fault and it was not the cause of the accident. Therefore, the respondent is not liable to pay compensation to the petitioners.

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

(i) Whether the accident had happened due to the rash and negligent driving of

the Maruthi car or bus?

(ii) Whether the petitioners are entitled to get compensation? If so, what is the quantum of compensation, which the petitioners are entitled to get?

9. On the petitioners' side one witness was examined as PW1 and six documents were marked as Exs. P1 to P6. On the respondents' side no witnesses were examined and no documents were marked.

10. The second petitioner, Jayasankaran, was examined as PW1. PW1 in his evidence had adduced evidence stating that on 09.05.2002 at about 08.30 p.m. the deceased Jayaprakash was riding his TVS50 motorcycle bearing registration No. TN27 8715 towards the Junction in Omalur Main road. When he was nearing Kalpana Theatre, a Maruthi car bearing registration No. TN30 A5523 came behind the deceased at a high speed, in a rash and negligent manner dashed against the deceased, and the deceased fell over towards the left side of the road. At that time a bus bearing registration No. TN27 D3456 ran over his head and he died on the spot. For which First Information Report registered against the drivers of the car and the bus, which is marked as Ex.P1. Charge Sheet also filed against the drivers of the car and the bus, which is marked as Ex.P5. The drivers of the car and the bus admitted the accident and paid the fine also. It reveals in the Judgment of the Criminal Court. The said Judgment is marked as Ex.P6 and the PW1 further adduced evidence stating that at the time of the said accident, the deceased was aged about 25 years, he was doing silver ornament business. Through his profession, he was earning a sum of Rs. 10,000/- per month. After considering the evidence of the PW1 and documents, which were marked as exhibits, the Tribunal came to the conclusion that the accident had happened due to the rash and negligent driving of the drivers of the car and bus. Hence, the second and fourth respondents are liable to pay compensation to the petitioners. The Tribunal fixed the income of the deceased at Rs. 3,000/- per month. As such, his annual income at Rs. 36,000/-. After deducting 1/3rd share for his personal expenses, Rs. 24,000/- was contributed to his family. Considering the age of the first petitioner, the Tribunal adopted a multiplier method of 8 and awarded a sum of Rs. 1,92,000/- under the head of loss of income and Rs. 10,000/- for funeral expenses. In total, the Tribunal awarded a sum of Rs. 2,02,000/- as compensation to the petitioners, 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. Further, the Tribunal apportioned a sum of Rs. 1,27,000/- to the first petitioner and Rs. 75,000/- to the second petitioner. Further, the Tribunal directed the respondents to deposit the entire compensation amount with interest within a period of sixty days from the date of its Order. From and out of the total compensation amount, the first and second respondents were to pay 50% of the award amount and the third and fourth respondents were to pay 50% of the award amount to the petitioners. In turn, the said compensation amount to be deposited in any one of a nationalised bank for a period of three years in a fixed deposit scheme. The Advocate fees fixed at Rs. 7,040/-.

11. Having not been satisfied with the said Award and Decree, the appellants/petitioners have filed the above appeal praying for additional compensation amount of Rs. 1,00,000/-.

12. The learned Counsel appearing for the appellants argued that at the time of the said accident the deceased was aged about 25 years and he was involved in silver ornament business by occupation. As such, he was earning a sum of Rs. 8,000/- per month. Further, he was the only breadwinner of his family. The mother of the deceased is aged about 58 years and the brother of the deceased is aged about 25 years. Further, the brother of the deceased is a handicapped person. He was depending upon the income of the deceased. Further, the award amount granted by the Tribunal is on the lower side, considering the age and income of the deceased.

13. The learned Counsel appearing for the second respondent vehemently argued that the Tribunal after considering the evidence of the PW1 and documents marked as exhibits, granted the compensation amount, which is a well considered one and fair and equitable.

14. Considering the facts and circumstances of the case, findings of the Tribunal and arguments advanced by the learned Counsel appearing on either side, this Court is of the view that the compensation amount of Rs. 2,02,000/- is on the lower side. Hence, this Court decides to enhance the compensation amount granted by the Tribunal as follows:

1. This Court fixed the income of the deceased at Rs. 3,750/- per month. After deducting 1/3rd share for his personal expenses of the deceased and adopting multiplier method of 8, this Court grants a sum of Rs. 2,40,000/- as compensation under the head of loss of income,

2. The Tribunal awarded a sum of Rs. 10,000/- for funeral expenses. This Court confirms the same under the same head.

3. This Court grants a sum of Rs. 30,000/- under the head of loss of love and affection,

In total, this Court grants a sum of Rs. 2,80,000/-. The Tribunal awarded a sum of Rs. 2,02,000/- 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. This Court awards a sum of Rs. 78,000/- as additional compensation amount to the claimants. The additional compensation amount will carry interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 1182 of 2002, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem, which is fair and equitable.

15. Therefore, this Court directs the second and fourth respondents to deposit the additional compensation amount of Rs. 78,000/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of

payment of compensation, into the credit of the M.C.O.P. No. 1182 of 2002, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem, within a period of four weeks from the date of receipt of a copy of this order.

16. After such deposit being made into the credit of the M.C.O.P. No. 1182 of 2002, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem, the claimants are at liberty to withdraw the compensation amount by making proper payment out application in accordance with law.

17. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 03.01.2005, made in M.C.O.P. No. 1182 of 2002, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Salem, is modified. There shall be no order as to costs.