
(2014) 03 MAD CK 0189

In the Madras High Court

Case No : C.M.A. No. 946 of 2014 and M.P. No. 1 of 2014

The Branch Manager, M/s. Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mrs. Venkatamma and Others

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, 163-A

Penal Code, 1860 (IPC) — Section 279, 304(A), 337

Citation : (2014) 03 MAD CK 0189

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Manikumar, J.—19.02.2010, about 13.45 hours, when one Mr. Venkatesh was traveling as a pillion rider in TVS 50 motorcycle, near a petrol bunk, on Hosur to Krishnagiri National Highways, a tourist bus bearing Regn. No. A/01/B8881, belonging to one B.G. Somashekar, (2nd respondent in MCOP No. 1539 of 2010) driven in a rash and negligent manner, by Mr. R. Balaji Deepan (3rd respondent in MCOP No. 1539 of 2010), dashed against the motorcycle and in the result, the pillion rider, Venkatesh died on the spot. A case in Cr. No. 60 of 2010 has been registered under Sections 279, 337 and 304(A) IPC against the driver of the bus bearing Regn. No. KA/01/B8881, on the file of the Soolagiri Police Station, Krishnagiri District. Parents and unmarried sisters, filed MCOP No. 1539 of 2010 on the file of MACT (Additional District Judge), Krishnagiri, for Rs. 8,00,000/-. Before the claims tribunal, the Branch Manager, Oriental Insurance Company Limited, Bangalore, has filed a counter affidavit and disputed the manner of accident. According to him, the motorcycle carried four persons. The motorcyclists, in an uncontrollable speed, near the cut road, from Soolagiri tried to enter into the National Highways, without seeing the bus and thus caused the accident. In the above said circumstances, they disputed the liability. Without prejudice to the above, the Insurance, has Company has disputed the age, income and the quantum of compensation claimed under various heads.

2. Before the claims tribunal, Mrs. Venkatamma, mother of the deceased examined herself as P.W. 1 and reiterated the manner of accident. Ex. P1, copy of FIR dated 19.02.2010, Ex. P2, the copy of the postmortem certificate, Ex. P3, copy of insurance policy and Ex. P4, the copy of the Motor Vehicle Inspector's report, have been filed on the side of the claimants. No oral or documentary evidence has been adduced on the side of the Insurance Company.

3. The claim petition has been filed u/s 163 of the Motor Vehicles Act, contending inter alia that the deceased earned Rs. 3,300/- per month. Upon evaluation of pleadings and evidence, the claims tribunal, held that the accident occurred due to the rash and negligent driving of the driver of Sangeetha Tourist bus bearing Regn. No. KA/01/B8881 insured with the appellant insurance company. At the time of accident, the deceased was stated to be aged 21 years. Income has been fixed as Rs. 3,300/- per month. Having regard to the judgment of the Supreme Court in the MG. Dir., Bangalore Metropolitan Tpt. Corp. Vs. Sarojamma and Another, and taking note of the fact that the claim petition has been filed u/s 163-A of the Motor Vehicles Act, 1988, the tribunal, deducted 1/3, towards the personal and living expenses of the deceased, and after applying "18" multiplier computed, the loss of contribution to the family at Rs. 4,75,200/-. A sum of Rs. 30,000/- has been awarded for loss of love and affection, to the parents (Rs. 15,000/- each). Claimants 3 and 4 were unmarried sisters. Therefore, a sum of Rs. 24,000/- has been awarded for loss of love and affection to the unmarried sisters (Rs. 12,000/- each). Funeral expenses of Rs. 5,000/- has been awarded. Altogether, the claims tribunal has awarded Rs. 5,34,200/- as compensation to the respondents/claimants, with interest, at the rate of 6% per annum, from the date of claim.

4. Though, Mr. J. Chandran, learned counsel for the appellant Insurance Company, submitted that the claims tribunal, ought to have adverted to the averments made in the counter affidavit that four persons traveled in the motorcycle, at the time of accident, there is absolutely no grounds in the memorandum of appeal.

5. It is well settled by the Apex Court that when an application u/s 163-A of the Motor Vehicles Act, is made, the claimants need not prove negligence. But if the opposite parties, Insurance company, or the insured attributes negligence against the injured or the deceased as the case may be, then the burden is on the opposite party to adduce concrete evidence and prove negligence on the part of the injured or the deceased, as the case may be. Reference can be made to the decision of the Supreme Court in National Insurance Company Ltd. Vs. Sinitha and Others, .

6. During the course of hearing, it was brought to the notice of this Court, that the above said decision has been referred to a larger Bench of the Apex Court. But it is well settled that till a reference is answered, the law declared in National Insurance Company Ltd. Vs. Sinitha and Others, , has to be applied to all pending cases.

7. In the light of the decision of the Supreme Court, this Court is not inclined to interfere with the finding fixing negligence on the driver of the Sangeetha Tourist bus bearing Regn. No. KA/01/B8881, and insured with the appellant Insurance Company. Quantum of compensation awarded by the tribunal cannot be said to be grossly excessive, warranting interference. The finding fixing negligence and the quantum of compensation, are sustained and consequently, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently the connected Miscellaneous petition is closed. Consequent to the dismissal of the appeal, the appellant Insurance Company, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of MCOP No. 1539 of 2010 on the file of MACT (Additional District Judge), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the respondents/claimants are permitted to withdraw the award amount as apportioned by the tribunal, by making necessary applications.