

(2010) 09 MAD CK 0010
In the Madras High Court
Case No : C.M.A. No. 2028 of 2006

The Manager, The New India Assurance Co., Ltd.

APPELLANT

Vs

Uma and Others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2010) 09 MAD CK 0010

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

Bench : Single Bench

Advocate : K.M. Mohamed Hussain, for Sree Associates, for the Appellant; R. Neelakandan, for RR1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the Appellant/second Respondent against the Award and

Decree, dated 23.04.2004, made in M.C.O.P. No. 817 of 2001, on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvallur,

awarding a compensation of Rs. 4,62,500/- together with 9% interest per annum, from the date of filing the claim petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the Appellant/second Respondent has filed the above appeal praying to scale down the award and

decree passed by the Tribunal.

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

On 11.06.2001, at about 06.00 a.m. the deceased Venkatesan was standing near Othikkady bus stop to go to Thiruvallur. At that time, the Auto

bearing registration No. TN20 C9572, belonging the first Respondent and insured with the second Respondent, was coming towards Tiruvallur,

driven by its driver in a rash and negligent manner and hit against the deceased and the said Auto had capsized. As a result, the deceased

Venkatesan sustained grievous injuries and succumbed to the injuries in Government General Hospital, Chennai after three days treatment. The

accident had occurred only due to the rash and negligent driving of the driver of the first Respondent's Auto. As such, the Petitioners claimed a

compensation of Rs. 5,00,000/- with interest before the Tribunal.

4. The second Respondent, in their Counter, had resisted the claim petition, which reads as follows:

This Respondent denies the age, income and occupation of the deceased.

The claims under various heads in Para 21(1) are not admitted the Petitioners are put to strict proof to that effect.

It is also put to strict proof that the injury was caused by the accident involving vehicle ie. Auto bearing registration No. TN20 C9572 belonging to

the first Respondent insured with this Respondent. The insurance particulars are also put to strict proof by the Petitioners.

It is submitted that the delay in filing FIR should be properly explained.

This Respondent further submits that under the aforesaid circumstances this Respondent is entitled to contest the case u/s 170 of Motor Vehicles

Act.

This Respondent reserves their right to file an additional counter at a later date.

Without prejudice of the above contentions, this Respondent submits that the claim amount is excessive, exorbitant and without any basis.

In the circumstances, the petition is liable to be dismissed with costs.

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

(i) Who is responsible for the said accident?

(ii) What is the quantum of compensation, which the Petitioners are entitled to?

6. On the Petitioners' side, the first claimant was examined as PW1 and one Balasundaram, who is the eye witness of the accident, was examined

as PW2 and five documents were marked as Exs.P1 to P5 namely Ex.P1-Xerox copy of the First Information Report, Ex.P2-Motor Vehicle

Inspector's Report, Ex.P3-Post-mortem Report, Ex.P4-Xerox copy of the Charge Sheet, Ex.P5-Copy of the judgment of the Lower Court. On

the Respondents' side no witnesses were examined and no documents were marked.

7. The first claimant, PW1 had adduced evidence stating that she is the widow of the deceased, the second and third claimants are the minor

daughters of the deceased Venkatesan and the fourth and fifth claimants are the parents of the deceased. Further, she had adduced evidence

stating that her husband had expired in the motor vehicle accident. The case was also registered against the driver of the offending vehicle. In order

to prove her case, she had marked the Ex.P1-FIR, Ex.P2-Motor Vehicle Inspector's Report, Ex.P4-Charge Sheet and Ex.P5-Judgment of the

lower Court. Further, she had adduced evidence stating that at the time of the accident, her husband's age was 28 years and by profession an

Auto driver. Through this profession he was earning a sum of Rs. 10,000/- per month. She has also marked Ex.P3-Post-mortem Report.

8. One Balasundaram, who is the eye witness of the accident, was examined as PW2. He had adduced evidence stating that two years back, one

day at early morning 6.00 a.m. he was at the bus stand and the deceased was also standing at the bus stop. At that point of time, the offending

vehicle namely Auto dashed against him and the accident had occurred only due to the rash and negligent driving of the driver of the Auto.

9. After considering the evidence of PW1 and PW2 and documents, which were marked by the claimant, the learned Tribunal had come to the

conclusion that the driver of the auto had committed the accident, therefore the Respondents are liable to pay compensation and awarded the

compensation as follows:

i. Rs. 3,60,000/- under the head of loss of income, after adopting the multiplier method on the formula basis (Rs. 2,500/- X 12 X $\frac{2}{3}$ X 18 = Rs.

3,60,000/-),

ii. Rs. 2,500/- under the head of transport expenses,

iii. Rs. 25,000/- under the head of loss of consortium to the widow of the deceased,

iv. Rs. 25,000/- under the head of shock and suffering,

v. Rs. 25,000/- under the head of loss of love and affection,

vi. Rs. 25,000/- under the head of loss of estate,

In total, the Tribunal awarded a sum of Rs. 4,62,500/- as compensation to the Petitioner, 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 directed the second Respondent to deposit the

compensation amount of Rs. 4,62,500/- 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, within a period of one month from the date of its order. In turn, the said amount to be deposited, under a fixed deposit

scheme, in a nationalised bank for a period of three years. Further, the Tribunal apportioned a sum of Rs. 2,31,250/- to the first Petitioner and Rs.

46,250/- each to the second to sixth Petitioner. Further, the Tribunal directed the first, fourth and sixth Petitioners to deposit the minors' share in a

nationalised bank, till they attain adulthood Accordingly ordered.

10. Aggrieved by the said Award and Decree, the Appellant/second Respondent has filed the above appeal praying to scale down the award and

decree passed by the Tribunal.

11. The learned Counsel appearing for the Appellant argued that there is no income proof for the deceased. The Tribunal awarded a sum of Rs.

25,000/- under the head of love and affection to the first claimant, which is not pertinent and another sum of Rs. 25,000/- under the head of loss of

estate, which is an injustice. Therefore, he submitted that the award passed by the Tribunal is an excessive and exorbitant one. Hence, he prays to

scale down the compensation amount awarded by the Tribunal.

12. The learned Counsel appearing for the claimants/Respondents 1 to 6 argued that the claimants are 5 in number, the second and third claimants

being minors, aged about 4 and 5 years respectively. The first claimant is a young widow. The deceased was the only bread winner of the family,

who was earning Rs. 10,000/- per month through his auto profession. Further, he argued that the award passed by the Tribunal is a fair and

equitable one. Therefore, he prays to dismiss the appeal.

13. Considering the facts and circumstances of the case, the arguments advanced by the learned Counsel appearing on either side and the award

and decree passed by the Tribunal, this Court is of the view that the Tribunal had not awarded a compensation under the head of funeral expenses.

Further, this Court is of the view that the first claimant is an young widow and at the time of the said accident she was pregnant and second and

third minor claimants are aged about 4 and 3 years respectively. Therefore, this Court finds it unwilling to interfere with the quantum of

compensation awarded by the Tribunal. Therefore, this Court confirms the award and decree passed by the Tribunal.

14. This Court hereby directs the Appellant/New India Insurance Company Ltd., to deposit the entire compensation amount awarded by the

Tribunal, into the credit of the M.C.O.P. No. 817 of 2001, on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruvallur, within a

period of six weeks from the date of receipt of a copy of this Order.

15. As the accident had happened in the year 2001, the claimants/Respondents 1 to 6 are at liberty to withdraw the entire respective shares, as

apportioned by the Tribunal, with accrued interest thereon and costs, lying in the credit of the M.C.O.P. No. 817 of 2001, on the file of the Motor

Accident Claims Tribunal, Sub Court, Thiruvallur, by making proper payment out application, subject to the deduction of withdrawals, if any, and

subject to the minors attaining adulthood, in accordance with law.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 23.04.2004, in M.C.O.P. No. 817 of 2001,

passed by the Motor Accident Claims Tribunal, Sub Court, Thiruvallur is confirmed. No costs.