

(2013) 09 MAD CK 0205

In the Madras High Court

Case No : C.M.A. No. 1441 of 2009 and M.P. No. 1 of 2009

The Manager, United India Insurance Co. Ltd.

APPELLANT

Vs

Balakrishnan, Radha Balakrishnan, Preethi and Babu

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0205

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : S. Arunkumar, for the Appellant; R. Subramanian for R. 1 to R. 3 in C.M.A. No. 1441/09 and for R. 1 in CMA No. 1442/09, for the Respondent

Judgement

R. Subbiah, J.—Challenging the common award dated 30.4.2006 passed by the learned Additional District Judge, Fast Track Court No. V, Thiruvallur, made in M.C.O.P. Nos. 329 and 330 of 2006, the present appeals have been filed. The brief facts are that on 8.7.2006 at about 9.30 a.m., while the deceased Praveen was riding a motor cycle at G.N.T. Road near Karanodai Bridge along with the injured claimant Jaiganesh as a pillion rider, a lorry proceeding from the opposite direction, came in a rash and negligent manner at a hectic speed and dashed against the two wheeler, in which the rider and pillion rider of the two wheeler had sustained grievous injuries. On the way to hospital, the rider of the two wheeler namely, Praveen died. The injured victim namely Jaiganesh had sustained multiple injuries all over the body. The injured victim was admitted in the Stanley hospital. Thereafter, he went to Sundaram Foundation hospital and took treatment as inpatient for two days. Alleging that the accident was due to the rash and negligent driving of the driver of the lorry, the legal heirs of the deceased Praveen have filed M.C.O.P. No. 329 of 2006 claiming compensation of a sum of Rs. 60,00,000/- and the injured victim has filed the claim petition in M.C.O.P. No. 330 of 2006 claiming compensation of a sum of Rs. 2,00,000/-.

2. Resisting the claim petitions, the insurance company filed counter affidavits denying the age, occupation and income of the deceased Praveen and the

injuries sustained by the claimant Jaiganesh. It was also stated that the driver of the lorry was not responsible for the accident and therefore, the insurance company is not liable to pay the compensation.

3. To substantiate the claim, the injured claimant examined himself as P.W. 1. The Mother of the deceased Praveen was examined as P.W. 2, Dr. Thiyagarajan was examined as P.W. 3 and one Selvaragavan Mani was examined as P.W. 4 in both the claim petitions. On the side of the claimants, Exs. P1 to P17 were marked in both the claim petitions. On the side of the insurance company, one Neelamegam was examined as R.W. 1, one Soundarapandian was examined as R.W. 2 and one Easunathan was examined as R.W. 3 and Exs. R1 to R3 were marked in both the claim petitions.

4. The Tribunal after going through the evidence, both oral and documentary, came to the conclusion that the accident is the result of rash and negligent driving of the driver of the lorry. By coming to such a conclusion, the Tribunal has awarded a sum of Rs. 28,52,500/- as against the claim of Rs. 60,00,000/- to the claim made by the legal heirs of the deceased Praveen and awarded a sum of Rs. 50,000/- as against the claim of Rs. 2,00,000/- in respect of the claim made by the injured claimant Jaiganesh. Aggrieved over the same, the insurance company has filed these two appeals.

5. At the outset, learned counsel appearing for the appellant/insurance company submitted that the accident had occurred only due to the negligent act of the deceased Praveen himself. He has further submitted that on the date of occurrence, there is no valid fitness certificate for the lorry, which had caused the accident and hence, the Tribunal ought to have dismissed both the claim petitions in toto. In any event, the Tribunal ought to have come to the conclusion that there was a contributory negligence and thereby ought to have deducted 50% of the amount from the compensation fixed in respect of the claim made by the legal heirs of the deceased Praveen. The learned counsel appearing for the appellant/insurance company has also drawn the attention of this Court to Section 56 of the Motor Vehicles Act and submitted that the vehicle shall not be deemed to be validly registered, unless it carries the certificate of fitness. In the instant case, the evidence on record would show that the fitness certificate had expired as early as on 6.6.2006 itself and on the date of occurrence i.e., on 8.7.2006, it was not in force. Therefore, there is a statutory violation on the part of the owner of the lorry. Under such circumstances, the insurance company is not liable to pay the compensation and only the owner of the lorry is liable to pay the compensation. Hence, the award passed by the Tribunal as against the insurance company is liable to be set aside.

6. We have heard the learned counsel on either side and perused the materials available on record.

7. We find that though there was no valid fitness certificate for the lorry on the date of accident, on a perusal of the evidence available on record, it is clear that

the Inspector of the insurance company, who was examined as R.W. 2, has admitted in his cross examination that the Motor Vehicle Inspector has given a report stating that absolutely there is no mechanical defect in the vehicle. Thus, the evidence of R.W. 2 would show that even on the date of occurrence, the vehicle was found to be fit to run. Moreover, we are of the opinion that the evidence on record would show that the fitness certificate had expired just one month prior to the date of occurrence and the same could be renewed at any time. In this situation, we are of the opinion that since the vehicle was covered by insurance on the date of accident, the insurance company cannot deny the payment of compensation in respect of the claim made by the third parties. So far as the third party claims are concerned, the insurance company can pay the compensation amount and recover the same from the owner of the vehicle. In view of the above discussions, we are of the view that since on the of accident there is no valid fitness certificate, the insurance company can pay the compensation and recover the same from the owner of the vehicle.

8. So far as the rash and negligent aspect is concerned, we find that the insurance company has not chosen to examine the driver of the lorry, who is the competent person to speak about the rash and negligent act. On the other hand, on the side of the claimants, the injured victim Jaiganesh was examined as P.W. 1, who has spoken about the manner of the accident. Hence, by considering the evidence, both oral and documentary and connected materials, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. We do not find any infirmity in the said finding.

9. With regard to the quantum of compensation awarded in respect of the claim made by the legal heirs of the deceased Praveen is concerned, we find that the deceased was working as Software Engineer in H.C.L. Technologies India Limited and earning a sum of Rs. 52,000/- per month. In order to prove the income of the deceased Praveen, on the side of the claimants, the Senior Manager of H.C.L. Technologies India Limited was examined as P.W. 4. He has clearly stated in his evidence that the said Praveen worked as Consultant in the said company and was earning a sum of Rs. 44,815/- per month and his annual income was Rs. 5,37,780/-. The salary certificate of the deceased Praveen was also produced and marked as Ex. P. 7. The Tribunal, by relying upon the evidence of P.W. 4 and Ex. P. 7, has come to the conclusion that the take home salary of the deceased Praveen is Rs. 21,148/- which is rounded of Rs. 21,000/- and arrived at the annual income of the deceased Praveen as Rs. 2,52,000/-. Thereafter, by deducting 1/3rd amount from the said amount towards his personal expenses, arrived at a sum of Rs. 1,68,000/-. Thereafter, by considering the age of his mother, which was 51 years, by applying the multiplier of 11, awarded a sum of Rs. 18,48,000/- as loss of dependency. The Tribunal has also awarded a sum of Rs. 2,000/- towards funeral expenses and a sum of Rs. 2,500/- towards loss of estate. The Tribunal has also awarded a sum of Rs. 10,00,000/- towards loss of future earnings. Thus, the Tribunal has awarded a total sum of Rs. 28,52,500/-

as compensation to the legal heirs of the deceased Praveen. Considering the income of the deceased at the time of his death, we are of the opinion that the compensation of a sum of Rs. 28,52,500/- awarded by the Tribunal cannot be said to be excessive.

10. So far as C.M.A. No. 1442 of 2009 is concerned, the Tribunal has awarded only a sum of Rs. 50,000/- as against the claim of Rs. 2,00,000/- for the injuries sustained by the injured claimant Jaiganesh. We do not find any infirmity in the compensation awarded by the Tribunal.

11. In view of the findings rendered above, we are of the opinion that there is no infirmity in the order of the Tribunal warranting interference of this Court.

12. In fine, the common award dated 30.4.2006 passed by the learned Additional District Judge, Fast Track Court No. V, Thiruvallur, made in M.C.O.P. Nos. 329 and 330 of 2006 is confirmed and the both the appeals are dismissed. No costs. However, since there is no valid fitness certificate for the lorry, this Court directs the insurance company to pay the compensation amount in both the cases to the legal heirs of the deceased Praveen and the injured claimant Jaiganesh and recover the same from the owner of the vehicle. The insurance company is also directed to deposit the entire compensation amount with accrued interest, if not so far deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants in both the appeals are permitted to withdraw their respective shares with proportionate interest. Connected M.Ps are closed.