(2013) 10 MAD CK 0133

In the Madras High Court

Case No : C.M.A. No. 3020 of 2009 and M.P. No. 1 of 2009

The National Insurance Co. Ltd. APPELLANT

Vs

S.Selladurai, Eluvakkal, Samuthirakani and A.Ravichandran RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0133

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

Bench : Single Bench

Advocate : N.B. Surekha, for the Appellant; N. Manokaran for R1 and R2, for the Respondent

Judgement

C.S. Karnan, J.—The appellant/third respondent has preferred the present appeal against the judgment and decree dated 26.03.2008, made in M.A.C.T.O.P. No. 28 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Fast Track Court No. V, Coimbatore. The short facts of the case are as follows:-

The claimants, who are the parents of the deceased Kannan, had filed a claim petition in M.A.C.T.O.P. No. 28 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Fast Track Court No. V, Coimbatore, claiming a sum of Rs. 7,50,000/- as compensation, from the respondents, for the death of their son Kannan in a motor vehicle accident.

2. It was submitted that on 30.06.2005, at about 05.30 p.m., when the deceased Kannan @ Senthilmurugan was riding a motorcycle bearing registration No. TN33 AC5160 along with the deceased Parthiban, on Mettupalayam Road, the second respondent''s lorry bearing registration No. TN40 7399, coming at a high speed and driven in a negligent manner, dashed against the motorcycle. As a result, the deceased Kannan @ Senthilmurugan had sustained injuries and succumbed to it. Hence, the claimants had filed the claim petition against the respondents, who are the driver, owner and insurer of the lorry bearing registration No. TN40 7399.

3. The third respondent Insurance Company had filed their counter affidavit and

resisted the claim petition. They had denied the averments made in the claim petition regarding age, occupation and income of the deceased. Further, the accident had been committed by the rider of the motorcycle due to his negligence. Further, they had submitted that three persons had travelled on the motorcycle and as such there is violation of policy conditions and violation of M.V. Act and as such the Insurance Company is not liable to pay compensation. Further, they had submitted that the owner and insurer of the motorcycle are also necessary parties in the claim and the second respondent''s lorry had not been covered under valid vehicular records to ply on the public road.

4. On considering the averments of both sides, the Tribunal had framed two issues namely:

i. Due to whose negligence was the accident caused? and

ii. Whether the claimants are entitled to get compensation? if so, what is the quantum of compensation?

5. In the said accident, the pillion rider of the motorcycle namely Parthiban had also succumbed to his injuries. Hence, the parents of the deceased had filed a claim petition in M.C.O.P. No. 27 of 2006, claiming compensation from the same respondents. Hence, the Tribunal had conducted a joint trial and passed a common award.

6. On the claimants'' side, two witnesses were examined as P.Ws. 1 and 2 and 14 documents were marked as Exs. P1 to P14 namely copy of FIR, sketch, observation mahazar, M.V.I''s report, charge sheet, postmortem reports, legal heir certificates, ration card, educational certificate, training certificate, salary certificate and certificate containing particulars of driving licence. On the respondents'' side, no witness was let in and no document was marked.

7. P.W. 2 father of the deceased Kannan @ Senthilmurugan had adduced evidence that on 30.06.2005 at about 05.30 p.m., when his son Kannan @ Senthilmurugan was riding motorcycle bearing registration No. TN33 AC5160, along with Parthiban and Shankar, on Mettupalayam Main Road, the first respondent''s lorry bearing registration No. TN40 7399, driven by it''s driver in a negligent manner, had dashed against the motorcycle and as a result his son had succumbed to his injuries. The pillion rider Parthiban also died on the spot and another pillion rider Sankar had sustained injuries. Further, he had adduced evidence that his son Kannan was aged about 18 years and was working as an Electrician and earning Rs. 5,000/- per month.

8. On considering the evidence of the witnesses and on perusing the documents marked by the claimants, the Tribunal awarded a sum of Rs. 5,15,000/- as compensation to the claimants and directed the third respondent Insurance Company to pay the said sum together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, with costs, within a period of one month, from the date of it''s

order.

9. Aggrieved by the award passed by the Tribunal, the third respondent Insurance Company has preferred the present civil miscellaneous appeal.

10. The learned counsel appearing for the appellant Insurance Company has contended in the appeal that the entire negligence had been fastened on the driver of the lorry, which is not appropriate in the instant case. Actually, the deceased and two others, who were proceeding on the motorcycle as rider and pillion rider, had lost their control, due to overloading of vehicle and dashed against the lorry. As such, there is violation of policy conditions and therefore the appellant Insurance company is not liable to pay compensation. Further, the deceased was a bachelor and therefore 50% of the income of the deceased has to be deducted for personal expenses instead of 1/3rd income. Further, in the instant case contributory negligence has to be attributed, since the rider of the motorcycle had invited the said accident.

11. The learned counsel appearing for the claimants has argued that in the said accident two persons expired and one person had sustained injuries. However, the injured person had not preferred any claim. The learned counsel has further argued that the driver of the lorry had filed criminal proceedings since he had committed the said accident and it is also seen that the said lorry had been insured with the appellant Insurance Company. Therefore, the Tribunal has decided all the relevant issues on the basis of documentary proof namely FIR, charge sheet, rough sketch, insurance policy. The quantum of compensation had been decided on the basis of age and income of the deceased. Therefore, there is no lacuna in the impugned award. Hence, it is prayed to dismiss the appeal.

12. On verifying the facts and circumstances 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.

13. This Court has already directed the appellant Insurance Company to deposit the entire award amount together with interest, less the amount already deposited, to the credit or M.A.C.T.O.P. No. 28 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Fast Track Court No. V, Coimbatore.

14. Now, it is open to the claimants to withdraw their apportioned compensation amount, with proportionate interest thereon, lying in the credit of M.A.C.T.O.P. No. 28 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Fast Track Court No. V, Coimbatore, after filing a memo along with a copy of this Judgment. In the result, this civil miscellaneous appeal is dismissed and the Judgment and decree dated 26.03.2008, made in M.A.C.T.O.P. No. 28 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Fast Track Court No. V, Coimbatore, is confirmed. Consequently, connected civil miscellaneous petition is closed. No costs.