

(2013) 10 MAD CK 0047

In the Madras High Court

Case No : C.M.A. No. 3019 of 2009 and M.P. No. 1 of 2009

The National Insurance Co. Ltd., Mettupalayam

APPELLANT

Vs

P.N. Muthu, Irulayee, Samuthirakani and A. Ravichandran

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0047

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

Final Decision : Dismissed

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. 27 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 Parthiban, had filed a claim petition in M.A.C.T.O.P. No. 27 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 Parthiban in a motor vehicle accident.

2. It was submitted that on 30.06.2005, at about 05.30 p.m., when the deceased Parthiban and one Shankar were travelling as pillion riders on a

motorcycle bearing registration No. TN33 AC5160 along with Kannan @ Senthilmurugan, who was riding the motorcycle, 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 Parthiban 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 rider of the motorcycle namely Kannan @ Senthilmurugan had also succumbed to his injuries. Hence, the parents of the

deceased had filed a claim petition in M.C.O.P. No. 28 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. 1 father of the deceased Parthiban had adduced evidence that on

30.06.2005 at about 05.30 p.m., when his son Parthiban was travelling as a pillion rider on the motorcycle bearing registration No. TN33 AC5160, 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 rider Kannan also died on the spot and another pillion rider Sankar had sustained injuries. Further, he had adduced evidence that his son Parthiban was aged about 18 years and he was 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.

4,19,000/- 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 FIR and charge sheet had been levelled against the driver of the offending

lorry. Further, the claimants had marked rough sketch, which clearly reveals that the driver of the lorry had committed the said accident. It is also

seen that the lorry had been insured with appellant Insurance company.

Therefore, the negligence, liability had been decided in an appropriate manner. Regarding quantum, the deceased was aged about 18 years and he was a salesman in a petrol bunk. Both the claimants were depending upon the income of the deceased, who was a breadwinner of the family and the claimants had lost their only earning son in the said accident.

Therefore, the quantum of compensation is not on the higher side to the sorrowful parents.

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 of M.A.C.T.O.P. No. 27 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. 27 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. 27 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.