(2013) 11 MAD CK 0006

In the Madras High Court

Case No : C.M.A. No. 2949 of 2008 and M.P. No''s. 1 of 2008 and 1 of 2009

The New India Assurance Co. Ltd. — APPELLANT

Vs

A. Kasthuri, A. Anand, A. Sathish and A. Rajesh — RESPONDENT

Date of Decision : 05-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0006

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

Bench : Single Bench

Advocate : M. Krishnamoorthi, for the Appellant; A.N. Viswanatha Rao for R1 to R4, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 08.10.2007,

made in M.A.C.T.O.P. No. 4562 of 2002, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai. The short

facts of the case are as follows:-

The claimants, who are the wife, children and mother of the deceased Arumugam, had filed a claim petition in M.A.C.T.O.P. No. 4562 of 2002,

on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, claiming compensation of a sum of Rs. 25,00,000/- from

the respondents for the death of the said Arumugam in a motor vehicle accident.

2. It was submitted that on 08.03.2002, at about 11.40 p.m., when the first claimant''s husband Arumugam was proceeding on his motorcycle

bearing registration No. TN09 Y9754, on Thiruvanmiyur Main Road, the first respondent''s van bearing registration No. AP03 V0780, driven by it''s driver in a rash and negligent manner, on the same direction, dashed behind the motorcycle. As a result, the rider of the motorcycle had

succumbed to his injuries. Hence, the claimants had filed the claim petition against the respondents, who are the owner and insurer of the van

bearing registration No. AP03 V0780.

3. The second respondent Insurance Company, in their counter affidavit, had resisted the claim petition. They had denied the manner of accident.

Further, the vehicle had not been covered under a valid policy, permit, R.C., etc. It was also submitted that the driver of the van did not possess a

valid driving licence. The averments made in the claim petition regarding age, income and occupation of the deceased were also not admitted.

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

i. Who is responsible for the accident? and

ii. Whether the claimants are entitled to get compensation? If so, how much?

5. On the side of the claimants'' two witnesses were examined as P.W.1 and P.W.2 and nine documents were marked as Exs. P1 to P9 namely

postmortem certificate, death certificate, F.I.R., death and legal heir certificate, Food World Bills, bank statement, rough sketch and Food World

advance. On the side of the respondents, one witness was examined as R.W.1 and two documents were marked as Exs. R1 and R2 namely

M.V.I''s reports.

6. P.W.1 wife of the deceased had adduced evidence that the claimants 2, 3 and 4 are the minor sons of the deceased and the fifth claimant is the

widowed mother of the deceased. The deceased''s age was 32 years and he was working as a wholesale vegetable vendor and earning Rs.

15,000/- per month. She deposed that on 08.03.2002, at about 11.40 p.m., when her husband was proceeding in his motorcycle, on

Thiruvanmiyur Main Road, the first respondent''s van bearing registration No. AP03 V708, coming behind the motorcycle and driven in a negligent

manner, dashed against her husband.

7. P.W.2 had spoken on the same lines of P.W.1 regarding manner of accident.

8. R.W.1 had adduced evidence that the accused, who is the driver of the van, had been acquitted from the criminal case. Further, he had marked

the M.V.I''s reports of both the vehicles.

9. On considering the evidence of the witnesses and on scrutinizing the documents marked by both the parties, the Tribunal had awarded a sum of

Rs. 7,02,000/- as compensation to the claimants and directed the second respondent Insurance Company to pay the award amount, on behalf of

the first respondent, 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 (excluding the period of default, if any), with costs, within a period of eight weeks from the date of it''s order.

10. Aggrieved by the said Award, the second respondent Insurance Company has preferred the present civil miscellaneous appeal.

11. The learned counsel appearing for the appellant has contended in the appeal that as per the M.V.I''s reports, the motorcycle of the deceased

had been damaged on it''s front side and as such it was evident that the rider of the motorcycle had committed the said accident. Initially, FIR had

been registered against the driver of the van, but he had been subsequently acquitted from the criminal case. As per the manner of accident, the

accident had occurred due to collision of two vehicles and as such contributory negligence has to be attributed. Further, no income proof had been

filed to prove the income of the deceased and the multiplier adopted is also on the higher side. Hence, it is prayed to set aside the award passed by

the Tribunal.

12. The very competent counsel appearing for the claimants has argued that when the deceased was proceeding on his motorcycle on

Thiruvanmiyur Main Road, the driver of the van, drove the van at a high speed on the same direction and hit behind the motorcycle. In order to

prove the manner of accident, the claimant had marked the rough sketch. After scrutinizing the rough sketch, the Tribunal determined the tyre

marks of both vehicles and fastened the negligence on the side of the driver of the van. The said van had been insured with the Insurance

Company. The deceased''s age was 32 years and he was earning Rs. 15,000/- per month. In order to prove the income of the deceased, the first

claimant had marked the bank statement of the deceased and bills of the goods. Therefore, the claimants have well established their case before

the Tribunal against the Insurance Company.

13. Further, the learned counsel has argued that the first claimant is the young widow and the other three claimants are minors and school going

children. All the claimants were depending upon the income of the deceased, who was the sole breadwinner of the family. Now, the claimants are

in a deserted condition and without any support. Therefore, the quantum of compensation is reasonable.

14. On considering the factual position 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. This Court is of the view that the deceased''s age was 32 years and he was a wholesale vegetable vendor and supplying the same to

''Food World''. In order to prove the same, documents were marked. Further, the deceased was earning considerable income as per evidence on

scrutiny of bank statements. Further, the claimants are four in numbers and out of them, three are minor children. Therefore, the quantum of

compensation awarded is reasonable considering the dependency factor.

15. This Court has already directed the appellant Insurance Company to deposit a sum of Rs. 4,00,000/- with proportionate interest thereon, to

the credit of M.A.C.T.O.P. No. 4562 of 2002, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai and

subsequently the first claimant had been permitted to withdraw her half share with entire accrued interest and costs.

16. Now, this Court directs the appellant Insurance Company to deposit the balance compensation amount with proportionate interest thereon, to

the credit of M.A.C.T.O.P. No. 4562 of 2002, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, within a

period of four weeks from the date of receipt of a copy of this Judgment.

17. After such a deposit having been made, it is open to the major claimants to withdraw their apportioned share amount, apportioned by the

Tribunal, with proportionate interest thereon, lying in the credit of M.A.C.T.O.P. No. 4562 of 2002, on the file of the Motor Accident Claims

Tribunal, Small Causes Court No. VI, Chennai, subject to the deduction of earlier withdrawals made as per this Court''s order, after filing a memo

along with a copy of this Judgment.

18. This Court directs the learned VI Judge, Small Causes Court No. VI, Motor Accident Claims Tribunal, Chennai, to deposit the fourth minor

claimant''s share amount, with proportionate interest thereon, in Indian Bank, High Court Branch, Chennai-104, as fixed deposit, in the cumulative

deposit scheme, till such time the minor claimant attains the age of a major and hand over the fixed deposit certificate to the first claimant/mother. In

the result, this civil miscellaneous appeal is dismissed and the Judgment and decree dated 08.10.2007, made in M.A.C.T.O.P. No. 4562 of 2002,

on the file of the Motor Accident Claims Tribunal, Small Causes Court No. VI, Chennai, is confirmed. Consequently, connected miscellaneous

petitions are closed. No costs.