
(2011) 02 MAD CK 0162

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2717 of 2006 and M.P. No's. 1 of 2006 and 1 of 2007

The New India Assurance Co. Ltd.

APPELLANT

Vs

J. Chitra and Others

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0162

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; Thirumalaisamy, for R-1 to R-3 for Saravabhauman Associates, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / New India Assurance Company Limited, against the award and

decree dated 22.03.2006 made in M.C.O.P. No. 499 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District Sessions

Court, Coimbatore.

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

On 08.04.2003, the deceased Jayachandran was travelling in an Ambassador Car bearing Registration No. TDC 5688, along with his friends,

while proceeding on the Dharapuram to Palani Main Road, when at that time, the driver of the Car lost his control and dashed the vehicle against a

tree, resulting the deceased had sustained grievous injuries, subsequently he had undergone treatment for a lengthy period, however, he succumbed

to his injuries. Hence the legal heirs have filed a claim petition against the Respondents for a sum of Rs. 37,00,000/-with interest.

3. The third Respondent-Insurance Company had filed a counter statement that initially the claim petition had been filed for a sum of Rs.

10,00,000/-, subsequently an enhanced petition was filed for Rs. 19,00,000/-. Once again one more enhancement petition was filed for Rs.

32,00,000/-. Thereafter, it has been enhanced to Rs. 37,00,000/-. The Respondent stated that the compensation amount is highly excessive, the claim petition is also not maintainable.

4. On the pleadings of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Was the first Respondent, who committed the accident driving in a rash and negligent manner?

(ii) Whether claimants are entitled to receive compensation as claimed by them? If so what is the quantum of compensation?

5. PW1 had stated that on 08.04.2003, her husband-Jayachandran had travelled with others in an Ambassador Car bearing Registration No.

TDC 5688, on the Palani-Dharapuram Road and at that point of time the car met with an accident, resulting he had sustained grievous injuries on

his skull and all over his body. Immediately, he was taken to the Ramakrishna Hospital, Coimbatore, wherein he had undergone treatment for more

than four months. During the medical treatment period, he was in a state of Coma, thereafter, he expired on 25.02.2005. She had spent Rs.

2,16,100/-towards medical expenses. She further stated that other claimants are the daughter and son of the deceased. In order to prove the

accident and medical expenses, she had marked 19 exhibits and 4 witnesses had been examined. The marked important documents are as follows:

First Information Report, Sketch, Death Certificate, Postmortem report, Legal-heir certificate, medical records and medical bills.

6. PW2-Doctor had adduced evidence stating that the deceased's skull was fractured and due to it, his brain was damaged, he assessed the

disability as 90%. PW4-eye witness also spoke in the same line about the accident. On the side of the Respondent RW1 was examined on behalf

of the Insurance Company and marked two documents, viz., Insurance Policy and accident report.

7. On considering the evidence of the witnesses, the Tribunal had awarded a sum of Rs. 9,10,875/-with interest at the rate of 7.5% per annum.

The breakup compensation are as follows:

Rs.1,50,000/ -towards mental agony;

Rs. 70,000/ -towards loss of love and affection;

Rs. 4,68,000/ -against loss of income;

Rs. 2,16,100/ -for medical expenses &

Rs. 6,775/ -towards nutrition.

8. Aggrieved by the said award, the Appellant has filed the above appeal.

9. Learned Counsel for the Appellant argued that the date of accident 08.04.2003 and date of death 25.02.2005, after two years the injured had

expired, has no proper nexus, in order to prove the death of the injured that the expiry was due to an accident. The learned Counsel further argued

that there is no income proof for the deceased.

10. Learned Counsel for the claimant argued that the deceased initially was admitted at Coimbatore Ramakrishna Hospital as an inpatient, wherein

he had undergone treatment for more than four months in a state of Coma. The deceased's brain and urinal system were totally affected, hence,

the treatment proved ineffective and he subsequently expired. After the accident, he had not recovered and till his death he remained in a Coma

state. In order to prove the same, the claimant had marked number of vital documents.

11. On considering the facts and circumstances of the case, the arguments advanced by the learned Counsels on either side and on perusing the

impugned award of the Tribunal, this Court is of the considered opinion that the quantum of compensation is reasonable. Considering the medical

expenses a sum of Rs. 2,16,100/-and the deceased age was 45 years and his income was Rs. 4,500/-through business, therefore, the learned

Tribunal properly assessed the compensation, hence it is confirmed, which is fair and equitable.

12. It is open to the claimants to withdraw their apportioned share amount with accrued interest thereon lying in the credit of M.C.O.P. No. 499 of

2003, on the file of the Motor Accidents Claims Tribunal, Additional District Sessions Court, Coimbatore, after filing necessary payment out of

application in accordance with law, subject to withdrawals if any made already.

13. Resultantly, the above Civil Miscellaneous appeal is dismissed. Consequently,

the award and decree, passed by the Motor Accident Claims Tribunal, Additional District Sessions Court, Coimbatore, made in M.C.O.P. No. 499 of 2003, dated 22.03.2006 is confirmed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.