

(2013) 09 MAD CK 0110

In the Madras High Court

Case No : C.M.A. No. 2126 of 2006 and M.P. No. 1 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

Kamalam and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0110

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

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; MA. P. Thangavel (for R1 to R6), for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The claimants have filed claim petition in M.C.O.P. No. 477 of 2001, on the file of the Motor Accidents Claims Tribunal,

(Additional District cum Sessions Judge & Fast Track Court-3), Dharapuram, stating that when the 1st claimant's husband, Achuthan was

proceeding on the Moped bearing Registration No. TDC- 4672, on the Coimbatore Main road, on 01.05.1999, at about 10.00 a.m., the lorry

bearing Registration No. TDI-9798, coming in the same direction and driven in a negligent manner, dashed against the moped. As a result, the 1st

claimant's husband has succumbed to his injuries. Hence, the claim has been levelled against the owner and insurer of the offending vehicle. The

Insurance Company had filed counter statement and resisted the claim petition. The respondent submits that the said lorry had not been involved in

the said accident and the said lorry was not covered under valid R.C., F.C. and Permit. It was submitted that the driver of the lorry did not

possess a valid driving licence. The averments in the claim regarding age, income and occupation of deceased was not admitted. Further, it was

submitted that the deceased did not die due to injuries sustained in the alleged accident and as such the claimants are not entitled to get

compensation.

2. On considering the averments of both parties, the Tribunal had framed two issues namely: (1) Due to whose negligence was the accident

caused? and (2) Whether the claimants are entitled to get compensation? If so, what is the quantum of compensation?

3. On the side of the claimants, three witnesses were examined and 17 documents were marked as Exhibits namely F.I.R.; Motor Vehicle

Inspector's report; Charge sheet; Wound Certificate; Rough sketch; Copy of Criminal Court judgment; Accident register; Legal heir certificate;

Death Certificate; Motor Vehicle Inspector's report; Discharge summary; Medical records; Medical bills; Hospital bills; and Salary Certificate. On

the side of the respondents, no oral evidence was let in and no documentary evidence was produced.

4. PW1, the wife of the deceased had adduced evidence that when her husband was proceeding on his moped bearing Registration No. TDC-

4672, on 01.05.1999, at about 10.00 a.m., on the Siruvani Main road, the 1st respondent's lorry bearing Registration No. TDI-9798, driven by

its driver in a negligent manner and at a high speed had dashed against her husband. PW1 further stated that her husband was working as

Tamilnadu Forest Guard and earning Rs. 5,000/- per month and his age was 57 years at the time of accident. The other claimants are the son and

daughters of the deceased. PW3, an eyewitness had spoken on the same line of PW1 regarding manner of accident.

5. PW1 further stated that after the accident, her husband had been admitted at the Government Hospital, Coimbatore, wherein he had been

treated as inpatient for 3 days and had again been referred to Sheela Hospital, Coimbatore for better treatment, wherein he had been hospitalised

from 03.05.1999 to 14.05.1999. During medial treatment period, a surgical operation was conducted. PW1 further stated that she had spent a

sum of Rs. 19,691/- towards medical expenses. After the accident, her husband was bedridden and puss oozed out from the operated area and he

had been treated at home by competent Doctors. Further, he had undergone treatment under various Doctors, but in spite of treatment, he had expired. PW2, the neighbour of PW1, had adduced evidence that due to the accident, the deceased Achuthan had sustained grievous injuries which led to his death.

6. On verifying the factual position of the case and on recording the evidence of the witnesses and on scrutinising the documents marked by the claimant, the Tribunal had awarded a sum of Rs. 4,20,000/- with interest at the rate of 7.5% per annum. Against the said award and decree, the Insurance Company has filed the above appeal. The highly competent counsel for the Insurance Company argued that the deceased had initiated claim petition while he was alive. Therefore, the injuries sustained by him had not led to his death. The date of accident was on 01.05.1999 and the date of death was on 23.10.2003. As such, he had died only after a period of 4 years and therefore there is no nexus to show that the injuries sustained had led to his death.

7. Initially the injured person has filed the compensation petition. After his death, the L.R.'s of the deceased had proceeded with the claim after filing impleading petition, after a period of 4 years and as such the claimants are only entitled to get medical expenses alone. Hence, the learned counsel entreats the Court to set aside the award.

8. The very competent counsel for the claimants argued that the deceased Achuthan had sustained grievous bone fracture injuries on his right eye, skull, left sole and rib bone. Initially, he had been hospitalised at Government Hospital, Coimbatore, wherein he was treated as inpatient and subsequently he had been admitted at Sheela Hospital, Coimbatore, wherein he received treatment as an inpatient. Besides this, he underwent treatment at Palakkad Welfare Hospital, Devipriya Hospital, Palakkad, Kollanjiramparai People's Clinic, etc. and besides this he had received medical treatment at home by competent Doctors. During medical treatment period, a surgical operation was conducted on his left sole and steel plate was fixed. After operation, puss had oozed out from the operated area and he had been bedridden till his death. The same had been confirmed by PW2. After the accident, the deceased did not attend his office which clearly proves that the deceased had not recovered from the

injuries sustained in the accident. All the claimants were depending upon the income of the deceased, who was the sole breadwinner of the family.

9. Per contra, the learned counsel for the Insurance Company vehemently argued that no Doctor was examined to prove that the deceased had

died only due to injuries sustained by him in the said accident. Further, no Postmortem certificate had been produced by the claimant in order to

prove the cause of death of deceased. Further, there is long gap between the date of accident and date of death and as such there is no nexus to

show that the injuries sustained had led to his death. As such, there is a lapse in the said impugned order.

10. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel 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 further view that the driver of the offending vehicle had been punished by the Criminal Court and the said

vehicle had been insured with the appellant herein. Therefore, negligence and liability had been proved by the claimants through evidence. This

Court is of the view that the deceased was a Government Employee and he was earning Rs. 5,369/- as monthly salary and the dependants are 5 in

numbers and therefore, the quantum of compensation is reasonable in the instant case. Regarding nexus, this Court is of the view that as per

evidence of PW1 and PW2, it is evident that the deceased underwent treatment continuously at various hospitals as inpatient and outpatient and he

had also been given medical treatment at his house by qualified medical practitioners.

11. Further, as per evidence of PW1, it is seen that even after treatment, puss had oozed out from the operated area and as such it is evident that

the physical condition of the deceased had worsened as the condition of his muscles, nerves, blood vessels and bone had deteriorated. Even

though there was a long delay between the date of accident and date of death, this cannot be taken as conclusive proof to show that the injuries

had not led to his death, as the deceased had taken continuous treatment during this period. Postmortem certificate is not required in the instant

case, as he had not died at the hospital. Therefore, this Court does not find any compelling force in the appeal to allow it. Hence, the award is

confirmed.

12. This Court directed the appellant to deposit 50% of the award amount. Now, this Court directs the appellant herein to execute the trial Court

award within a period of 4 weeks, by way of depositing it before the Tribunal, after deducting earlier deposits made by them.

13. After such a deposit having been made, it is open to all the claimants to withdraw their apportioned share amount, with proportionate interest

thereon, lying in the credit of M.C.O.P. No. 40 of 2004, on the file of Motor Accidents Claims Tribunal, (Additional District cum Sessions Judge,

Fast Track Court-3), Dharapuram, after filing a memo along with a copy of this order. In the result, the above Civil Miscellaneous Appeal is

dismissed. Consequently, the Award and Decree, passed in M.C.O.P. No. 40 of 2004, dated 04.08.2005, on the file of the Motor Accidents

Claims Tribunal, (Additional District cum Sessions Judge, Fast Track Court-3), Dharapuram, is confirmed. No costs. Consequently, connected

miscellaneous petition is closed.