
(2013) 01 MAD CK 0106

In the Madras High Court

Case No : C.M.A. (MD) No. 427 of 2010 and M.P. (MD) No. 2 of 2010

The New India Insurance Co. Ltd.

APPELLANT

Vs

Shantha, Kannan and Megala

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2013) 01 MAD CK 0106

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : A.K. Baskarapandian, for the Appellant; S. Vijayakumar, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mr. P. Devadass, J.—This is an insurer's appeal. On 10.9.2003, one Murugan, the head of the family of the claimants lost his life in a tragic incident. For this, his wife and children claimed compensation. The Tribunal awarded them Rs. 3,37,300/- (There is an arithmetic mistake, actually, it is Rs. 3,36,300/-).

2. Learned counsel for the appellant would contend that the deceased travelled in the lorry as a gratuitous passenger. So, there is no coverage in the policy. Further, there was no negligence on the part of the lorry driver, as the deceased himself hit on the protruding tamarind tree branches, while the lorry was moving. The claimants themselves have stated that the deceased was 43 years old. But, the Tribunal determined it 37, merely based on the postmortem certificate. In fact, the wife of the deceased herself was then 42 years old. Further, excessive compensation has been awarded.

3. On the other hand, the learned counsel for the claimants would contend that the deceased travelled along with his goods in the lorry. So, he is

covered in the policy. Further, such incident itself is due to the rash and negligent driving of the lorry driver. The Tribunal had taken very low

monthly income. The Tribunal referred to the postmortem certificate and determined his age accordingly. What was awarded itself is very less.

4. I have considered the rival submissions, perused the materials on record and also the impugned award of the Tribunal.

5. On 10.9.2003, at about 9.30 a.m. deceased Murugan was on board of the lorry. The lorry was proceeding on the Karaikudi-Kundragudi Main

Road and near Parathakudy, Murugan sustained head injuries and died.

6. One Meiyappan lodged the FIR (Ex. P.1). It is stated in the FIR that at the time of accident from the opposite side a car came, the lorry driver

has rashly driven the lorry and that has resulted in Murugan's head hitting against the roadside protruding branches of tamarind tree and got serious

head injury. This has been reiterated by P.W. 2. The FIR has been registered against the lorry driver. After investigation, he has been charge-

sheeted (see Ex. P.5). In the facts and circumstances, we concur with finding of the Tribunal that Murugan's death was due to the rash and

negligent driving of the lorry driver.

7. In the FIR, it is stated that in Karaikudi, Murugan's relative Mayandi's daughter Chinnammai was ailing for some time and died and Murugan

and others were travelling in the lorry to participate in her funeral. In the petition, it has been stated that then Murugan was taking various items

along with him in the lorry. This is also the evidence of P.Ws. 1 and 2. The deceased was living in a Village. In this part of the state, it is not an

uncommon event that when death occurs, relatives visit the bereaved family with rice and necessary cooking items and it is part of their custom.

The close relatives will take rice and other items in huge quantities in bags. It has been specifically pleaded in the petition that Murugan went in the

lorry with bags of materials. Thus, Murugan travelled in the lorry along with his goods. In the circumstances, his death is covered in the policy.

8. The Tribunal took Rs. 2,000/- p.m. as his income, considering the deceased a coolie and effected 1/3 deduction towards his personal expenses.

It is very reasonable.

9. In the claim petition, Shantha/first respondent herself claimed that her deceased husband was then 43 years old. However, referring to 37 years

mentioned in the postmortem certificate, the Tribunal determined his age at 37 years. When Shantha herself was 42 years old, it is against common

sense that Murugan will not be 37 years old. In the facts and circumstances, we determine the age of the deceased at 43. As per Smt. Sarla

Verma and Others Vs. Delhi Transport Corporation and Another, , the appropriate multiplier is "14".

10. Now, calculating on the above lines, the loss of dependency comes to Rs. 2,24,000/- (Rs. 2,000/- x 12 x 14 x 2/3). The Tribunal omitted to

grant compensation for funeral expenses. Towards funeral expenses, we award Rs. 10,000/-. In other respects, we are not interfering with the

award of the Tribunal. In the result, this Civil Miscellaneous Appeal is allowed in part. The award of the Tribunal is modified. The respondents are

awarded a total compensation of Rs. 3,15,300/- with 7.5% interest p.a. from the date of filing the original petition till deposit. As the appellant has

deposited the entire amount, the respondents shall be paid their entire share of above modified amount, less amount, if any, already withdrawn. The

balance amount together with corresponding interest shall be refunded to the appellant. No costs. Consequently, the connected Miscellaneous

Petition is closed.