

(2010) 03 MAD CK 0077

In the Madras High Court

Case No : C.M.A. No. 1575 of 2006 and C.M.P. No's. 1931 and 1932 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Jaya and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 3
Motor Vehicles Act, 1988 — Section 163(A), 166(1), 181
Penal Code, 1860 (IPC) — Section 304(A)

Citation : (2010) 03 MAD CK 0077

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

Bench : Single Bench

Advocate : K.S. Narasimhan, for the Appellant; R. Muralidharan, for RR1 and 5, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the Award and Decree,

dated 23.09.2004, made in M.C.O.P. No. 1619 of 2003, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), at

Cuddalore, awarding a compensation of Rs. 6,70,500/- together with interest at the rate of 9% per annum from the date of filing the petition till the

date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/second respondent has filed the above appeal praying to scale down the award granted

by the Tribunal.

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

On 07.06.2003, at about 10.15 p.m. while the (deceased) P. Sekar was walking from south to north direction at his extreme left hand side of the

Villupuram to Chennai G.S.T. Road at Villupuram and opposite to Aristo Hotel, the first respondent's car bearing registration No. TN 31 B 6374,

coming in the same direction and driven at a high speed and in a rash and negligent manner by its driver, dashed behind the (deceased) P. Sekar.

Due to the accident, the (deceased) P. Sekar died on the spot.

4. The deceased was hale and healthy at the time of accident and was aged about 32 years old and earning a sum of Rs. 7,500/- per month as a

transport contractor and driver. He was the only breadwinner of his family. The first respondent being the owner of the said car involved in the said

accident and the second respondent being the insurer of the car are liable to pay compensation to the petitioners, who are the legal heirs of the

deceased, P. Sekar.

5. The 1st petitioner is the wife of the deceased, 2nd, 3rd and 5th petitioners are the minor daughters of the deceased and the 4th petitioner is the

minor son of the deceased. The petitioners have claimed a compensation of Rs. 15,00,000/- together with interest at the rate of 18% per annum

and costs from the respondents u/s 166(1) of the Motor Vehicles Act.

6. Regarding the said accident, a criminal case has been registered at the Villupuram Taluk Police Station in Crime No. 504/2002.

7. The second respondent, in his counter, has resisted the claim, denying the averments in the claim regarding the age, income and occupation of

the deceased as well as the manner of the accident. It has been submitted that the first petitioner's vehicle driver drove the vehicle at a moderate

speed, observing all traffic rules and regulations. It has been submitted that the deceased suddenly crossed the road, without minding the oncoming

vehicle and invited the accident. It has been submitted that as the accident had occurred only due to the carelessness and negligent act of the

deceased, the respondent is not liable to pay any compensation to the petitioners. The second respondent has also denied the allegation in the

claim that the petitioners are the legal heirs of the deceased and has stated that this should be proved through documentary evidence.

8. The respondent had also submitted that the first respondent's vehicle driver did not have a valid and effective driving licence at the time of

accident and that the first respondent's vehicle had not been insured with the second respondent at the time of accident. It was also submitted that

the claim was excessive and has to be dismissed with costs.

9. The Motor Accident Claims Tribunal framed three issues for the consideration namely:

(i) Was the accident caused by the high speed and rash and negligent driving by the driver of the first respondent's car bearing registration No. TN

31 B 6374

(ii) Did the driver of the first respondent's car have valid driving licence at the time of accident?

(iii) Are the petitioners entitled to get compensation? If so, what is the quantum of compensation payable to them?

10. On the petitioners' side two witnesses were examined as PW1 and PW2 and three documents were marked as Exs.P1 to P3. On the

respondents' side no witness was examined and no documents were marked.

9. The first petitioner, Jaya was examined as PW1. The PW1, in her evidence adduced that on 07.06.2003, at about 10.15 p.m. when her

husband was walking on the Villupuram-Chennai G.S.T. Road at Villupuram from south to north on the extreme left side of the road, the first

respondent's car bearing registration No. TN 31 B 6374, which was driven by its driver at a high speed and in a rash and negligent manner and

from south to north direction on the same road, had dashed her husband from behind and that her husband had died on the spot. She had further

deposed that the accident had been caused only by the high speed and rash and negligent driving of the driver of the first respondent's car.

10. One Vaithiyalingam, who was an eyewitness of the accident, was examined as Pw1. In his evidence he deposed that on 07.06.2003, at about

10.15 p.m. he was standing opposite Aristo Hotel at Villupuram on the Villupuram-Chennai main road; that a car, coming from south to north,

bearing registration No. TN 31 B 6374 was driven by its driver at a high speed and in a rash and negligent manner and had dashed the (deceased)

Sekar, walking on the extreme left side of the road and that the (deceased) Sekar had died on the spot. He had deposed that the accident had

been caused only by the high speed and rash and negligent driving of the driver of the first respondent's car. The copy of the First Information

Report, registered at the Villupuram Taluk Police Station, in Crime No. 504/2003, u/s 304(A) of I.P.C. as against the driver of the first

respondent's car bearing registration No. TN 31 B 6374, has been marked as Ex.P1. It is seen on scrutiny of the Ex.P1 that the FIR had been registered based on a written complaint given by one Suresh Kumar. It is seen that the evidence given by the PW1 and PW2 are in consonance with the statements made in the FIR regarding the manner of the accident. Ex.P2 is the copy of the Motor Vehicle Inspector's Report of the car bearing registration No. TN 31 B 6374. On scrutiny of the Ex.P2, it is seen that the accident had not occurred due to the mechanical defects in the said car. Though the second respondent has stated in his counter that the driver of the car had driven the car carefully and at a moderate speed, adhering to all the traffic rules and regulations and that the accident had been caused only due to the negligent act of the deceased in not noticing the oncoming car and suddenly crossing the road, the second respondent has not examined the driver of the car as a necessary witness to establish and prove his above contention. On the contrary, it has been established by the evidence of the PW1 and PW2 and also through documentary exhibits marked as P1 and P2 that the accident had happened only due to the high speed and rash and negligent driving of the driver of the first respondent's car. As such, the Tribunal held that the accident had been caused only due to the rash and negligent driving of the driver of the car and the high speed at which the driver had driven the first respondent's car bearing registration No. TN 31 B 6374.

11. It has been stated in the counter filed by the second respondent that the driver of the first respondent's car did not have a valid driving licence to drive the car at the time of accident, the second respondent has not taken any measures to prove that the driver of the car did not have a valid driving licence at the time of accident. On a visual screening of Ex.P1, it is seen that a criminal case has been registered as against the driver of the car only u/s 304(A) of I.P.C and that the case has not been registered u/s 181 and Rule 3 of the Motor Vehicles Act. Hence, the Tribunal held that the driver of the first respondent's car had a valid driving licence at the time of accident.

12. On scrutiny of the Ex.P3, the Post-mortem Report issued by the Villupuram Government Hospital it is seen that the age of the (deceased)

Sekar has been stated as 32 years. As such, the Tribunal held that the age of the (deceased) Sekar at the time of accident was 32 years. It is seen

that for assessment, the relevant multiplier of loss of income to the petitioners to be adopted, as per Section 163A Schedule 2 of the Motor

Vehicles Act, is 17 relevant to the age of the deceased as 32 years. Considering that the age of the first petitioner was 27 years at the time of

accident, the multiplier to be adopted is shown as 18. On the basis of the age of the 2nd, 3rd, 4th and 5th petitioners, the multiplier to be adopted

is shown as 15. The Tribunal, relying on various Judgments of Supreme Court, wherein it had been held that the relevant multiplier to be adopted in

similar cases should be the lower of the multiplier's applicability for the deceased and the petitioners. Computed the multiplier to be adopted as 16

($18+15+15+15+15/5=78/5=15.6$ and rounded it of to 16).

13. It has been stated in the claim that the deceased Sekar was employed as a driver and earning a sum of Rs. 7,500/- per month. But, no

documentary evidence has been produced by the petitioners to prove this contention. However, the Tribunal considering that the deceased could

have earned a sum of Rs. 4,500/- per month through his employment as a driver held the income of the deceased as Rs. 4,500/- per month and

computed his yearly income as Rs. 54,000/-. Deducting 1/3rd share of this for the personal expenses of the (deceased) Sekar, the Tribunal

assessed his yearly contribution to his family as Rs. 36,000/- and accordingly held that the yearly loss of income to the petitioners as Rs. 36,000/-.

Adopting a multiplier of 16, they assessed the future loss of income of the petitioners as Rs. 36,000/- X 16 = Rs. 5,76,000/- and awarded this

amount as compensation to the petitioners under the head of loss of future income. The Tribunal further awarded a compensation of Rs. 50,000/-

to the first petitioner under the head of consortium, on considering that the first petitioner had lost her husband at a relatively young age. The

Tribunal further awarded a sum of Rs. 10,000/- each to the second, third, fourth and fifth petitioners ie. Rs. 40,000/- as compensation under the

head of loss of love and affection. The Tribunal awarded a sum of Rs. 2,000/- as compensation to the petitioners for funeral expenses and also

awarded a sum of Rs. 2,500/- under the head of loss of estate. In total, the Tribunal awarded a sum of Rs. 6,70,500/- as compensation to the

petitioners and from and out of this award apportioned a sum of Rs. 1,70,500/- to the first petitioner and 1,25,000/- each to the second, third,

fourth and fifth petitioners.

14. The Tribunal directed the first and second respondents to jointly or severally deposit the above said award together with interest at the rate of

9% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 1619 of 2003, on

the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Cuddalore, within a period of one month from the date of its Order.

Further, after such deposit was made into the Court, the apportioned share of the first petitioner with proportionate accrued interest was to be

deposited in a nationalised or scheduled bank, as fixed deposit for a period of three years and the first petitioner was permitted to receive the

interest on such deposit, once in six months directly from the bank. The apportioned share of award of the minor petitioners 2 to 5 along with

proportionate accrued interest was to be deposited in a nationalised or scheduled bank, as fixed deposit, until such time they attain the age of a

major and the first petitioner being the mother and natural guardian was permitted to withdraw the interest on the minor petitioners once in six

months for the upkeep and welfare of the minor petitioners. The petitioners were directed to pay the Court fee due on the award within a period of

ten days from the date of its Order. The Advocate fees was fixed at Rs. 13,705/- and the first and second respondents were directed to pay the

cost of Rs. 19,810/- to the petitioners.

15. Learned Counsel appearing for the appellant has contended in his appeal that the Tribunal had failed to note that there was no evidence

regarding the occupation and alleged income and hence the Tribunal should have taken the notional income of the deceased as only Rs. 3,000/- as

has been fixed by the Hon''ble Division Bench of this court.

16. It has also been contended that the Tribunal failed to note that the driving licence of the deceased was not produced and hence their

assumption that the deceased was a driver was not sustainable under law. It has also been pointed out that the Tribunal failed to note that even the

minimum wages paid to a driver under G.O.Ms.101, Labour & Employment was not more than Rs. 3,900/- and certainly not Rs. 4,500/- per

month. It has also been contended that the learned Tribunal erred in awarding a sum of Rs. 50,000/- towards loss of consortium, Rs. 40,000/-

towards loss of love and affection and Rs. 2,500/- towards loss to estate as it was contrary to the ruling of the Apex Court reported in 1996 ACJ

831. As such, it has been contended by the learned Counsel appearing for the appellant that the award granted by the Tribunal is excessive and

has to be scaled down.

17. Learned Counsel appearing for the appellant submitted a synopsis and narrated that in the absence of income proof of the deceased, but

considering that the deceased was a driver, the notional income as per Workmen Compensation norms could be fixed at Rs. 4,000/- per month

and that his yearly income assessed as Rs. 48,000/-. Deducting 1/3rd share of this for his personal expenses, the contribution of the deceased to

his family is Rs. 48,000/- - Rs. 16,000/- = Rs. 32,000/-. Hence, adopting a multiplier of 16, the pecuniary loss sustained by the petitioners could

be taken as Rs. 32,000/- X 16 = Rs. 5,12,000/-; compensation for the loss of consortium to the first petitioner could be fixed at Rs. 25,000/-; the

compensation for loss of love and affection to the second, third, fourth and fifth petitioners could be fixed at Rs. 40,000/-; the award for funeral

expenses could be fixed at Rs. 5,000/- and the compensation for loss of estate could be fixed at Rs. 5,000/-. The learned Counsel appearing for

the appellant had contended that an award of Rs. 5,87,000/- would adequately compensate the petitioners in the instant case. Further, the learned

Counsel appearing for the appellant pointed out that the award granted to the petitioners could be rounded off to Rs. 5,90,000/- in the instant

case.

18. Learned Counsel appearing for the first to fifth respondents argued that the claimants are five in number. As such, 1/4th of the income of the

deceased should only be taken as personal expenses of the deceased. The widow of the deceased is aged 27 years and the other claimants are

minors. The deceased was a driver by profession. Considering these aspects, the award granted by the Tribunal is reasonable. Hence the learned

Counsel appearing for the first to fifth respondents has prayed for dismissal of the appeal.

19. Considering the facts and circumstances of the case, arguments advanced by the learned Counsels appearing on either side and on

consideration synopsis submitted by the learned Counsel appearing for the

appellant, this Court is of the view that the suggestions of the learned Counsel appearing for the appellant regarding the quantum of compensation is fair. As such, this Court awards a sum of Rs. 5,90,000/- to the claimants. The award of Rs. 6,70,000/- granted by the Tribunal has been reduced to Rs. 5,90,000/- by this Court.

20. The said award amount of Rs. 5,90,000/- granted by this Court will carry an interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 1619 of 2003, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Cuddalore.

21. On 28.04.2006, this Court imposed a condition on the appellant/the United India Insurance Co., Ltd., to deposit the entire compensation amount with accrued interest and costs, into the credit of the M.C.O.P. No. 1619 of 2003, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Cuddalore. The said compensation amount is apportioned as follows:

1. The first petitioner is apportioned a sum of Rs. 1,90,000/-,
 2. The second to fifth petitioners are apportioned a sum of Rs. 1,00,000/- each,
22. It is open to the claimants to withdraw their apportioned share of award amount, with proportionate accrued interest thereon, lying in the credit of the M.C.O.P. No. 1619 of 2003, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Cuddalore, after filing necessary payment out application in accordance with law, subject to deduction of withdrawals if any and also subject to the claimants 4 and 5 becoming majors.

23. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 23.09.2004, in M.C.O.P. No. 1619 of 2003, passed by the Principal Subordinate Judge, Motor Accident Claims Tribunal, Cuddalore, is modified. Consequently, connected civil miscellaneous petitions are closed. There shall be no order as to costs.