(2011) 04 MAD CK 0025

In the Madras High Court

Case No : C.M.A. No. 942 of 2011 and M.P. No. 1 of 2011

United India Insurance Co. Ltd. APPELLANT

Vs

Kalyani and Others RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0025

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

Bench : Single Bench

Advocate : T. Ravichandran, for the Appellant; M. Aniruthan, for R1, R3 to R4 and S.K. Krishnamurthy, for R-8, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / United India Insurance Company Limited, against the judgment and

decree dated 30.04.2009 made in M.C.O.P. No. 620 of 2003 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate,

Krishnagiri.

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

On 04.08.2002 at about 3.15 p.m., the (deceased) Poongan was travelling in a tempo bearing Registration No. KA-17-6506 along with others

from Bangalore towards Krishnagiri on the National Highways Road, when at that time the driver had driven the tempo in a rash and negligent

manner and dashed against the T.V.S. Parcel lorry bearing Registration No. TN-23-F-7461 which was coming in the opposite direction and

driven by its driver in a rash and negligent manner and caused the accident. Due to the impact, Poongan had died on the spot. Hence, the legal-heirs of the deceased had filed the claim petition against the Respondents seeking compensation of a sum of Rs. 10,00,000/- with interest.

3. The fourth Respondent / United India Insurance Company Limited had filed a counter statement and refuted the claim petition. The Respondent

stated that the driver of the first Respondent had committed the accident in a reckless manner. The driver of the third Respondent had driven the

vehicle with due caution and at moderate speed. Actually, the driver of the first Respondent had attempted to overtake the ongoing vehicle, as a

result, the driver of the first Respondent dashed against the third Respondent''s vehicle. The deceased Poongan and others were travelling in a

goods vehicle, some of them had been seated in the cabin of the first Respondent''s vehicle. The deceased Poongan was not a load-man. The

driver of the first Respondent was not possessing a valid driving licence and he was under the influence of alcohol, besides the claim amount is

excessive.

4. On the same accident, three separate claim petitions were filed, viz., this O.P. No. 620 of 2003, against this O.P award, the above appeal has

been filed.C.M.A. No. 940 of 2011 arising from M.C.O.P. No. 683 of 2006 and appeal No. 941 of 2011 arising from M.C.O.P. No. 619 of

2008. All the O. Ps'' were filed together and common evidence recorded and common judgment and separate decree was passed to the

respective claimants.

5. On the averments of the parties, the Tribunal had framed two issues for consideration, namely;

(i)Were the driver of the first and third Respondents who had committed the said accident?

(ii)Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?

6. On the side of the claimant, the claimant in M.C.O.P. No. 683 of 2006 was examined as PW1; Dr. D.V. Gandhi was examined as PW2; Mrs.

Pachammal, claimant in M.C.O.P. No. 619 of 2003 was examined as PW3 and Mrs. Kalyani, claimant in M.C.O.P. No. 620 of 2003 was

examined as PW4 and one Sankar was examined as PW5 and nine documents were marked viz., Wound Certificate, Copy of the Insurance

Policy, Disability Certificate, X-rays, First Information Report, Post-mortem report, records for flower sales and etc., On the side of the

Respondent, one Dhanasekarn was examined as RW1, Mr. Koush Sherrif, Junior Assistant was examined as RW2 and one Rathnavelu was

examined as RW3 and five documents were marked viz., Driving licence, Insurance Policy, copy of the judgment and R.C. Book.

7.PW1-Sankar, claimant in M.C.O.P. No. 683 of 2006 had adduced evidence stating that on 04.08.2002 at around 3.15 p.m., the deceased

Ramar and Poongan and few others had traveled in the tempo bearing Registration No. KA-17-6506 which was proceeding from Krishnagiri to

Hosur, the driver had driven the vehicle in a rash and negligent manner, when at that time, the third Respondent''s vehicle bearing Registration No.

TN23-F-7461 had been driven by its driver in a rash and negligent manner, as a result, both vehicles collided into each other. In the said accident,

Ramar and Poongan had died on the spot. PW4, Kalyani had adduced evidence stating that she is the wife of the deceased Poongan; second

claimant is the mother; third, fourth and sixth claimants are daughters, fifth claimant is the son of the deceased respectively. She stated that her

husband aged about 45 years and he was an engine mechanic and was earning a sum of Rs. 2,000/-per month. Besides, he was also engaged as

an agriculturist, as such he was earning a total of Rs. 10,000/-per month, at the time of the accident, he was 45 years old.

8. On the side of the Respondent, RW1 was examined, who is an Assistant Officer attached to the fourth Respondent / United India Insurance

Company, he stated that the third Respondent''s vehicle insured with his Insurance Company. He further stated that the accident had been

committed by the driver of the first Respondent. RW2-Junior Assistant working in the Regional Transport Office had stated that the driver was not

possessing a valid driving licence. RW3-Junior Assistant working in the second Respondent / Oriental Insurance Company had admitted that the

first Respondent vehicle was insured with his Insurance Company, but as per policy, passengers were not permitted to travel in the vehicle, but six

persons had traveled in the first Respondent''s vehicle. As such, there was a violation of policy conditions.

9. On considering the evidence of the witnesses and documentary evidence, the Tribunal had awarded a sum of Rs. 3,84,000/-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. The compensation

comprises of Rs. 3,60,000/-(Rs. 2,000 x 12 x 1/3 x 2 x 15 = Rs. 3,60,000/-), Rs. 2,000/-, Rs. 2,000/-, Rs. 10,000/-and Rs. 10,000/-granted

towards loss of dependency, transport, funeral expenses, loss of consortium and loss of love and affection respectively. Out of the compensation

amount, the first and second Respondents are apportioned 50% of the compensation amount with interest and the other 50% of the compensation,

the third and fourth Respondents are liable to pay, accordingly ordered.

10. Against the decree and judgment, the fourth Respondent / Insurance Company has filed the above appeal to set-aside their liability fashioned in

the impugned award.

11. The learned Counsel for the Appellant argued that as per First Information Report which is registered against the driver of the first Respondent

vehicle. The offending vehicle has been insured with the second Respondent / Oriental Insurance Company. PW1, the injured claimant and also an

eyewitness had categorically admitted in his evidence that the first Respondent''s driver had driven the vehicle in a rash and negligent manner and

dashed against the third Respondent''s vehicle. This is the factual position as narrated by PW1. As such, the United India Insurance Company is

not liable to pay any compensation to the claimants.

12. Learned Counsel for the claimants argued that PW1 himself adduced evidence stating that the first and third Respondents vehicle had dashed

against each other by a head on collusion, as such both Insurance Companies had fashioned the liability. This issue had been decided by the

Tribunal and is considered absolutely correct. In the absence of tire marks through a rough sketch, the Appellant cannot challenge the liability.

Learned Tribunal also cannot determine the liability on one side. As per FIR, the evidence of PW1, i.e., the eye witness, the Tribunal had fastened

the liability as 50% = 50% as appropriate.

13. On considering the facts and circumstances of the case and 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 deceased''s age was 45 years, Dependants six in numbers,

deceased was engaged as an engine mechanic as well as an agriculturist, considering this aspect, the compensation amount is not on the higher side

and the learned Tribunal had decided two issues and awarded the compensation to the legal-heirs / claimants on the basis of oral and documentary

evidence, which is fair and justifiable. Therefore, this Court does not find any discrepancy in the said award, hence, it is confirmed. Therefore, this

Court directs the Appellant / Insurance Company to comply with the impugned award of the Tribunal within a period of six weeks from the date of

receipt of this order by way of deposit. After such a deposit being made, it is open to the first, third and fourth claimants to withdraw their

apportioned share amount as fixed by the Tribunal lying in the credit of M.C.O.P. No. 620 of 2003 on the file of the Motor Accidents Claims

Tribunal, Chief Judicial Magistrate, Krishnagiri, after filing a Memo along with this order. The share of the minors, viz., fifth and sixth Respondents

/fifth and sixth claimants to be deposited in a Nationalized Bank in close proximity to the residence of the claimants under the accumulated deposit

scheme and the deposit certificate to be handed over to the first claimant i.e., the mother of the child. The deposit period will remain until the child

reaches adulthood and this arrangement will not be subjected to any changes.

14. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims

Tribunal in M.C.O.P. No. 620 of 2003, dated 30.04.2009 on the file of Chief Judicial Magistrate, Krishnagiri is confirmed. There is no order as to

costs. Consequently, connected miscellaneous petition is closed.