
(2013) 09 MAD CK 0232

In the Madras High Court

Case No : C.M.A. No. 1851 of 2007 and M.P. No. 2 of 2007

United India Insurance Co. Ltd.

APPELLANT

Vs

Ramalingam and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0232

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; R. Shivakumar for R1 to R4 and R5 - Ex-parte, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The claimants have filed M.C.O.P. No. 137 of 2005, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Mayiladuthurai, against the owner and Insurance Company of the Tractor bearing Registration No. TN-51-W-6960 stating that when the 1st claimant's son was travelling on the mudguard of the Tractor on 25.08.2003, on the Nallathur Main Road, the deceased had fallen from the Tractor and succumbed to his injuries. Hence, the claim has been filed. The Insurance Company has filed counter statement and resisted the claim petition. The respondent stated that the accident is a self invited disaster by the deceased and the claimants had also openly admitted that the deceased had travelled on the mudguard of the Tractor and as such as the policy conditions had been violated, the Insurance Company is not liable to pay compensation. The respondent denied the averments in the claim regarding age, income and occupation of deceased.

2. On verifying 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, who is liable to pay compensation?

3. On the side of the claimants, two witnesses were examined and 6 documents were marked as Exhibits P1 to P6 namely: Ex. P1-F.I.R.; Ex. P2-Motor Vehicle Inspector's report; Ex. P3-Postmortem report; Ex. P4-Criminal Court judgment; Ex. P5-Insurance policy; and Ex. P6-Deceased educational qualification certificate. On the side of the respondent's, one witness was examined and one document viz. Insurance policy was marked as Ex. R1.

4. PW 1 had adduced evidence that on 25.08.2003, when his son Murugavel was travelling on the Tractor bearing Registration No. TN-51-W-6960 and while the Tractor was proceeding on the Nallathur Main road, the driver of the Tractor had driven it at a high speed, as a result of which his son had lost his balance and had fallen down and the wheel of the Tractor ran over him resulting in his death. PW 1 further stated that his son was aged about 22 years and he was possessing an I.T.I. Fitter course certificate.

5. PW 2 had adduced evidence that he had witnessed the said accident. He also deposed on the same lines of PW 1 regarding mode of accident. RW 1, had adduced evidence that the trailer of the Tractor was not insured with their firm and further the deceased was travelling on the mudguard which is violative of the policy conditions.

6. On recording the evidence of the witnesses and on perusing the exhibits marked by the parties, the Tribunal had awarded a sum of Rs. 2,72,000/- with interest at the rate of 7.5% per annum. Against the said award, the Insurance Company has filed the above appeal. The highly competent counsel argued that the deceased had travelled on the mudguard of the Tractor and the same had been admitted by the applicants. As such, there is violation of policy conditions and hence the Insurance Company is not liable to pay any compensation. Further, there is no cover for any person travelling on a tractor. The award had been passed ignoring the policy conditions of Insurance and as such the award is not sustainable under law. Hence, the learned counsel entreats the Court to set aside the award.

7. The learned counsel for the claimants argued that the deceased was travelling on the mudguard with the permission of the driver of the Tractor due to unavoidable circumstances. The said Tractor was insured with the appellant herein. Further, the deceased had succumbed to his injuries, while he was travelling on the Tractor, as it had been driven by its driver in a negligent manner, due to which the deceased had fallen down and the wheel of the Tractor ran over him. The nucleus point in this case is that the Tractor wheel had ran over the deceased resulting in his death. The said Tractor had been insured with the Insurance Company and therefore the Insurance Company is liable to pay compensation.

8. 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 deceased had fallen down from the Tractor and the death was caused only due to the running of the wheel of the Tractor over him. Further, the accident had not happened due to injuries sustained by fall, but had only happened as the wheel of the Tractor had run over him.

9. This Court is of the further view that the offending vehicle driver was punished and the Tractor was insured with the Insurance Company. Therefore, the negligence and liability have been decided in an appropriate manner. The quantum of compensation is also reasonable, as the deceased was aged about 22 years and holding an I.T.I. Certificate. The pay and recovery ordered by the Tribunal is appropriate and remains unaltered. This Court directs the appellant herein to execute the award by way of depositing the award before the trial Court, within a period of four weeks from the date of receipt of this order.

10. After such a deposit having been made, it is open to all the claimants to withdraw their apportioned share amount, with accrued interest thereon, lying in the credit of M.C.O.P. No. 137 of 2005, on the file of Motor Accidents Claims Tribunal, Principal Subordinate Court, Mayiladuthurai, 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. 137 of 2005, dated 10.04.2006, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Mayiladuthurai, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.