

(2010) 04 MAD CK 0127
In the Madras High Court
Case No : C.M.A. No. 687 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Thamizharasi and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0127

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

Bench : Single Bench

Advocate : J. Jayendra Krishnan, for the Appellant; J. Rajamohan, for RR1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

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

24.03.2005, made in M.C.O.P. No. 76 of 2000, on the file of the Motor Accident Claims Tribunal, Sub Court, Panruti, awarding a compensation

amount of Rs. 3,51,000/- with 9% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree passed by the Motor Accident Claims Tribunal, the appellant/respondent has filed the above appeal

praying to scale down the award passed by the Tribunal.

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

The petitioners submitted that the first petitioner is the widow of the deceased, second and third petitioners are the son and daughter of the

deceased and the fourth petitioner is the mother of the deceased. On 24.02.2000, the deceased and others had gone to Tindivanam Town Crusher

for loading blue metal in the first respondent's lorry bearing registration No. TN31 A8766, when the deceased and others were proceeding from south to north on Tindivanam N.H. Road near Then Bazaar, G.S.T. Road, at about 13.00 hours the accident had happened. The first respondent's driver drove the lorry TATA 1612 at a high speed in a rash and negligent manner without observing the traffic rules. Because of it the lorry had suddenly swerved to the right side of the road and dashed against a Palm tree and capsized. Resultantly, the deceased and three others had died on the spot itself and the others had sustained injury. The deceased body was taken to the Government Hospital, Tindivanam. The deceased was the only breadwinner of his family. The petitioners are depending upon the sole income of the deceased and they have no other sources of income. Now, they are living in very bad condition and they are unable to meet even their livelihood. If the accident had not happened the deceased could have lived for another 45 years. The minor petitioners lost not only their father but also their bright future. The first respondent is liable as the owner of the vehicle and the second respondent is liable as the insurer of the vehicle. Therefore, both the respondents jointly and severally should pay a sum of Rs. 5,00,000/- as compensation to the petitioners.

4. The second respondent has filed a counter statement stating that the first respondent driver did not drive the vehicle in a rash and negligent manner as stated in the claim petition. Further, the second respondent does not admit that the vehicle was driven rashly and negligently at the time of the accident. The vehicle under reference was driven within the prescribed speed limits and also cautiously. The driver of the lorry bearing registration No. TN31 A8766 was adhering to all traffic rules and regulations and it cannot be believed at any stretch of imagination, that the accident occurred due to the rash and negligent act of the driver of the first respondent. Further, the respondent does not admit that the petitioners had sustained grievous injuries and the petitioner is put into strict proof of the same. The averments in respect of the age, income and occupation of the petitioner is not true. The petitioner is put to strict proof of the same. Further the petitioner, who travelled in the first respondent's lorry was only a gratuitous passenger. In such event, the petitioner is an unauthorised traveller in the said lorry and the petitioner is not entitled to any

compensation, as against the insurance company. If at all the petitioner is entitled to any, then only as against the owner of the lorry, who had

permitted the unauthorised traveller. Since, the first respondent has violated the permit and policy conditions. Further, the petitioner is put into strict

proof that the petitioner has travelled in the said lorry at the time of the accident. Further, the petitioner is an agriculturist, he is neither owner of the

goods nor a loading-man so, the petitioner is only a gratuitous passenger and no liability can be imposed upon this respondent. Further, the amount

of compensation claimed is excessive and exorbitant .The petitioner is not entitled to that amount, since the petition is devoid of material particulars

and not supported by relevant documents. Hence, the second respondent prayed to dismiss the claim petition with costs.

5. The Motor Accident Claims Tribunal had framed four issues for consideration namely;

(i) Who is responsible for the accident?

(ii)Whether the petitioners are entitled to get compensation? If so, what is the quantum of compensation?

(iii)Who is liable to pay compensation?

(iv)To what other relief, the petitioners are entitled?

6. On the side of the petitioners the first claimant was examined as PW2. She adduced evidence that she is the wife of the deceased Sigamani, the

second and third petitioners are the son and daughter of the deceased and the fourth petitioner is the mother of the deceased. As such, they are

eligible to claim compensation against the respondents for death of her husband namely Sigamani. Further, she adduced evidence stating that at the

time of the said accident her husband was aged about 27 years old and he was a load man in the said lorry. Further, he was earning a sum of Rs.

5,000/- per month.

7. The learned Tribunal after considering the evidence of PW2 and examined the Ex.P1-first information report and Ex.P2-motor vehicle

inspector's report had come to the conclusion that the first respondent's vehicle is the cause for the said accident. As such, the first respondent,

owner of the vehicle and the second respondent, Insurance Company are jointly liable to pay compensation to the claimant.

8. After considering the evidence of the PW2, the Tribunal had come to the

conclusion stating that the deceased was aged about 27 years old and his income was Rs. 2,500/- per month. After deducting Rs. 1,000/- for his personal expenses of the deceased and adopting multiplier method 18 (Rs.1,500/- X 12 X 18 = Rs. 3,24,000/-), the Tribunal awarded a sum of Rs. 3,24,000/- as compensation under the head of loss of income; Rs. 2,000/- under the head of funeral expenses and Rs. 15,000/- under the head of loss of consortium to the first petitioner and Rs. 10,000/- under the head of loss of love and affection. In total, the Tribunal awarded a sum of Rs. 3,51,000/- as compensation to the petitioners, together with interest at the rate of 9% from the date of filing the claim petition till the date of payment of compensation. Further, the Tribunal apportioned a sum of Rs. 1,75,000/- to the first petitioner, Rs. 62,500/- each to the second and third petitioners and Rs. 51,000/- to the fourth petitioner. In turn their respective shares of the said compensation amount to be deposited in any one of a nationalised bank for a period of three years under a fixed deposit scheme. The first petitioner is permitted to withdraw the interest from the minors' share. Accordingly, the claim petition was ordered.

9. Aggrieved by the said Award and Decree passed by the Motor Accident Claims Tribunal, the appellant/respondent has filed the above appeal praying to scale down the award passed by the Tribunal.

10. Learned Counsel appearing for the appellant argued that the deceased had travelled as a gratuitous passenger in a Goods vehicle. The claimants are not entitled to claim any compensation from the appellant. The claimants remedy if any is only against the fifth respondent. Further, the Tribunal failed to note that more than 13 persons, unauthorisedly travelled in the lorry as gratuitous passengers, which is gross violation of policy condition. The policy does not cover gratuitous passengers. Ignoring this factual position, the Tribunal erroneously cast the liability on this appellant. Further, the learned Tribunal failed to consider that the deceased was neither an employee of the fifth respondent nor was he authorised to travel in the lorry. The averments in the claim petition that he was an employee under the fifth respondent and he travelled in the lorry with the permission of the fifth respondent has been specifically denied by the fifth respondent. Ignoring this admitted fact the Tribunal erroneously cast the liability on the appellant. The learned Tribunal erred in holding that the accident

was caused due to the negligence of the lorry driver. The driver lost his control of the vehicle due to the large number of unauthorised passengers travelling in the vehicle in violation of the policy condition. The deceased has contributed to the accident. The claimants are not entitled to any compensation. Further, the learned Tribunal erred in fixing the income of the deceased as Rs. 2,500/- per month and granting Rs. 3,24,000/- as compensation for loss of income and the award is excessive and not in conformity with law. Hence, the learned Counsel has prayed before this Court to scale down the compensation awarded by the Tribunal.

11. Learned Counsel appearing for the respondents 1st to 4th argued that the deceased was 27 years at the time of accident. He was the only breadwinner of his family and the claimants were depending upon the income of the deceased. After the said accident, the entire family is suffering like anything. Further, the learned Counsel argued that the Tribunal rightly had come to the conclusion that the award amount granted by the Tribunal is a reasonable and well considered one and there is no discrepancy in the said award and decree passed by the Tribunal. Hence, the learned Counsel has prayed before this Court to dismiss the above appeal.

12. After considering the facts and circumstances of the case, scrutiny of findings of the Tribunal and the arguments advanced by the learned Counsel appearing on either side, this Court is of the view that the deceased was aged about 27 years at the time of accident. Further, the loss of income fixed by the Tribunal is also reasonable. Further, this Court is of the view that the claimants are four in number, as such, the award and decree passed by the Tribunal is fair and equitable. Further, this Court does not find any discrepancy in the award and decree passed by the Tribunal.

13. On 16.03.2006, this Court directed the appellant to deposit the entire compensation amount with accrued interest, into the credit of the M.C.O.P. No. 76 of 2000, on the file of the Motor Accident Claims Tribunal, Sub Court, Panruti, within a period of eight weeks from the date of its Order.

14. As the accident had happened in the year 2000, it is open to the claimants to withdraw their apportioned share amount with accrued interest thereon, lying in the credit of the M.C.O.P. No. 76 of 2000, on the file of the

Motor Accident Claims Tribunal, Sub Court, Panruti, by making proper payment out application in accordance with law, subject to the deduction of earlier withdrawal if any made.

15. In the result, the above Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 24.03.2005, made in M.C.O.P. No. 76 of

2000, on the file of the Motor Accident Claims Tribunal, Sub Court, Panruti, is confirmed. There shall be no order as to the costs.