
(2013) 09 MAD CK 0162
In the Madras High Court
Case No : C.M.A. No. 3392 of 2008

United India Insurance Co. Ltd.

APPELLANT

Vs

Vijaya and Others

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0162

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

Bench : Single Bench

Advocate : S. Arun Kumar, for the Appellant; J. Mahalingam for R1 to R5, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/second respondent has preferred the present appeal against the judgment and decree dated 31.01.2008, made in M.C.O.P. No. 414 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court (Fast Track

Court-IV), Poonamallee. The short facts of the case are as follows:-

On 28.12.2004, at about 02.45 a.m., when the first claimant's husband namely D. Sekar was proceeding on his motorcycle bearing registration

No. TN22 S7569, on Maduravoyal-Tambaram 200 feet road towards Tambaram, he had dashed his motorcycle against one lorry bearing

registration No. TN01 V3902, which was parked on a curved road on the National Highways Road, without any parking signal, in a dark area of

the road. Due to which, he sustained injuries and succumbed to it on the spot. Hence, the claimants had filed a claim petition in M.C.O.P. No. 414

of 2005, on the file of the Motor Accident Claims Tribunal, Additional District and

Sessions Court (Fast Track Court-IV), Poonamallee, against the insurer and owner of the lorry.

2. The second respondent Insurance Company had filed a counter statement and resisted the claim petition. The second respondent had denied

that the lorry had been parked without putting on any indicator lights. Actually, the lorry was parked on the safer side of the road and six red cones

were put up around the vehicle, which were provided by the National Highways Authorities. Actually, the rider of the motorcycle had committed

the said accident due to his rash and negligent riding when he was under the influence of alcohol. The averments made in the claim petition

regarding age, income and occupation of the deceased were not admitted.

3. On considering the averments of both sides, the Tribunal had framed three issues namely:

i. Whether the accident was due to negligent parking of the first respondent's driver?

ii. Whether the petitioners are entitled to any claim? and

iii. If so, how much?

4. On the petitioners' side three witnesses were examined as P.Ws.1 to 3 and seven documents were marked as Exs. P1 to P7 namely FIR,

Charge Sheet, Postmortem Certificate, Legal Heir Certificate, Cash Receipts, Reminder Letter, Letter from Individual. On the respondents' side

three witnesses were examined as R.Ws.1 to 3 and 11 documents were marked as Exs. R1 to R11 namely Summon, Advocate Notice,

Acknowledgement Card, Deposition of Prosecution Witnesses and Judgment Copy of the Criminal Court.

5. P.W.1 wife of the deceased had adduced evidence that on 28.12.2004, at about 02.45 a.m., when her husband was travelling on his

motorcycle bearing registration No. TN22 S7569, on Maduravoyal-Tambaram 200 Feet Road, towards Tambaram, a lorry bearing registration

No. TN01 V3902 was parked on the curve of the road in a dark area of the road, without any signal. Therefore, her husband was unable to see

the parked lorry and dashed against the lorry. P.W.1 further stated that her husband was aged about 37 years and he is the proprietor of a lorry

transport firm and he was earning a sum of Rs. 15,000/- per month. The other claimants are the mother and children of the deceased.

6. P.W.2 an eye-witness to the accident had adduced evidence, which is on similar lines to the evidence of P.W.1 regarding mode of accident.

7. P.W.3 another lorry owner had adduced evidence that the deceased was running a lorry business and also carrying on business of blue metal

jelly and earning Rs. 10,000/- per month.

8. R.W.1 driver of the lorry had adduced evidence that the lorry was parked on the left side of the road with six red cones around the lorry. He

deposed that in the criminal case levelled against him, he had been acquitted by the Criminal Court.

9. R.W.2 had adduced evidence that Inspector Natarajan, who is retired now, had registered a criminal case against the driver of the lorry and the

said criminal case was dismissed by the Criminal Court as not proved after full trial.

10. On considering the evidence of the witnesses and on perusing the documents marked by them, the Tribunal had assessed the compensation at

Rs. 11,00,000/- with interest at the rate of 7.5% per annum. The Tribunal had fastened 25% negligence on the side of the rider of the motorcycle

and 75% negligence on the side of the lorry and directed the Insurance Company to pay their liability amount of a sum of Rs. 8,25,000/- with

proportionate interest.

11. Aggrieved by the said Award, the Insurance Company has preferred the present civil miscellaneous appeal.

12. The highly competent counsel appearing for the appellant Insurance Company has argued that the entire negligence lies on the side of the rider

of the motorcycle. Initially, the first information report had been registered against the driver of the lorry, but the criminal case had been dismissed

as not proved against him. The Tribunal had fixed the income of the deceased at Rs. 9,000/- per month without any income proof. Therefore, he

prays this Court to set aside the award passed by the Tribunal.

13. The learned counsel appearing for the claimants has argued that the lorry was parked in darkness on the curved road, without putting on any

indicator signals and therefore the driver of the lorry had been negligent by way of parking the lorry without following traffic rules. Hence, the entire

negligence should have been attributed to the lorry driver. The deceased was an earning member, aged about 37 years and all the five claimants

were depending upon the income of the deceased. Therefore, the quantum of compensation is not on the higher side.

14. On verifying 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 does not find any discrepancy in the conclusions arrived at in fixing the negligence in the rate of 1:4

among the deceased and the driver of the lorry. However, the quantum of compensation is slightly on the higher side. Therefore, this Court

reassesses the compensation as follows:

i. Rs. 9,00,000/- is awarded under the head of loss of earning (7500X2/3X12X15),

ii. Rs. 15,000/- is awarded towards consortium to the first claimant,

iii. Rs. 45,000/- is awarded towards loss of love and affection to the three minor claimants,

iv. Rs. 13,000/- is awarded towards funeral expenses, and

v. Rs. 12,000/- is awarded towards transport expenses.

In total, this Court awards Rs. 9,85,000/- as compensation. After deducting 25% of compensation for negligence on the part of the deceased, this

Court awards a sum of Rs. 7,38,750/- as compensation as it is found to be appropriate in the instant case.

15. This Court had already directed the appellant Insurance Company to deposit a sum of Rs. 5,00,000/- with proportionate interest thereon.

Now, this Court directs the appellant to deposit the balance compensation amount with interest as per this Court's findings, within a period of four

weeks from the date of receipt of a copy of this Order.

16. After such a deposit having been made, it is open to the first and fifth claimants, who are the wife and mother of the deceased, to withdraw

their share amount, apportioned by the Tribunal, with accrued interests, lying in the credit of M.C.O.P. No. 414 of 2005, on the file of the Motor

Accident Claims Tribunal, Additional District and Sessions Court (Fast Track Court-IV), Poonamallee, after filing a memo along with a copy of

this Order.

17. This Court directs the learned Additional District and Sessions Judge, Motor Accident Claims Tribunal (Fast Track Court-IV), Poonamallee,

to deposit the minors' share amount with proportionate interest thereon, in a nationalized bank as fixed deposit in the cumulative deposit scheme, till they attain the age of a major and hand over the fixed deposit certificates to the mother of the minor claimants. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 31.01.2008, made in M.C.O.P. No. 414 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court (Fast Track Court-IV), Poonamallee, is modified. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.