

(2011) 06 MAD CK 0060

In the Madras High Court

Case No : C.M.A. No. 1044 of 2010 and M.P. No. 1 of 2010

United India Insurance Company Ltd.

APPELLANT

Vs

Gowraavan and S. Rajan

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0060

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; K. Kuppusamy, for R-1, for the Respondent

Judgement

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

decree made in M.C.O.P. No. 1403 of 2003, dated 14.08.2009, on the file of Motor Accidents Claims Tribunal, Additional District Court and

Special Court, Salem.

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

On 13.06.2003, at about 3.00 a.m., the Petitioner was travelling in the Respondent's mini door delivery van bearing Registration No. TN29-E-

6556, towards Mecheri to Mettur Road after loading his paddy bags, to sell it in the market. At that time, the driver of the vehicle, drove the

vehicle in a rash and negligent manner and lost his control, resulting in the vehicle overturning on the road side. In the impact, the Petitioner

sustained severe bone fracture injuries. Hence, the Petitioner has filed a claim against the Respondents for a sum of Rs. 2,00,000/- with interest.

3. The second Respondent/United India Insurance Company Limited, had filed a

counter statement and resisted the claim petition. The Petitioner had travelled in the goods carriage three wheeler auto bearing Registration No. TN29-E-6556 along with 10 bags of paddy from Pucharappatty towards Dharmapuri. At that time, the driver had driven the overloaded vehicle with three persons in the cabin, in a reckless manner. The Petitioner had travelled as a gratuitous passenger. Therefore, the Insurance Company is not liable to pay the claim amount. The driver did not possess a valid driving licence. The age, income and occupation of the claimant are denied.

4. On the plea of both parties, the Tribunal had framed three issues for consideration, namely;

(i) Did the accident happen due to the rash and negligent driving of the first Respondent's vehicle bearing Registration No. TN29-E-6556, by its driver?

(ii) Whether the second Respondent is liable to pay compensation?

(iii) What is the quantum of compensation which the claimant is entitled to get?

5. On the side of the claimant, two witnesses had been examined as PW1 and PW2 viz., the claimant and doctor respectively. On the side of the

Respondents, two witnesses had been examined as RW1 and RW2. The following exhibits had been marked by the claimant in order to prove his

case viz., First Information Report, Wound Certificate, Motor Vehicle Inspector's Report, Charge Sheet, Judgment copy of Criminal Court,

Disability Certificate and X-rays etc., On the side of the Respondents, a letter was marked which was sent by the Taluk Transport authority

regarding driving licence of the driver of the offending vehicle and the copy of the insurance policy of the vehicle.

6. PW1 had adduced evidence stating that on 13.06.2003, at around 3.00 a.m., he was travelling along with his paddy bags in the Respondent's

vehicle from Mecheri to Massilampalayam and at that time the driver drove the vehicle in a rash and negligent manner. In the result, the vehicle had

capsized. PW1 further adduced evidence that he had sustained bone fracture injuries on his left hand and also sustained other bodily injuries.

7. RW2 had adduced evidence stating that the accident had not been committed by the driver of the vehicle in a negligent manner. Further, the

driver of the vehicle did not possess a valid driving licence to drive a heavy

vehicle, but he possessed only a LMV licence.

8. PW2-doctor, had adduced evidence stating that he had examined the claimant and verified the medical records and had assessed that disability

sustained by the claimant was 25%. PW2 further stated that the claimant's left forearm bone had been fractured.

9. On considering the evidence of the witnesses and on perusing the exhibits marked by both the parties, the Tribunal had awarded a sum of Rs.

26,000/- as compensation to the claimant together with interest at the rate of 7.5% per annum. The breakup of the compensation is as follows:

Rs. 500/- towards transport;

Rs. 500/- for nutrition;

Rs. 5,000/- for pain and suffering;

Rs. 20,000/- loss of income due to disability;

10. Aggrieved by the said award, the Appellant/Insurance Company has filed the above appeal for setting aside the said award.

11. The learned Counsel for the Appellant argued that the offending vehicle was not covered under transport vehicle licence and the driver of the

vehicle also did not have a valid driving licence and the vehicle was overloaded. Hence, the accident had occurred. Further, the claimant is a

gratuitous passenger.

12. The learned Counsel for the claimant argued that the vehicle was a goods carriage vehicle. The claimant had travelled along with his paddy

bags in the said vehicle. At that time, the driver of the vehicle had driven the vehicle in a rash and negligent manner, as a result of which, the vehicle

had capsized. The claimant had sustained bone fracture injuries on his left arm. As per doctor's evidence, he had sustained 25% disability. The age

of the claimant was 35 years. As such, he is entitled to get a sum of Rs. 50,000/- under the head of "disability". The Tribunal had not considered

the award under the heads of attender charges, medical expenses and loss of income during medical treatment period.

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 driver of the offending vehicle had not possess a valid driving

licence. Therefore, the Insurance Company has to compensate the claimant and recover the amount from the owner of the vehicle. Regarding

quantum, the compensation awarded by the Tribunal is not on the higher side. Hence, this Court confirms the award as it is fair and justifiable.

14. As per order dated 14.08.2009 in M.C.O.P. No. 1403 of 2003 the Appellant/ United India Insurance Company has already deposited 50%

of the award amount to the credit of M.C.O.P. No. 1403 of 2003, on the file of Motor Accidents Claims Tribunal, Additional District Court and

Special Court, Salem. On 21.04.2010, this Court imposed a condition on the Appellant/United India Insurance Company to deposit the balance

compensation amount to the credit of M.C.O.P. No. 1403 of 2003, on the file of Motor Accidents Claims Tribunal, Additional District Court and

Special Court, Salem. Now, it is open to the claimant to withdraw the entire compensation amount with accrued interest lying in the credit of

M.C.O.P. No. 1403 of 2003, on the file of Motor Accidents Claims Tribunal, Additional District Court and Special Court, Salem, after filing a

Memo along with this order. Subject to withdrawals, if any, made already.

15. Resultantly, the above Civil Miscellaneous Appeal is disposed of. Consequently, the Award and Decree, passed by the Motor Accidents

Claims Tribunal in M.C.O.P. No. 1403 of 2003, dated 14.08.2009 on the file of Additional District Court and Special Court, Salem is modified.

There is No. order as to costs. Consequently, connected miscellaneous petition is closed.