

**(2010) 04 MAD CK 0150**

**In the Madras High Court**

**Case No :** C.M.A.S.R. No. 10447 of 2009 and M.P. No. 1 of 2009

V. Ramar

APPELLANT

Vs

Ramalingam, Kolangi and The Oriental Insurance Co. Ltd.

RESPONDENT

**Date of Decision :** 07-04-2010

**Acts Referred:**

Limitation Act, 1963 — Section 5  
Motor Vehicles Act, 1988 — Section 166  
Penal Code, 1860 (IPC) — Section 304A

**Citation :** (2010) 04 MAD CK 0150

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

**Bench :** Single Bench

**Advocate :** R. Meenal, for the Appellant; V. Raghavachari, for RR1 and 2 and S. Arun Kumar, for R3, for the Respondent

**Final Decision :** Dismissed

## Judgement

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

dated 26.12.2005, made in M.C.O.P. No. 220 of 2005, on the file of the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi,

awarding a compensation of Rs. 1,53,300/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of

payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/first respondent, V. Ramar, has filed the above appeal praying to set aside the award

and decree passed by the Tribunal.

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

On 24.02.2003, at 01.00 hours, when the (deceased) Ramachandran was

walking, carefully, on the mud portion of the road towards Kaduvanur, the first respondent's tractor bearing registration No. TN47C9049, driven at a high speed and in a rash and negligent manner by its driver, dashed against the (deceased) Ramachandran. Due to the the said accident, the (deceased) Ramachandran sustained grievous injuries and died on the spot. The (deceased) Ramachandran was aged about 15 years at the time of the said accident and he was shepherding five cows and earning an income of Rs. 3,000/- per month. The petitioners, who are the parents of the (deceased) Ramachandran, have claimed a compensation of Rs. 5,00,000/- from the first and second respondents, the owner and insurer of the said tractor involved in the said accident, u/s 166 of the Motor Vehicles Act.

4. Regarding the said accident, a criminal case has been registered by the Station House Office, Sankarapuram, in Crime No. 114 of 2003, as against the driver of the said tractor, u/s 304A of I.P.C and the same is pending before the Judicial Magistrate Court, Sankarapuram.

5. The second respondent, the Oriental Insurance Co., Ltd., in his counter has resisted the claim denying the averments in the claim regarding the age, income and occupation of the (deceased) Ramachandran. It has been pointed out that the age of the deceased was only 12 years as per the post-mortem report. The second respondent has also stated that the tractor bearing registration No. TN47C9049 had not been insured with them at the time of the said accident. It was also stated that the petitioners should have to prove that the driver of the tractor possessed a valid driving licence and that the R.C., F.C., and permit of the vehicle were valid at the time of the said accident. The second respondent has also submitted that the first respondent's driver of the said tractor had not driven the tractor at a high speed and in a rash and negligent manner as alleged in the claim petition. It was also submitted that the claim amount was also excessive and has to be dismissed with costs.

6. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Was the accident caused due to the rash and negligent manner of driving by the driver of the first respondent?

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

quantum of compensation, which they are entitled to get?

7. On the petitioners' side the mother of the (deceased) Ramachandrann was examined as PW1 and six documents were marked as Exs. P1 to

P6. On the second respondent's side one witness was examined as RW1 and one document was marked as Ex. R1.

8. The mother of the (deceased) Ramachandran and the second petitioner in the claim was examined as PW1. In her sworn affidavit, she has

stated that on 24.02.2003, at about 13.00 hours, when her son Ramachandran was shepherding the cows owned by them and walking on the

extreme left side of the road leading towards Kaduvanur, the first respondent's tractor had dashed against him and that her son had died as a result

of injuries sustained in this accident. In support of her evidence, she has marked Ex. P1-FIR; Ex. P3-Motor Vehicle Inspector's Report; Ex. P4-

Charge Sheet and Ex. P5-the copy of Judgment made in the Criminal case filed against the driver of the first respondent's tractor. It has been

stated in the Exs. P1 and P4 that the accident had been caused only by the negligence of the driver of the first respondent's tractor; on scrutiny of

Ex. P3, it is seen that the accident did not happen due to any mechanical defects in the said tractor. On scrutiny of Ex. P5, it is seen that the driver

of the first respondent's tractor had admitted his guilt before the Chief Judicial Magistrate Court at Sankarapuram and paid the fine amount

imposed on him. As such, the Tribunal held that the accident had been caused only by the rash and negligent manner of driving by the driver of the

first respondent's tractor.

9. On scrutiny of the copy of Post-mortem report of the (deceased) Ramachandran marked as Ex. P2, it is seen that the age of the (deceased)

Ramachandran had been stated as 12 years old and it has further been stated in the post-mortem report that the (deceased) Ramachandran had

died due to severe bleeding injuries and shock sustained in the said accident. Though, it has been stated on the petitioners' side that the (deceased)

Ramachandran was aged 15 years old at the time of the said accident, no documentary evidence had been let in by the petitioners to prove this

contention. As such, the Tribunal on considering that the age of the (deceased) Ramachandran was 12 years, adopted a multiplier of 15, as was

relevant to the age of the deceased as per the Motor Vehicles Act, to assess the

compensation. The Tribunal were not inclined to accept the contention put forth by the petitioners' side that the deceased by shepherding five cows owned by them and selling milk and was earning an income of Rs. 3,000/- every month, as they felt that a 12 year old boy would not be capable of earning a sum of Rs. 100/- by shepherding cows and selling its milk. As such, the Tribunal fixed the notional income of the (deceased) Ramachandran as Rs. 1,250/- per month and assessed his yearly income as Rs. 15,000/-. Deducting 1/3rd share from this for his personal expenses, the Tribunal held that the deceased Ramachandran could have contributed Rs. 10,000/- every year to the petitioners and assessed the total contribution, which he could have made as Rs. 10,000/- X 15 = Rs. 1,50,000/- and awarded this amount as compensation to the petitioners under the head of loss of income. The Tribunal further awarded a sum of Rs. 2,000/- towards funeral expenses; Rs. 1,000/- towards transport expenses and Rs. 300/- for damage to clothes of the (deceased) Ramachandran in the accident. In total, the Tribunal awarded a compensation of Rs. 1,53,300/- to the petitioners and from and out of this award amount apportioned a sum of Rs. 73,300/- to the first petitioner and a sum of Rs. 80,000/- to the second petitioner.

10. The Branch Manager of the second respondent firm, one Ravichandran, was examined as RW1. The RW1, in his evidence, has stated that the first respondent's tractor had not been insured with them at the time of the said accident. He has deposed that the insurance policy filed as Ex.P6 by the petitioners is not genuine and that the said document had not been issued by them. He has stated that he had been working in the second respondent's firm from the month of November, 1999 and that their head office was at New Delhi. It is seen from the Ex. P6, that the head office address of the insurance firm had been shown as 24, Whites Road, Chennai. As such, the RW1 had deposed that the said Ex. P6, the insurance policy had not been issued from their office. He has further stated that the date, on which the insurance policy had been taken, was shown as 21.03.2003 in Ex. P6. But on cross-examination, by the petitioners' side, the RW1 has deposed that the signature as seen in the column marked, the date on which the signature had been effected was shown as 23.02.2003. He had further marked the specimen copy of insurance policy issued

by them as Ex. R1 and had stated that the said tractor had not been insured with them at the time of accident.

11. The Tribunal, on considering the evidence of the RW1 and after scrutinising exhibit marked as R1, were of the opinion that the documentary

exhibit marked as P6 by the petitioners' side was not a genuine document and hence held that the first respondent's tractor had not been covered

under a valid policy of insurance with the second respondent at the time of the said accident. As such, the Tribunal held that the compensation

assessed by them has to be paid only by the first respondent and absolved the second respondent from its liability to pay compensation to the

petitioners. Accordingly, they dismissed the claim as against the second respondent.

12. The Tribunal directed the first respondent to deposit the award amount of Rs. 1,53,300/- together with interest at the rate of 7.5% per annum

from the date of filing the petition till the date of payment of compensation, with costs, into the credit of the M.C.O.P. No. 220 of 2005, on the file

of the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi, within a period of eight weeks from the date of its order. Further, after

such deposit was made into Court, each of the petitioners was permitted to withdraw 50% of their apportioned share of award immediately. The

balance of their apportioned share of award was to be deposited in a nationalised bank, as fixed deposit, for a period of three years and the

petitioners were permitted to withdraw interest on such deposit, once in six months. The petitioners were directed to pay the balance Court fee

due on the award immediately. The Advocate fee was fixed at Rs. 6,060/- and the first respondent was directed to pay the cost of Rs. 6,492/- to

the petitioners. The claim as against the second respondent was dismissed.

13. Learned Counsel appearing for the appellant has contended that the Tribunal had erred in overlooking the fact that the vehicle was insured with

the second respondent at the time of the said accident. It was also pointed out that the Tribunal had omitted to see that Ex. P6 is the original form

issued by the second respondent. It was also contended that the Tribunal erred in overlooking the fact that the specimen marked by the second

respondent was a recent one and that they had evaded liability by stating a false. It has also been pointed out that the Tribunal failed to see that the

second respondent, in his deposition, admitted that he did not raise objections as to the validity of Ex. P6 in the counter. It was also contended that

the Tribunal erred in overlooking the fact that no notice was served on the appellant that the vehicle was not insured with them. It was contended

that the tribunal omitted to see that Ex.P6 is the cover note issued by the second respondent. The learned Counsel has also contended that the

Tribunal had awarded a huge amount of compensation, especially, when the income of the deceased was not proved.

14. Learned Counsel appearing for the third respondent argued that in the relevant period, the offending vehicle was not covered under a valid

policy taken with them and the same was established before the Tribunal. As such, the Tribunal fastened the liability on the owner of the vehicle. In

the circumstances, the Insurance Company is not liable to pay any compensation to the claimants.

15. Leaned counsel appearing for the first and second respondents argued that the deceased was a 15 years old boy. He was a milk supplier. The

accident had happened in the beginning of the year 2003. The award passed in the year 2005. After four years, the appellant has filed this appeal

and has challenged the award granted by the Tribunal. Under the circumstances, the learned Counsel prayed for disposal of the appeal on merits.

The learned Counsel, in support of his contentions, has cited a Judgment made in Civil Appeal Nos. 6414-6417 of 2008, Supreme Court of India,

Pundlik Jalam Patil (D) by LRs. v. Exe. Eng. Jalgaon Medium Project and Anr., the relevant head notes of which are as follows:

Limitation - Condonation of delay - Delay of 1724 days - Section 5 of the Limitation Act, 1963 - Lands belonging to the Appellants were

acquired at the instance of the Respondent - Appellant sought for reference of the award seeking enhancement of the compensation - Civil Judge

enhanced the compensation on 9th March, 2000 - Special Land Acquisition Officer after about one year addressed the Principal Secretary to Law

and Judiciary Department, for reviewing the decision taken regarding acquiesce in the decision of Reference Court - Government informed not

only the Special Land Acquisition officer but also the first respondent that more than one year had elapsed and there were no grounds of

condoning the delay in filing the appeals - Beneficiary of the acquisition did not take any steps after receiving the communication until 25th

February, 2005 on which date the appeals were preferred along with the applications to condone the delay of 1724 days - High Court condoned the delay - Hence, present appeals - Whether the respondent made incorrect statement in the application seeking condonation of delay - Whether the High Court properly exercised its discretion - Whether the averments disclosed any sufficient cause to condone the inordinate delay of 1724 days in filing the appeals - Held, a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay - High Court ought to have refused to exercise its discretion having found that the Respondent in its application made incorrect submission - High Court exercised its discretion on wrong principles - Exercise of discretion by the High Court cannot be sustained - Respondent beneficiary of the acquisition did not initiate any steps before expiry of limitation and no circumstances are placed before the Court that steps were taken to file appeals but it was not possible to file the appeals within time - Hence, the Respondent beneficiary was not diligent in availing the remedy of appeal - Averments made in the application do not show any acceptable cause much less sufficient cause to exercise Courts' discretion in its favour - High Court gravely erred and exercised its discretion to condone the inordinate delay of 1724 days though no sufficient cause has been shown by the Applicants - Impugned Judgment set aside - Appeals Allowed.

16. Considering the facts and circumstance of the case, scrutiny of findings of the Tribunal, contents of the condone delay petition and arguments advanced by the learned Counsel appearing on either side, this Court is of the view that the findings of the Tribunal on the two issues namely liability, which was fastened on the first respondent and the quantum of compensation assessed as a sum of Rs. 1,53,300/- with interest at the rate of 7.5% per annum are both justified as the deceased age was 12 and the multiplier of 15 has been adopted by the Tribunal to assess compensation, which is found to be fair and equitable in the instant case.

17. Therefore, this Court hereby directs the appellant to deposit the entire compensation amount of Rs. 1,53,300/- 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, into the credit of the M.C.O.P. No. 220 of

2005, on the file of the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi, within a period of 12 weeks from the date of receipt of a copy of this Order, subject to deduction of amount deposited earlier, if any.

18. After such deposit is made, 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. 220 of 2005, on the file of the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi, after filing necessary payment out application, in accordance with law.

19. In the result, the above unnumbered Civil Miscellaneous Appeal is dismissed and the Award and Decree, dated 26.12.2005, made in

M.C.O.P. No. 220 of 2005, on the file of the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi, is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.