

(2011) 06 MAD CK 0320

Madras High Court

Case No: C.M.A. No. 1891 of 2009

G. Nandha Kumar, N.
Parijatham, N. Shopa and
Janani, rep. by her guardian and
father G. Nandha Kumar

APPELLANT

Vs

D. Senthil and United India
Insurance Company Ltd.

RESPONDENT

Date of Decision: June 22, 2011

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

Bench: Single Bench

Advocate: T. Dhanasekaran, for the Appellant; N. Vijayaraghavan, for R-2, for the Respondent

Final Decision: Allowed

Judgement

C.S. Karnan, J.

The above appeal has been filed by the Appellants / claimants against the award and decree dated 19.09.2005 made in M.A.C.T.O.P. No. 803 of 2003 on the file of Motor Vehicles Accidents Claims Tribunal, Tiruvannamalai.

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

On 12.04.2003, at about 17.15 hours, the deceased Viji @ Sathis and one Kumaravelu were taking milk for selling in Tiruvannamalai Milk Society in the Auto bearing Registration No. TN-32-D-3107 from Nallanpillaipetrel to Tiruvannamalai. While so, at about 05.15 p.m., when the auto was at Kilpennathur Santhaimedu, the first Respondent's driver drove the lorry bearing Registration No. TN-72A-9063, in a rash and negligent manner and dashed against the rear side of the said auto. As a result, the auto skidded, resulting in the injuries to Kumaravel and Viji @ Sathis. Viji @ Sathis was admitted in Royapettah Hospital, where he succumbed to his injuries on 14.04.2003. Hence, the Petitioners who are the legal-heirs of the deceased Viji @ Sathis have filed a claim for Rs. 6,00,000/- against the owner and insurer of the lorry

bearing Registration No. TN-72A-9063.

3. The second Respondent, in his counter has resisted the claim and has stated that the Petitioners should prove the averments relating to details of accident, nature of injuries and medical treatment, age, income and occupation of the deceased Viji @ Sathis. It was also stated that the Petitioners have not included the driver of the auto and its Insurance Company to the petition and hence non-inclusion of these necessary parties renders the petition not maintainable. It was also stated that the claim was excessive.

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

(i) Did the accident occur due to the rash and negligent driving of the first Respondent's lorry by its driver?

(ii) Who is liable to pay compensation to the Petitioners?

(iii) If so, what is the quantum of compensation, they are entitled to get?

5. On the Petitioners' side, two witnesses were examined as PW1 and PW2 and eight documents were marked as Exs.P1 to P8 viz., Xerox copies of FIR, Post-mortem report, Insurance Policy, Registration Certificate of lorry, Driving Licence, Transfer Certificate issued at School, Ration Card of Petitioners and licence to practice as conductor. On the Respondents side, No. witness and No. documents.

6. The second Petitioner, the mother of the deceased Viji was examined as PW1. PW1 adduced evidence which was in consonance with the version of accident as mentioned in the claim. The eyewitness of the accident, one Kumaravel was examined as PW2. PW2 adduced evidence that on the date of accident, he and the deceased Viji, after loading the milk cans in the auto, were sitting in the rear of the auto and when the auto was proceeding towards Tiruvannamalai, the lorry bearing Registration No. TN-72A-9063 belonging to the first Respondent, driven at a high speed and in a rash and negligent manner had dashed against the rear of the auto. Hence, the Tribunal based on evidence of PW2 held that the accident had been caused by the rash and negligent driving of the first Respondent's lorry driver.

7. The Tribunal on considering that only the first and second Petitioners in the claim are the primary legal-heirs of the deceased held that only they are entitled to get compensation and that the third and fourth Petitioners, being sisters of deceased, are not entitled for compensation. Further, as the first Respondent's lorry was insured with the second Respondent at the time of accident, the Tribunal held that the second Respondent is liable to pay compensation.

8. Though PW1 had adduced evidence that her deceased son was working as Conductor and earning a sum of Rs. 4,000/-month, No. documentary evidence had been produced to back this claim. On scrutiny of Ex.P8, it is seen that the deceased

has been given the licence to practice as a conductor. However, as No. documentary proof had been filed to show under whom he was working. The Tribunal held that the deceased was a daily wage earner and could have earned Rs. 60/-per day i.e., Rs. 1,500/-per month. Deducting 1/3rd of this for his personal expenses, the Tribunal held that the deceased could have contributed Rs. 12,000/-to his family every year. Adopting a multiplier of "16", as was relevant to the age of the deceased as 20 years (as per post-mortem report), the Tribunal awarded a compensation of Rs. 1,92,000/-(Rs. 12,000/-x 16) to the Petitioners under the head of "loss of income". The Tribunal further awarded Rs. 6,000/-under the head of "loss of love and affection to the Petitioners" and Rs. 2,000/-for funeral expenses. In total, the Tribunal awarded Rs. 2,00,000/-as compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of payment of compensation. The Tribunal directed the second Respondent to deposit the above said award with interest within two months from the date of its order.

9. Not being satisfied with the award passed by the Tribunal, the claimants have filed the present appeal to set-aside the award and to enhance the award amount from Rs. 2,00,000/- to Rs. 6,00,000/-.

10. The learned Counsel for the Appellants has argued that the lower Court after having rightly held that the accident occurred due to the rash and negligent driving of the driver ought to have made all the Respondents liable for the entire claim. It was pointed out that the Tribunal failed to see that the deceased is the only earning member in the family and that the Appellants are aged persons and they have to educate and celebrate the marriage of their other two daughters. The Tribunal failed to see that the deceased was aged about 25 years at the time of accident and he was working as a Conductor in a private bus as well as working in the auto at leisure time. The Tribunal had failed to see that the monthly income of deceased was more than Rs. 4,000/-per month as per evidence of PW1. Hence, it was prayed that the award should be enhanced to Rs. 6,00,000/-. The deceased was a qualified driver and conductor. In order to prove the same, Ex.P5, driving licence was marked and Ex.P8, Conductor licence was marked. Therefore, his income is more than Rs. 4,000/-per month, but the Tribunal had fixed the income at Rs. 60/-per day and the monthly income was considered after taking only 25 working days in the month. This view of the Tribunal is erroneous.

11. Considering the facts and circumstances of the case and arguments advanced by the learned Counsel for the Appellants and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the deceased was possessing a driving and conductor licence and as such he is a qualified driver and conductor. Therefore, the deceased cannot be treated as a coolie. Hence, this Court fixes the income of the deceased as Rs. 3,000/-per month and assesses the compensation as follows:

For loss of income to Petitioners (Rs. 3000 x 1/3 x 2 x 12 x 16)	..	Rs. 3,84,000/
for loss of love and affection	..	Rs. 20,000/-
For funeral expenses	..	Rs. 10,000/

In total, this Court awards Rs. 4,14,000/-as compensation to the claimants. After deducting initial compensation of a sum of Rs. 2,00,000/-this Court awards an additional compensation of Rs. 2,14,000/-as compensation. This amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of payment of compensation, as it is fair and justifiable in the instant case. This Court further directs the second Respondent / United India Insurance Company to comply with this Court order, as mentioned above, within a period of six weeks from the date of receipt of this order. The first claimant is apportioned a sum of Rs. 50,000/-with accrued interest thereon; the second claimant is apportioned a sum of Rs. 64,000/-; and the third and fourth claimants are apportioned a sum of Rs. 50,000/-each. After such deposit has been made, it is open to the claimants to withdraw their apportioned modified compensation amount, as fixed by this Court lying in the credit of M.A.C.T.O.P. No. 803 of 2003 on the file of Motor Vehicles Accidents Claims Tribunal, Tiruvannamalai, after filing a Memo along with this order, subject to fourth claimant becoming a major. If the fourth claimant is not a major, the second claimant i.e., the father of the fourth claimant is at liberty to withdraw the compensation apportioned to the fourth claimant.

12. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.A.C.T.O.P. No. 803 of 2003 dated 19.09.2005 on the file of Motor Vehicles Accidents Claims Tribunal, Tiruvannamali is modified. There is No. order as to costs.