

(2013) 09 MAD CK 0274

Madras High Court

Case No: C.M.A. No. 1866 of 2009

The Manager, The New India
Assurance Co. Ltd.

APPELLANT

Vs

A. Chandira and Others

RESPONDENT

Date of Decision: Sept. 27, 2013

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

Bench: Single Bench

Advocate: M. Krishnamoorthi, for the Appellant; C. Prabakaran, for the Respondent

Final Decision: Dismissed

Judgement

C.S. Karnan, J.

The appellant/second respondent has preferred the present appeal against the judgment and decree dated 25.11.2008, made in M.C.O.P. No. 128 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court-II), Kancheepuram. The short facts of the case are as follows:-

The claimants had stated that the first claimant's husband namely Arumugam was travelling as a Coolie on a tractor bearing registration No. TN21 I6557, on 28.12.2006, at about 05.00 p.m., on Villipakkam Village Road and at that point of time, the driver of the tractor had driven it in a rash and negligent manner and at a high speed and had suddenly applied brakes, due to which the deceased Arumugam had fallen down and the wheel of the tractor had run over him, resulting in his death. Hence, the claimants had filed a claim petition in M.C.O.P. No. 128 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court-II), Kancheepuram, against the insurer and owner of the vehicle, claiming a compensation of Rs. 6,00,000/- for the death of the said Arumugam in the motor vehicle accident.

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

was not registered at the time of the accident with the transport authorities and as such the vehicle had not been covered under valid documents. They had denied the averments made in the claim petition regarding age, income and occupation of the deceased. They had also denied the averments made in the claim petition that the accident had been caused by the driver of the tractor. As per permit, only the driver of the tractor was permitted to operate the vehicle and there is no seating capacity for travelling of other passengers and as such the deceased and another person were allowed to sit on the mudguard, the deceased had fallen down due to his own negligence. As such, there is a violation of policy condition. As per the averments of the claimants, the deceased was travelling as a coolie. Therefore, the claimants have to approach the proper forum to get relief and they are not entitled to get relief from the Motor Accident Claims Tribunal.

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

- i. Whether the accident had been caused due to the rash and negligent driving by the driver of the first respondent's tractor? and
- ii. Whether the claimants are entitled to get compensation? If so, what is the quantum of compensation?

4. On the petitioners' side two witnesses were examined as P.Ws.1 and 2 and five documents were marked as Exs.P1 to P5 namely FIR, Postmortem Certificate, Death and Legal Heir Certificate and death report. On the respondents' side two witnesses were examined as R.Ws.1 and 2 and three documents were marked as Exs.R1 to R3 namely investigation report, letter sent to the owner of the vehicle and copy of policy.

5. P.W.1 had adduced evidence that her husband was aged about 28 years at the time of the accident and that when he was travelling on the first respondent's tractor bearing registration No. TN21 L6557, as a Coolie, and when the vehicle was proceeding on the Villipakkam Road, the driver of the tractor had driven it in a high speed and in a rash and negligent manner and had applied sudden brake, due to which her husband had fallen down and the wheel of the tractor had run over him resulting in his death. The accident took place on 28.12.2006 at about 05.00 p.m. The second and third claimants are the minor children of the deceased and the fourth claimant is the widowed mother of the deceased.

6. P.W.2 had adduced evidence that he had witnessed the said accident and had spoken on similar lines of P.W.1 regarding manner of accident.

7. R.W.1, who is an Assistant, attached to the Insurance Company, had adduced evidence that he had investigated the accident and filed the report. He had adduced that the deceased was travelling on the mudguard and the driver of the tractor did not possess valid driving licence.

8. R.W.2 Junior Assistant attached to R.T.O. Office, had adduced evidence that he is unable to give particulars regarding whether or not the driver of the tractor had a valid driving licence.
9. On considering the evidence of the witnesses and on perusing the documents marked by them, the Tribunal had assessed the compensation at Rs. 4,66,500/- with interest at the rate of 7.5% per annum.
10. Aggrieved by the said Award, the Insurance Company has preferred the present civil miscellaneous appeal.
11. The highly competent counsel appearing for the appellant Insurance Company has submitted that the deceased had travelled on the mudguard of the tractor as an unauthorised passenger and not as a coolie as alleged by the claimants. The claimants had stated that the deceased was paid a sum of Rs. 6,000/- per month. In order to prove the same, the owner of the tractor was not examined and no document was produced regarding salary of the deceased. In the absence of the said particulars, the Tribunal had fixed the income of the deceased at Rs. 3,000/-per month, which is not pertinent in the instant case. Further, at the time of the accident, the tractor was not registered with the transport authorities. As such, the vehicle had not been covered under valid documents. The driver of the tractor did not possess a valid driving licence.
12. The highly competent counsel for the claimants has vehemently argued that the tractor was used for agricultural operations and therefore two persons had travelled on the tractor as coolies. Further, the tractor had been insured with the appellant Insurance Company. As such, the Insurance Company is liable to pay compensation. Further, R.W.1, who is an employee working with the Insurance Company, had conducted a partial enquiry and filed a report to suit the convenience of the Insurance Company. R.W.2, who is attached to the R.T.O. Office had adduced evidence that he is unable to produce the driving licence particulars pertaining to the driver of the tractor due to lack of particulars available on his office. Therefore, pay and recovery theory will not be applicable in the instant case. Further, the Tribunal had not granted adequate compensation under the relevant heads namely loss of earning, loss of consortium, loss of love and affection, transport and funeral expenses. All the claimants are depending upon the income of the deceased, who was the sole breadwinner of the family. The claimants are four in numbers and as such only 1/4th of the income of the deceased has to be deducted for his personal expenses instead of 1/3rd taken by the Tribunal.
13. 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 short comings in the conclusions arrived at negligence, liability and quantum of compensation. Therefore, the award passed by the Tribunal is liable to be confirmed.

14. This Court directs the appellant Insurance Company to deposit the entire compensation amount with interest thereon, to the credit of M.C.O.P. No. 128 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court-II), Kancheepuram, subject to the deduction of earlier deposits made by them, within a period of four weeks from the date of receipt of a copy of this Order.

15. After such a deposit having been made, it is open to the first and fourth 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. 128 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court-II), Kancheepuram, after filing a memo along with a copy of this Order.

16. This Court directs the learned Additional District Judge, Motor Accident Claims Tribunal (Fast Track Court-II), Kancheepuram, 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 dismissed and the Judgment and decree dated 25.11.2008, made in M.C.O.P. No. 128 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court-II), Kancheepuram, is confirmed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.