

(2013) 11 MAD CK 0140

Madras High Court

Case No: C.M.A. No. 1594 of 2009 and M.P. No"s. 1 of 2009 and 1 of 2010

Branch Manager, United India
Insurance Co. Ltd.

APPELLANT

Aruldas and Others

Vs

RESPONDENT

Date of Decision: Nov. 14, 2013

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

Bench: Single Bench

Advocate: N. Vijayaraghavan, for the Appellant; D. Balachandran for R1 to R5, 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 05.09.2008, made in M.C.O.P. No. 724 of 2006, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri. The short facts of the case are as follows:-

The claimants, who are the husband, sons and daughters of the deceased Bakkiyammal, had filed a claim petition in M.C.O.P. No. 724 of 2006, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri, claiming a sum of Rs. 5,00,000/- as compensation, from the respondents, for the death of the said Bakkiyammal in a motor vehicle accident.

2. It was submitted that on 14.12.2004, when the deceased Bakkiyammal was travelling with her goods along with others in the first respondent's Tempo Van bearing registration No. TN25 F1995, from Pulivanthal village to Bangalore, on Tiruvannamalai-Krishnagiri National Highways Road and on 15.12.2004, at about 04.30 a.m., when the tempo van was proceeding near Sentharpalli Bus Stop, the driver of the van drove it at a high speed and in a rash and negligent manner and dashed it against a tamarind tree on the side of the road. As a result, the deceased

Bakkiammal and others sustained grievous injuries. The deceased Bakkiammal was admitted at Krishnagiri Government Hospital, wherein first aid was given and subsequently admitted at Appaya Hospital, Bangalore, wherein she received treatment as an inpatient from 15.12.2004 to 29.12.2004. As her condition deteriorated, she was admitted at St. Paul Hospital, Chetpet. But, in spite of treatment, she succumbed to her injuries on 30.12.2004. At the time of accident, the deceased was aged 55 years and was working as an agriculturist and as a coolie and earning Rs. 5,000/- per month. Hence, the claimants had filed the claim petition against the respondents, who are the owner and insurer of the Tempo Van bearing registration No. TN25 F1995.

3. The first respondent, in his counter affidavit, had denied the averments made in the claim petition that the deceased Bakkiammal had travelled as owner of goods in the first respondent's tempo van. It was submitted that at the time of occurrence of accident, the first respondent's van was in a state of disrepair and that the first respondent's van was not involved in the alleged accident. It was also submitted that the first respondent's van had been erroneously mentioned as the offending vehicle in the complaint and as it had been insured with the second respondent at the time of accident, the first respondent is not liable to pay any compensation to the claimants.

4. The second respondent Insurance Company, in their counter affidavit, had submitted that the first respondent's Tempo Van bearing registration No. TN25 F1995 had been insured with them at the time of accident. It was also submitted that the first respondent's driver did not have a valid licence to drive it at the time of accident. Further, it was submitted that as the deceased Bakkiammal and others had travelled in the first respondent's goods vehicle as owners of goods and as they had travelled as unauthorized passengers, they are not liable to pay any compensation. Further, it was submitted that the accident was caused only due to negligence of the driver of the tempo van as he had driven the vehicle for a long duration in the night, without getting adequate sleep. The averments made in the claim petition regarding age, income and occupation of the deceased Bakkiammal and others were also not admitted. It was also submitted that the claim was excessive.

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

- i. Whether the accident was caused by the rash and negligent driving by the driver of the first respondent's van?
- ii. Whether the respondents are liable to pay compensation? and
- iii. Whether the claimants are entitled to get any compensation? If so, what is the quantum of compensation?

6. In the same accident, three other claim petitions had been filed by the injured passengers of the tempo van in M.C.O.P. Nos. 725 to 727 of 2006, claiming compensation for the injuries sustained by them from the same respondents. Based on the request made by the counsels for their respective claimants through a joint memo, a joint trial was conducted and a common evidence was recorded.

7. The first claimant in M.C.O.P. No. 724 of 2006 namely Aruldas was examined as P.W. 1 and the claimants in M.C.O.P. Nos. 725 to 727 of 2006 namely Sundar, Mary and Anthony Cruz were examined as P.Ws. 2 to 4 respectively and one Dr. Ashok Kumar was examined as P.W. 5 and fourteen documents were marked as Exs. P1 to P14 namely copy of FIR, copy of postmortem certificate of Bakkiammal, discharge summary of Bakkiammal, death certificate of Bakkiammal, legal heir certificate issued by Tahsildar, Polur, medical receipts for Rs. 1,17,307.58, death certificate of Bakkiammal issued at St. Pauls Hospital, Chetpet, copy of policy, wound certificates, medical receipts for Rs. 15,334, permanent disability certificate and X-ray. On the respondent's side, one K. Dhanasekaran was examined as R.W. 1 and insurance policy was marked as Ex. R1.

8. P.W. 1 husband of the deceased Bakkiammal had adduced evidence which is corroborative of the statements made in the claim petition regarding manner of accident. P.Ws. 2 to 4 had also adduced evidence that the accident had been caused by the rash and negligent driving by the driver of the first respondent's van and in support of their evidence they had marked Exs. P1 to P14.

9. R.W. 1 had adduced evidence that as the first respondent's van had been registered as a goods vehicle and as the deceased and others had travelled as unauthorized passengers in the first respondent's vehicle, the conditions of policy had been violated and as such the second respondent is not liable to pay any compensation and in support of his evidence he had marked Ex. R1.

10. The Tribunal, on scrutiny of Ex. P1 and the evidence of P.Ws. 1 to 4 and on observing that no evidence had been let in on the respondents' side to rebut the claim of P.Ws. 1 to 4 regarding manner of accident held that the accident had been caused by the rash and negligent driving by the driver of the first respondent's vehicle.

11. P.W. 1 had further adduced evidence that his deceased wife was working as an agriculturist and a coolie and earning Rs. 5,000/- per month and that she was aged 55 years at the time of accident. He deposed that all the claimants were dependent on the income of the deceased and that he had spent a sum of Rs. 1,50,000/- for medical expenses, Rs. 10,000/- for transport and Rs. 25,000/- for nutrition. The Tribunal, on scrutiny of Ex. P2 observed that the deceased was aged 55 years at the time of accident. As no documentary evidence had been marked to prove the income of the deceased, the Tribunal held that the notional income of the deceased was Rs. 3,000/- per month. The Tribunal, on adopting a multiplier of 11, awarded a

sum of Rs. 2,64,000/- as compensation to the claimants under the head of loss of income ($3,000 \times 2/3 \times 12 \times 11$), Rs. 2,000/- was awarded for transport expenses, Rs. 5,000/- was awarded for funeral expenses, Rs. 15,000/- was awarded to the first claimant under the head of loss of consortium and Rs. 15,000/- was awarded to the claimants under the head of loss of love and affection and Rs. 1,17,307/- was awarded for medical expenses. In total, the Tribunal had awarded a sum of Rs. 4,18,307/- as compensation to the claimants.

12. The Tribunal, on considering that the deceased Bakkiammal and the other claimants in the other claim petitions had travelled as owners of goods in the first respondent's van and that no fare had been paid to the driver of the vehicle to prove that they had travelled as unauthorized passengers in the first respondent's van. On scrutiny of Ex. P8 policy, it is seen that coverage had been extended to five persons for travel in the said vehicle. Hence, the Tribunal, held that the respondents are jointly and severally liable to pay the said compensation amount to the claimants and directed them to pay the compensation 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, with costs, within a period of two months from the date of it's order.

13. Aggrieved by the award passed by the Tribunal, the second respondent Insurance Company has preferred the present civil miscellaneous appeal.

14. The learned counsel appearing for the appellant has contended in the appeal that the Tribunal erred in holding the appellant liable to pay compensation for passengers, who had travelled unauthorizedly in a goods vehicle. Further, it is contended that the Tribunal failed to note that the vehicle was a goods vehicle with no capacity for carrying any passengers and as such the appellant ought to have been fastened along with the liability to pay compensation. It is also contended that the Tribunal failed to note that the driver of the vehicle did not have a valid licence and badge to drive the vehicle. Hence, it is prayed to set aside the award passed by the Tribunal.

15. The very competent counsel for the claimants has vehemently argued that the deceased was aged 35 years and she was travelling as owner of goods in the van. She was involved in agricultural operations as a coolie. The claimants are five in numbers. The FIR had been registered against the driver of the offending vehicle. The deceased had been at two different hospitals and even after treatment of 15 days, she had succumbed to her injuries. The quantum of compensation is also not on the higher side.

16. 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 regarding negligence, liability and quantum of compensation. This Court is of the

further view that the Tribunal had decided the relevant issues in an appropriate manner. This Court is of the view that the FIR had been registered against the driver of the vehicle and the said vehicle had been insured with the Insurance Company. The quantum of compensation is not on the higher side, since the deceased was aged 35 years and the claimants are five in numbers. Therefore, the above appeal does not have enough force to allow it and the impugned award is found fit to be executed.

17. This Court has already directed the appellant Insurance Company to deposit the entire award amount together with interest, to the credit of M.C.O.P. No. 724 of 2006, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

18. Now, it is open to the claimants to withdraw their apportioned share amount, with proportionate interest thereon, lying in the credit of M.C.O.P. No. 724 of 2006, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri, after filing a memo along with a copy of this Judgment. In the result, this civil miscellaneous appeal is dismissed and the Judgment and decree dated 05.09.2008, made in M.C.O.P. No. 724 of 2006, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri, is confirmed. Consequently, connected miscellaneous petitions are closed. No costs.