

(2011) 04 MAD CK 0400

Madras High Court

Case No: C.M.A. No. 1307 of 2011 and M.P. No. 1 of 2011

United India Insurance Co. Ltd.

APPELLANT

Vs

K. Unnamalai and Others

RESPONDENT

Date of Decision: April 29, 2011

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

Bench: Single Bench

Advocate: K.S. Narasimhan, for the Appellant; M.R. Sivakumar, for R1 to R5, for the Respondent

Final Decision: Dismissed

Judgement

C.S. Karnan, J.

The above appeal has been filed by the Appellant/United India Insurance Co. Ltd., against the judgment and decree dated 21.03.2007, made in M.A.C.T.O.P. No. 402 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Ginjee.

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

On 06.09.2003, at about 01.10 p.m., in the afternoon, when the (deceased) Kasi was travelling as a pillion rider on a TVS 50, from Narayanapuram to Nallanpillaipetran and when the TVS 50 was nearing Narayanapuram Junction road, the Van bearing Registration No. TN25-D-8997, coming in the opposite direction and driven by its driver at a high speed and in a rash and negligent manner dashed against the said TVS 50 and caused the accident. The (deceased) Kasi died on the spot. Hence, the Petitioners, who are the legal heirs of the deceased have claimed a compensation of Rs. 11,00,000/- from the first and second Respondents, who are the owner and insurer of the said van.

3. The second Respondent has denied the allegations in the claim regarding the age, income and occupation of the deceased Kasi. It was also stated that the Petitioners have to prove that they are the legal-heirs of the deceased through documentary evidence. It was also stated that as the owner and insurer of the said TVS 50 have

not been added as necessary parties in the claim, the claim is not maintainable. It was also stated that the claim was excessive.

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

(i) Did the accident happen due to the rash and negligent driving of the driver of the first Respondent's van bearing Registration No. TN25-D-8997?

(ii) Are the Petitioners entitled for compensation? If so, what is the quantum of compensation?

5. Another person, Munusamy who had travelled in the said TVS 50, had also died in the accident. So the legal-heirs of Munusamy had filed a claim petition in M.C.O.P. No. 348 of 2005 for compensation against the Respondents. Based on a Memo for joint trial, both the claim petitions were taken for enquiry, common evidence was recorded and common judgment was passed, for both the claims.

6. On the Petitioners side three witnesses were examined as PW1, PW2 and PW3 and twelve documents were marked as Exs.P1 to P12. On the Respondents side no witness, no documents.

7. PW3, Murugan, the eyewitness of the accident adduced evidence that he was a worker in the Electricity Department. The Line Inspector Kasi, Wireman Munusami and his other co-workers in the Electricity Department viz., Sadasivam, Boopalam besides himself after attending to a transformer fault at Pothuvar Village, were on their way to their office. He had proceeded by cycle along with the said Boopalan and Munusamy rode his TVS 50 along with the said Kasi and Sadasivam as pillion riders. At about 01.10 p.m., in the afternoon, while they were proceeding in the Vettavalam to Nallampillaipetral road and when they were nearing Narayanapuram Junction Road, he had seen a Mahindra van bearing Registration No. TN25-D-8997, coming in the opposite direction and driven by its driver in a rash and negligent manner, dashed against the said TVS 50 going ahead of his cycle and cause the accident. In the impact, the said Munusamy and Sadasivam had died on the spot and the said Kasi had died while being taken to the Hospital. Ex.P1 reveals that the complaint had been given by the said Boopalan. The version of accident as seen from the F.I.R., is similar to the version of accident given by PW3. It is seen from the charge sheet marked as Ex.P4, that a criminal case had been registered against the driver of the said Van and from a scrutiny of Ex.P5, judgment copy, it is seen that the driver of the van had admitted his guilt. Hence, the Tribunal on considering evidence of PW3 and FIR were of the opinion that the accident had been caused by the driver of the first Respondent's van. However, on considering that three persons had travelled in the said TVS 50, the Tribunal held that there was contributory negligence also on the part of the (deceased) Munusamy who rode the TVS 50 as well as the other two deceased pillion riders of the TVS 50. Hence, the Tribunal held that there was contributory negligence of 25% on the part of the driver and pillion

riders of the TVS 50 and 75% on the part of the van driver.

8. The Tribunal, on scrutiny of Exs.P3, Post-mortem report and Ex.P7, salary certificate held that the age of the deceased Kasi was 53 years and that he was earning a monthly salary of Rs. 10,310/- by working as a Line Inspector in the Tamil Nadu Electricity Board. The Tribunal, based on the oral and documentary evidence awarded a total compensation of Rs. 11,22,280/- to the Petitioners. The breakup of compensation is as follows:

Rs.
9,07,280/-
For
funeral
expenses
Rs.
10,000/-
Rs.
10,000/-
Rs.
5,000/-
Rs.
40,000/-
Rs.
50,000/-

9. The Tribunal therefore held that the second Respondent is liable to pay 75% of the award i.e., Rs. 8,41,710/- and directed the second Respondent to deposit the above award 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, within 60 days from the date of its order.

10. Aggrieved by the said award passed by the Tribunal, the United India Insurance Company Limited has filed the present appeal to set-aside the award passed by the Tribunal.

11. The learned Counsel for the Appellant has argued that the Tribunal had totally overlooked the fact that for an educational institution bus, there is no necessity to travel in any place except for what it is authorised and if the vehicle is required to be used for any excursion or picnic, then a temporary permit has to be obtained from authorities. The Tribunal failed to note that a vehicle authorised to be plied for the school has no reason or valid excuse to travel beyond the city limit, that too on a Saturday, and the excuse offered and accepted by the Tribunal that travelling in a place without permit, due to natural calamities or urgency cannot be sustained under Motor Vehicles Act and no owner can claim any right under the Act.

(i) The learned Tribunal failed to note that the vehicle owned by the educational institution is permitted to be plied within the town limits of Thiruvannamalai District and that too for the conveyance of students and cannot be plied for hire or reward.

(ii) The learned Tribunal has thus failed to note that the owner of the vehicle, a school, had violated the permit and policy conditions and the insurer cannot be made liable to pay compensation. It was argued that the Tribunal ought to have granted at least the right of recovery from the owner of the vehicle. It was also

contended that the Tribunal had failed to note that there were damages found on the front portion including the handle bar of the two-wheeler, which corroborates the defence that there was a head on collision and as such the rider as well as the two pillion riders were guilty of contributory negligence. It was also argued that the Tribunal had failed to note that the deceased was aged 53 years and ought to have adopted multiplier of "5" years and for another "5" years, the contribution has to be fixed at Rs. 30,000/- per annum. It was also pointed out that the learned Tribunal has erred in awarding Rs. 15,000/- towards conventional damages, which is contrary to law. The learned Counsel further argued that two vehicles were involved in the said accident and a head on collision had occurred. As such, the contributory negligence has to be apportioned equally on both offending vehicle drivers.

12. The learned Counsel for the claimants argued that the deceased was aged about 50 years and his salary was Rs. 12,000/- per month. All the five claimants were depending upon the income of the deceased, who was working in the Tamil Nadu Electricity Board as Line Inspector. The learned Counsel further argued that the accident had been committed by the driver of the van. As such, the entire liability should be laid down on the side of the Insurance Company.

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 age of deceased was 50 years and his income was Rs. 12,000/- per month. The claimants are five in numbers. Considering this aspect, the Tribunal had assessed the compensation and passed award in favour of the claimants, out of the award amount, 25% has been deducted as contributory negligence, which was fastened on the Motorcyclist. Therefore, this Court does not find any discrepancy in the said award. Hence, this Court confirms the award as it is found to be fair and justifiable. This Court directs the Appellant/United India Insurance Company to comply with the impugned award, with interest, granted by the tribunal within a period of six weeks from the date of receipt of this order. After such deposit being made, it is open to the claimants to withdraw their apportioned share amount as fixed by the Tribunal with accrued interest thereon lying in the credit of M.A.C.T.O.P. No. 402 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Ginjee, after filing a Memo along with this order.

14. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.A.C.T.O.P. No. 402 of 2005, dated 21.03.2007 on the file of Sub Judge, Ginjee is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.