

(2013) 11 MAD CK 0152

Madras High Court

Case No: C.M.A. No. 3870 of 2008

Sankaralingam

APPELLANT

Vs

S. Rajasekaran and The New
India Assurance Co. Ltd.

RESPONDENT

Date of Decision: Nov. 7, 2013

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

Bench: Single Bench

Advocate: A.N. Viswanatha Rao, for the Appellant; S. Subbiah for R1 and Mr. M. Krishnamoorthy for R2, for the Respondent

Final Decision: Partly Allowed

Judgement

C.S. Karnan, J.

The appellant/claimant has preferred the present appeal against the judgment and decree dated 21.02.2008, made in M.C.O.P. No. 3102 of 2006, on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai. The short facts of the case are as follows:-

The claimant, who is the father-in-law of the deceased Gowri, had filed a claim petition in M.C.O.P. No. 3102 of 2006, on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai, claiming a sum of Rs. 7,00,000/- as compensation from the respondents for the death of the said Gowri in a motor vehicle accident.

2. It was submitted that on 14.04.2006, at about 08.15 p.m., when the deceased Sheema along with her parents namely Gurubaran @ Dilli Gurubaran, Gowri and sister Monisha, were about to cross the East Coast Road, from west to east, at Naravakkam, Villipuram District, the first respondent's car bearing registration No. TN59 H2929, proceeding from Chennai towards Pondicherry and driven in a rash and negligent manner, dashed against the deceased, who sustained grievous injuries and died on the spot. At the time of accident, the deceased Gowri was aged

30 years and was working as a fish vendor. Hence, the claimant had filed the claim petition against the respondents, who are the owner and insurer of the car bearing registration No. TN59 H2929.

3. The first respondent, in his counter affidavit, had submitted that the driver of the car drove it in a careful and cautious manner and that the accident was caused by the negligence of all the four persons, who crossed the road from west to east direction, suddenly giving no room for the driver to apply the brake and as such they had fully contributed to the occurrence of accident. Further, it was submitted that the driver of the car had a valid driving licence and that the vehicle was covered under a policy of insurance with the second respondent at the time of accident. It was also contended that in the criminal case filed against the driver of the car, he had been acquitted by the criminal court on 04.07.2007 mainly on the ground that the negligence was on the part of the deceased herein. It was submitted further that the claimant has to prove that he is the legal heir of the deceased. Further, it was submitted that the claim was excessive.

4. The second respondent Insurance Company, in their counter affidavit, had submitted that as the accident had taken place at Naravakkam, Villupuram District and as the first respondent resides at Madurai and as the policy is also taken at Madurai, this Court has no jurisdiction to try the claim. Further, it was submitted that the accident occurred due to the utter carelessness of the deceased in attempting to cross the busy East Coast Road, suddenly, without showing any signal. It was submitted further that the claimant has to prove the place, date and time of the accident, age and occupation of the deceased and also prove that the driver of the car had a valid driving licence and that it was covered under a policy of insurance with them. It was also submitted that the claim was excessive.

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

- i. Whether the accident had occurred due to the rash and negligent driving of the car owned by the first respondent and is insured with the second respondent at the time of accident?
- ii. Whether the deceased had in any manner contributed to the cause of the accident?
- iii. Whether the claimant is entitled to get the amount mentioned in the claim petition as compensation from the respondents? and
- iv. To what any other relief?

6. In the same accident, three other claim petitions had been filed by the same claimant Sankaralingam in M.C.O.P. Nos. 3002, 3003 and 3005 of 2006, claiming compensation from the same respondents. Hence, a joint trial was conducted and a common evidence was recorded.

7. On the claimant's side, the claimant was examined as P.W. 1 and thirteen documents were marked as Exs. P1 to P13 namely copy of FIR, copy of sketch, copy of postmortem reports, death and legal heir certificates and copy of charge sheet. On the respondents' side no witness was examined and the copy of ration card was marked as Ex. R1.

8. P.W. 1 had adduced evidence that on the date of occurrence of accident, when he with his son, daughter-in-law and granddaughters, alighted from an Auto on the main East Coast Road at Naravakkam and was about to cross the road from west to east direction, the Hyundai Car coming from Chennai to Pondy and driven in a rash and negligent manner, dashed against all the four persons, who were thrown away and sustained grievous injuries and died on the spot. In support of his evidence, he had marked Exs. P1 to P13. On scrutiny of Exs. P1 and P13, it is seen that FIR and charge sheet had been filed against the car driver. Though it was contended on the respondents' side that the accident was caused only due to the negligence of the deceased, they had not examined the driver of the car to prove their contentions. The Tribunal, on scrutiny of Ex. P2 rough sketch, observed that when the deceased was about to cross the road from east to west, the accident had taken place on the extreme left side of the road. The Tribunal opined that if the car driver had exercised due care and caution, he could have avoided the accident. Hence, the Tribunal held that the accident had been caused by the rash and negligent driving by the driver of the first respondent's car and hence held that the respondents, jointly and severally, liable to pay compensation to the claimant.

9. Further, the Tribunal, on observing that the claimant is a Class-II legal heir, opined that he cannot be treated as the dependent of the minor granddaughter. Hence, the Tribunal awarded a lump sum compensation of Rs. 50,000/- as per Section 140 of the Motor Vehicles Act to the claimant, Rs. 5,000/- was awarded under head of transport expenses and funeral expenses and Rs. 5,000/- was awarded under the head of loss of love and affection. In total, the Tribunal awarded a sum of Rs. 60,000/- as compensation to the claimant and directed the second respondent Insurance Company to pay the said compensation amount, on behalf of the first respondent, 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 its order.

10. Not being satisfied by the said Award passed by the Tribunal, the claimant has preferred the present civil miscellaneous appeal.

11. The learned counsel appearing for the appellant has contended in the appeal that the Tribunal should have seen that the deceased Gowri was a fish vendor and earning Rs. 200/- per day and that she would have easily earned a sum of Rs. 6,000/- per month, as such the Tribunal ought to have taken the multiplicand at Rs. 4,000/- per month and taken the multiplier at 10 and fixed the pecuniary loss at Rs. 4,80,000/-. Further, it is contended that the Tribunal erred in deciding the quantum

of compensation on the basis of no fault liability u/s 140 of the Motor Vehicles Act as amended and the very reasoning of the Tribunal is unsustainable in law and facts. It is also contended that the Tribunal should atleast have fixed the compensation as per second schedule of the Act and ought to have awarded compensation as per the provisions of Section 163A of the Act. It is contended further that the Tribunal ought to have seen the extreme tragedy and the mass accident, whereby the whole family had been wiped out and as such it is prayed for grant of additional compensation of Rs. 3,00,000/-.

12. The learned counsel appearing for the Insurance Company has argued that the deceased"s Class-I legal heirs are her husband and two daughters, who had expired in the said accident. As such, the claimant has no locus standi to claim compensation for the death of his daughter-in-law, who died in the said accident. Further, the claimant is dependent on the income of the deceased and does not depend on her for any other support. Even though, the Tribunal had granted adequate compensation to the claimant.

13. The learned counsel appearing for the first respondent owner of the vehicle has submitted that the car, which is involved in the accident had been insured with the second respondent Insurance Company at the time of accident and that the driver of the car possessed a valid driving licence for operating the car. As such, the owner of the vehicle is only a formal party in the said proceedings.

14. On verifying the factual position 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 view that the criminal proceedings had been levelled against the driver of the car due to his rash and negligent driving. Further, on the side of the respondents no one had opposed the claim petition through oral and authenticated documentary evidence to deny the claim. Further, it is seen that the car had been insured with the second respondent Insurance Company. Therefore, this Court is inclined to grant adequate compensation to the claimant. This Court awards Rs. 3,60,000/- as compensation to the claimant under the head of loss of income (4500 X 2/3 X 12 X 10), Rs. 10,000/- is awarded towards transport expenses, Rs. 10,000/- is awarded towards loss of love and affection and Rs. 10,000/- is awarded towards funeral expenses. In total, this Court awards a sum of Rs. 3,90,000/- as compensation to the claimant, as it is found to be appropriate in the instant case. After deducting the initial compensation of Rs. 60,000/- this Court awards a sum of Rs. 3,30,000/- as additional compensation to the claimant. This additional amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

15. This Court directs the second respondent Insurance Company to execute this Court"s Judgment, by way of depositing the entire compensation amount to the credit of M.C.O.P. No. 3102 of 2006, on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai, within a period of four weeks from the date

of receipt of a copy of this Judgment.

16. After such a deposit having been made, it is open to the claimant to withdraw 50% of the deposited amount, lying in the credit of M.C.O.P. No. 3102 of 2006, on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai, after filing a memo, along with a copy of this Judgment.

17. This Court further directs the learned Chief Judge, Motor Accident Claims Tribunal, Small Causes Court, Chennai, to deposit the balance compensation amount, in the Indian Bank, High Court Branch, Chennai-104, as fixed deposit, under the cumulative deposit scheme for a period of three years and hand over the fixed deposit certificate to the claimant. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 21.02.2008, made in M.C.O.P. No. 3102 of 2006, on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai, is modified. No costs.