

(2010) 09 MAD CK 0342

Madras High Court

Case No: Civil Miscellaneous Appeal No. 2626 of 2005

S. Susila and Others

APPELLANT

Vs

K. Sundaram and The
New India Assurance
Co. Ltd.

RESPONDENT

Date of Decision: Sept. 7, 2010

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

Bench: Single Bench

Advocate: R. Kalai Arasan, for the Appellant; 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 22.09.2003 made in M.C.O.P. No. 539 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional District cum Sessions Judge, II Fast Track Court, Chennai.

2. On 11.04.2000 at about 16.00 hours, the deceased was proceeding on his tricycle from Puzhal to Vyasarpadi on the North Trunk Road, when at that time a mini van bearing Registration No. TN 02 H 0703 came at high speed and in a rash and negligent manner on the same direction and dashed against the tricyclist, in which the tricycle went out of control and collided with an ongoing lorry bearing Registration No. TDO 275. In the result, he had succumbed. Hence, the legal-heirs of the deceased had filed the claim petition against the Respondents claiming a compensation of Rs. 20,00,000/- with interest.

3. The second Respondent/Insurance Company had filed a counter statement and resisted the claim petition. The Respondent denied the said accident which was committed by the driver of the van. In the said accident, owner of the lorry and the Insurance Company were not included in the said case, since the vehicle is involved

in the said case, as alleged by the claimant. The Respondent denied the age, income and occupation of the deceased. The claim amount is excessive.

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

(i) Was the accident committed by the first Respondent in a rash and negligent manner?

(ii) What is the quantum of compensation, the claimants are entitled to receive?

5. On the side of the claimants, three witnesses had been examined, six documents were marked. On the side of the Respondent no witness, but one document was marked i.e., requisition letter to the Doctor for a post-mortem-requested. The marked documents are as follows:

Legal-heir Certificate, Postmortem Certificate, Death Certificate, Salary Certificate, FIR and Rough Sketch.

6. P.W. 1 had adduced evidence that she is the wife of the deceased, other claimants are the children of the deceased. The deceased was a load-man under one Annai Agency and was being paid Rs. 1,750/- per month, besides he was paid Rs. 125/- per load and the deceased would normally attend to four or five loads per day. Therefore, the deceased was earning sufficiently to meet the requirements of his family. P.W. 2 had adduced evidence stating that he had witnessed the said accident, when the driver of the van had driven the vehicle in a rash and negligent manner and dashed against the tricyclist from behind.

7. On considering the evidence of the witnesses, the Tribunal had awarded a sum of Rs. 3,90,000/- with interest at the rate of 9% per annum.

8. Not being satisfied with the said award, the claimants have filed the above appeal for additional compensation a sum of Rs. 6,10,000/- with interest.

9. The learned Counsel for the Appellants argued that the claimants are five in number and they are totally depending on the income of the deceased, who was the sole breadwinner of the family. The deceased was earning sufficient income as a load-man on the basis of rate account of loads, this fact was not considered by the learned Tribunal and awarded the compensation a sum of Rs. 3,90,000/- which is inadequate, since the deceased was only 44 years and was a hard worker.

10. Learned Counsel for the Insurance Company argued that in the absence of documentary proof, the Tribunal had fixed the income of the deceased as Rs. 3,000/- per month, which is correct for the relevant year 2000, besides the learned Tribunal had awarded compensation on the other heads also.

11. In view of the facts and circumstances of the case and arguments advanced by the learned Counsels and on perusing the impugned award of the Tribunal, this

Court is of the considered opinion that the deceased was a load-man and his age was 44 years and the dependants being five in numbers, therefore, this Court grants adequate compensation to the claimants on the following heads:

Rs. 4,05,000/- towards loss of dependency;

(Rs. $3000 \times 1/4 \times 2/3 \times 12 \times 15$)

Rs. 15,000/- towards consortium;

Rs. 60,000/- against love and affection;

Rs. 10,000/- for funeral expenses;

In total, this Court awards a sum of Rs. 4,90,000/- which is fair and equitable. After deducting original compensation a sum of Rs. 3,90,000/- this Court grants Rs. 1,00,000/- and this 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.

12. Therefore, this Court directs the second Respondent/New India Assurance Company Limited, to comply with this Court order as mentioned above within a period of six weeks from the date of receipt of a copy of this order. After such a deposit being made, it is open to the claimants to withdraw their apportioned share amount as fixed by the Tribunal lying in the credit of M.C.O.P. No. 539 of 2001, on the file of Motor Accidents Claims Tribunal, Additional District cum Sessions Judge, II Fast Track Court, Chennai, after filing necessary payment out of application in accordance with law.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal on the file of Additional District cum Sessions Judge, II Fast Track Court, Chennai made in M.C.O.P. No. 539 of 2001, dated 22.09.2003 is modified. There is no order as to costs.