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Madras High Court

Case No: Civil Miscellaneous Appeal No. 1406 of 2006 and C.M.P. No. 6256 of 2006

United India Insurance Co. Ltd.	APPELLANT
Vs	
Lakshmi and Others	RESPONDENT

Date of Decision: Sept. 30, 2010

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

Bench: Single Bench

Advocate: K.S. Narasimhan, for the Appellant; S. Swaminathan, for Respondents Nos. 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

C.S. Karnan, J.
The above appeal has been filed by the Appellant/United India Insurance Company Limited, against the award and decree dated 08.04.2005 made in M.C.O.P. No. 752 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No. 5, Tiruppur.

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

On 11.06.2003 at around 5.15 hours, the deceased Thangamuthu had been riding a two wheeler bearing Registration No. TN39 U 0455 on the Kovai-Tiruchy Main Road, when at that time, the Respondent lorry bearing Registration No. TN28 C 2316 came at high speed and dashed against the deceased in a reckless manner. In the result, he had succumbed to his injuries. Hence, the legal-heirs of the deceased had filed a claim petition against the Respondent for a sum of Rs. 5,00,000/- with interest.

3. The second Respondent/Insurance Company had filed a counter statement and opposed the claim petition. The Respondent denied the said accident committed by the driver of the lorry. The Respondent stated that the driver of the lorry and the rider of the motorcycle had not possessed valid driving licence respectively. The age, income and

occupation of the deceased are denied. Owner of the motorcycle and the Insurance Company had not been included in the accident case. The claim amount is excessive.

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

(i) Who was responsible for the accident? Whether the compensation amount should be paid? If so, by whom is the compensation amount payable?

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

5. On the side of the claimants two witnesses had been examined and nine documents were marked. On the side of the Respondent no witness was examined and no document was marked. The marked documents on the side of the claimants are as follows:

First Information Report, Postmortem Report, Death Certificate, Legal-heir Certificate, Land documents and Identity Card of the deceased that he was an agriculturist, etc.

6. P.W. 1 had adduced evidence stating that she is the wife of the deceased Thangamuthu. On 11.06.2003 at around 3.50 p.m., the deceased and herself had been travelling on the two wheeler bearing Registration No. TN39 U 0455 on the Kovai to Tiruchy Main Road, when at that point of time, the Respondent lorry bearing Registration No. TN28 C 2316 had been driven by its driver at high speed in a rash and negligent manner from the opposite direction and dashed against the motorcycle, resulting in his untimely death on the spot. P.W. 2 one Easwaramurthy had witnessed the accident and spoken on the same line.

7. P.W. 1 further adduced evidence that her husband was an agriculturist, 55 years old and full-time involved in agricultural operations, as such he was earning Rs. 5,000/- per month. In order to prove the occupation, she had marked land documents and his identity card as an agriculturist.

8. On considering the evidence of the witnesses, the Tribunal had awarded a compensation of Rs. 6,57,000/- with interest at the rate of 9% per annum. The breakup of compensation are as follows:

Rs.5,94,000/- towards loss of dependency;

(Rs. 6,750 x 12 x 11 / 3 x 2)

Rs.30,000/- against loss of consortium and loss of love and affection;

Rs.3,000/- for funeral expenses;

Rs.30,000/- towards loss of love and affection to the claimants 2 to 4;

9. Aggrieved by the said award, the Appellant/United India Insurance Company has filed the above appeal.

10. The learned Counsel for the Appellant argued that the age of the deceased was 55 years and no documentary proof that his income was Rs. 6,750/- per month, after deducing personal expenses. The Tribunal had awarded Rs. 15,000/- under the head of love and affection to the first claimant which is not proper. In the said accident, the deceased"s motorcycle had been involved, as such contributory negligent is attributed.

11. Learned Counsel for the claimants argued that the deceased is not only an agriculturist but also a vegetable vendor and in order to prove the same Ex. P 6, had been marked, it reveals that the deceased was a member in the agricultural produce market. The deceased was possessing agricultural land and in order to prove the same Ex. P 5 land document was marked. The learned Counsel further argued that the deceased was an hard worker and physically well equipped for his agricultural operations, as such he was earning approximately Rs. 10,000/- per month. He was the sole breadwinner of the family.

12. In view of the facts and circumstances of the case and arguments submitted by the learned Counsels on either side and on perusing the impugned award, this Court is of the considered opinion that the learned Motor Accidents Claims Tribunal had properly assessed the compensation on the basis of dependency, occupation, age and income of the deceased. It was well established that the deceased was totally gaining from his avocation which has suddenly cut off. Therefore, this Court is not warranted in the interference of the award by the learned Motor Accidents Claims Tribunal, hence the award is confirmed as being fair and equitable.

13. On 14.06.2006, this Court imposed a condition on the Appellant/insurance Company to deposit the entire compensation amount with accrued interest thereon and costs to the credit of M.C.O.P. No. 752 of 2003, on the file of Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No. 5, Tiruppur at Coimbatore. Further, this Court permitted the claimants to withdraw 50% of the amount with interest and costs without furnishing security.

14. Now, it is open to the claimants to withdraw the balance compensation amount lying in the credit of M.C.O.P. No. 752 of 2003, on the file of Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No. 5, Tiruppur at Coimbatore, after filing necessary payment out application in accordance with law, subject to withdrawals if any made already, as per this Court order.

15. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal on the file of Additional District Judge, Fast Track Court No. 5, Tiruppur at Coimbatore, made in M.C.O.P. No. 752 of 2003, dated 08.04.2005 is confirmed. There is no order as to costs.

Consequently, connected miscellaneous petition is closed.