

Kuppusamy Vs. Balaraman

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Court : Chennai

Decided On : Aug-14-2013

Judge : C.S.Karnan

Appellant : Kuppusamy

Respondent : Balaraman

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 14.08.2013
CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A.No.1135 of 2009
1.Kuppusamy 2.Palaniammal .Appellants vs 1.Balaraman 2.M/s.South India
Corporation LTD.No.18-C Rukmani Lakshmipathi Salai, Egmore, Chennai-8.

3.Divisional Manager, United India Insurance Company LTD.No.46, Katpadi Road,
Vellore.

4.Divisional Manager, The Oriental Insurance Company LTD.No.75, Krishnan
Street, Thiruvannamalai.Respondents Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicle Act, 1988, against the Common Judgment and
Decree dated 31.10.2005 and made in M.C.O.P.No.584 of 2004 on the file of the
Motor Accident Claims Tribunal, Tiruvannamalai (District Court,
Tiruvannamalai).For Appellants : M/s.M.Malar For Respondents: R3 - Served R1,
R2 & R4 Exparte

JUDGMENT

The appellants / petitioners have preferred the present appeal in C.M.A.No.1135 of 2009, against the Judgment and Decree passed in M.C.O.P.No.584 of 2004, on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai.

2.The short facts of the case are as follows:- The petitioners who are the parents of the (deceased) Kanimozhi have filed the claim in M.C.O.P.No.584 of 2004, claiming compensation of a sum of Rs.5,00,000/- from the respondents for the death of the said Kanimozhi in a Motor Vehicle Accident.

It was submitted that on 09.10.2003, at about 7.00 p.m.when the (deceased) Kanimozhi, along with her mother Palaniammal, were travelling in the 1st respondent's lorry bearing Registration No.TST-9195 on the Chennai-Villupuram National Highway and when the lorry was proceeding near Arasur Lathe Works, the driver of the 1st respondent's lorry drove it at a high speed and in a rash and negligent manner and dashed it against the 2nd respondent's lorry bearing Registration No.TN-01-M-8356, which was coming in the opposite direction.

As a result, the (deceased) Kanimozhi sustained grievous injuries and died on the spot and some of the coolies who were travelling in the lorry also sustained injuries.

Hence, the petitioners have filed the claim against the respondents 1 to 4.

The 1st and 3rd respondents are the owner and Insurance Company of the lorry bearing Registration No.TST-9195 and the 2nd and 4th respondents are the owner and Insurer of the lorry bearing Registration No.TN-01-M-8356.

3.The 3rd respondent, in his counter has submitted that as the accident had been caused by the negligence of the deceased, this respondent is not liable to pay any compensation.

It was submitted that the claim was excessive.

4.The 4th respondent, in his counter had submitted that as the F.I.R.had been registered against the driver of the 1st respondent's lorry, only the 1st and 3rd respondents are liable to pay compensation to the petitioners and that the 2nd and

4th respondents had only been added as formal parties in the claim.

The averments in the claim that the lorry bearing Registration No.TN-01-M-8356 had been insured with this respondent, at the time of accident was also not admitted.

It was submitted that the claim was excessive.

5.The Motor Accident Claims Tribunal framed three issues for consideration in the case namely (1) Which of the drivers of the lorries involved in the accident, had been rash and negligent in driving the lorry and in causing the accident?.

(2) Who is liable to pay compensation to the petitioners?.

and (3) Are the petitioners entitled to get compensation?.

If so, what is the quantum?.

6.On the petitioners side, the 1st petitioner namely Kuppusamy was examined as PW1 and 4 documents were marked as Exhibits P1 to P4 namely, Ex.P1-Copy of F.I.R.; Ex.P2-Copy of postmortem report; Ex.P3 and Ex.P4-Policy copy.

On the respondents' side, no witness, no documents.

7.PW1 had adduced evidence that he is the father of the deceased and that the 2nd petitioner was his wife and that his deceased daughter namely Kanimozhi was aged 5 years at the time of accident.

He deposed that on 09.10.2003, when he, his wife and daughter were proceeding from Chennai to their native place in the 1st respondent's lorry bearing Registration No.TST-9195 and that when the lorry was proceeding on the Chennai-Villupuram National Highway and near Arasur, the driver of the lorry drove it in a negligent manner and dashed it against a lorry coming in the opposite direction.

He deposed that his daughter sustained grievous injuries and died on the spot.

The Tribunal, on scrutiny of Ex.P1-F.I.R.and on scrutiny of evidence of PW1 held that the accident had been caused by the rash and negligent driving by the driver of the 1st respondent's lorry.

The Tribunal on observing that the petitioners are the legal heirs of the deceased and on observing that the 1st respondent's lorry had been insured with the 3rd respondent at the time of accident, held the 3rd respondent liable to pay compensation to the petitioners.8.On scrutiny of Ex.P2, it is seen that the deceased Kanimozhi was aged 3 years at the time of accident.

The Tribunal, relying on the judgment reported in 2004 (2) TNMAC150(DW) D.S.Muralikrishnan and another, Appellants versus Metropolitan Transport Corporation (Chennai Divisional) Limited, Chennai, Respondent, held that the notional income of the deceased could be taken as Rs.3,000/- per month.

The Tribunal, on deducting 1/3rd of this for the personal expenses of the deceased and on adopting a multiplier of 6, awarded a sum of Rs.1,44,000/- as compensation under the head of loss of earning; Rs.15,000/- was awarded to the petitioners under the head of loss of love and affection and Rs.2,000/- was awarded for funeral expenses.

In total, the Tribunal awarded a sum of Rs.1,61,000/- as compensation to the petitioners and directed the 3rd respondent to pay the said sum together with interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation, with costs, within a period of two months from the date of its order.

9.Not being satisfied by the award passed by the Tribunal, the petitioners have preferred the present appeal.

The learned counsel for the appellants has contended in his appeal that the Tribunal failed to consider the age of the deceased and future prospects of the deceased.

It was contended that the Tribunal failed to note that as per the second schedule of the Motor Vehicle Act, the multiplier provided for age group of 1 to 15 was 15

and as such the Tribunal erred in fixing the multiplier at 6, without considering Ex.P2, wherein age of the deceased had been mentioned as 3 years. It was contended that the award passed for loss of love and affection and funeral expenses were on the lower side.

It was also contended that the Tribunal failed to grant any award for pain and suffering undergone by the deceased child and also for the mental agony sustained by the appellants.

Hence, it was prayed for grant of additional compensation of Rs.2,00,000/-.

10. The Court notice had been served to all the respondents, but even after receipt of Court notice, no one had appeared before this Court at the time of final hearing.

Therefore, this Court is constrained to pass final order on the basis of available records and on hearing the arguments of appellant herein.

11. In the above appeal, the claimants had sought additional compensation of a sum of Rs.2,00,000/- for the death of the minor girl aged about 5 years. This amount sought for is reasonable.

Therefore, this Court is inclined to allow the above appeal.

This Court directs the 3rd respondent herein / United India Insurance Company Limited to deposit the additional compensation amount of a sum of Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation, within a period of four weeks from the date of receipt of this order.

12. After such a deposit having been made, the claimants are permitted to withdraw the said compensation amount, equally among themselves, lying in the credit of M.C.O.P.No.584 of 2004, on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai, after filing a memo, along with a copy of this order.

13. In the result, the above appeal is allowed.

Consequently, the award and decree passed in M.C.O.P.No.584 of 2004, on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai, dated 31.10.2005, is modified.

No costs.

14.08.2013 vs Index : Yes / No Internet: Yes / No To 1.The Motor Accident Claims Tribunal, (District Court).Tiruvannamalai.

2.The Section Officer, VR Section, High Court, Madras.

C.S.KARNAN.J vs C.M.A.No.1135 of 2009 14.08.2013

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