

The Manager, Vs. Sagayaraj

The Manager, Vs. Sagayaraj

SooperKanoon Citation : sooperkanoon.com/964284

Court : Chennai

Decided On : Apr-25-2013

Judge : C.S.Karnan

Appellant : The Manager,

Respondent : Sagayaraj

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

25. 04/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.(MD)No.427 of 2009 AND Cross Appeal (MD)No.33 of 2010 C.M.A.(MD)No.427 of 2009 The Manager, Oriental Insurance Company Limited, Salem. ... Appellant Vs Sagayaraj 1.Selvakumar 2.S.Shanmugam (2nd respondent remained exparte before the lower Court) ... Respondents PRAYER Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set-aside the award of Rs.3,08,100/- (Rupees Three Lakhs Eight Thousand One Hundred only) passed in M.C.O.P.No.38 of 2005, dated 24.11.2008, on the file of the Motor Accidents Claims Tribunal cum Sub Court, Palani. !For Appellant .. Mr.K.Bhaskaran ^For Respondents .. Mr.S.Karthick for R-1 R-2 (Exparte) Cross Appeal (MD)No.33 of 2010 Selvakumar ... Appellant Vs.

1. The Manager, Oriental Insurance Company Limited, Salem. 2.S.Shanmugam (2nd respondent remained exparte before the lower Court) ... Respondents PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor

Vehicles Act, against the award made in M.C.O.P.No.38 of 2005, dated 24.11.2008, on the file of the Motor Accidents Claims Tribunal cum Sub Court, Palani. For Appellant .. Mr.S.Karthick For Respondents .. Mr.K.Bhaskaran for R-1 R-2 (Exparte) :COMMON JUDGMENT The brief facts of the case are as follows:- On 10.03.2003, at about 6 a.m., when the deceased Claura Mary was travelling in the Tata Sumo car bearing registration not TN-57-Y-5999 from Oddanchathiram to Tharapuram Main Road and at that point of time, the first respondent's lorry bearing registration not TNW-6984 had been driven by its driver in a reckless manner and dashed against the Tata Sumo car. As a result, the the said Claura Mary had sustained grievous injuries and died on the spot. Hence, the husband and son of the deceased Claura Mary have filed the claim petition in M.C.O.P.No.38 of 2005, on the file of Sub Court, Palani, against the owner and insurer of the lorry and claimed compensation of a sum of Rs.5,00,000/-.

2. The Insurance Company had filed a counter statement and resisted the claim petition. The respondent denied the accident which had been committed by the driver of the first respondent and also denied the age, income and occupation of the deceased. The respondent further stated that the driver of the lorry had driven the vehicle slowly and cautiously by observing the road traffic rules, but the driver of the tata sumo car had committed the said accident, by driving in a reckless manner. As such, the respondent is not liable to pay any compensation as claimed by the claimants. Further, the owner and insurer of the Tata Sumo car are necessary parties in the claim petition.

3. On considering the plea of both parties, the Tribunal had framed two issues, viz., "(i) Whether the accident had committed by the first respondent's driver? (ii) Whether the claimant is entitled to receive compensation? If so, what is the quantum of compensation?" 4. On the side of the claimant, two witnesses were examined and six documents were marked, viz., F.I.R. charge sheet, postmortem certificate, legal- heir certificate, first claimant's death certificate and salary certificate of Claura Mary. On the side of the respondent, no witness was examined and no document was marked.

5. P.W.2, the eyewitness had adduced evidence that on 10.03.2003, the deceased Claura Mary and one Manju Monica had travelled in the tata sumo car bearing registration not TN-57-Y-5999, on the Oddanchathiram Main Road, when at that point of time, the lorry bearing registration not TNW-6984, driven by its driver in a rash and negligent manner and dashed against the Tata Sumo car and the said Claura Mary had sustained grievous injuries and died on the spot. P.W.1, the son of the deceased had adduced evidence that his mother had met with an accident and expired on the spot. At the time of accident, her age was 28 years and was earning Rs.2,000/- per month as a serving teacher. He further stated that while the claim petition was pending, her father / first claimant had expired due to illness. P.W.1 further stated that he is studying at Engineering College and now he is in a deserted condition with no financial support or having any blood relations to support him.

6. On considering the evidence of witnesses, the Tribunal had awarded a sum of Rs.3,08,100/- as compensation with interest at the rate of 7.5% per annum and directed the Insurance Company to pay the said amount.

7. Aggrieved by the said order, the Insurance Company has filed the above appeal in C.M.A.(MD)No.427 of 2009.

8. The learned counsel for the appellant has contended that the age of the deceased was 38 years, but the Tribunal had taken age as 28 years, on the basis of the postmortem certificate, which is of an erroneous view. In the said accident, two vehicles were involved, as such, contributory negligence ought to have been attributed. The learned counsel has further submitted that the owner and the insurer of the Tata Sumo car are necessary parties, but the claimants without adding them as necessary parties had levelled the claim petition against the insurer and owner of the vehicle. Therefore, there is a non-joinder of parties, hence, the award is not sustainable under law, hence there is a lacuna in the impugned order.

9. Not being satisfied with the quantum of compensation, the second claimant has filed the Cross Appeal (MD)No.33 of 2010 and claimed additional compensation of a sum of Rs.3,59,900/-.

10. The learned counsel for the appellant, in Cross Appeal (MD)No.33 of 2010, argued that the deceased was an earning lady as a teacher and her age was 28 years at the time of accident. The first and second claimants were dependents on the income of the deceased. While the claim petition was pending, the father of the second claimant had expired due to illness. Now, the second claimant is in a deserted condition with no one to support him, he is doing a professional skilled course in engineering. The Tribunal had not granted adequate compensation under the relevant heads.

11. 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 does not find any lapse in the conclusion arrived at regarding negligence and liability. However, the quantum of compensation is on the lower side considering that the second claimant is in a deserted condition and struggling to make both ends meet and in spite of it he is some how carrying on his studies in the engineering course. Hence, this Court is inclined to grant additional compensation to the second claimant. The Tribunal had awarded a sum of Rs.2,88,144/- under the head of 'loss of earning' on the basis of the salary certificate of the deceased. Hence, this Court is inclined to grant compensation on the other heads, Rs.90,000/- is awarded under the head of 'love and affection' considering the deserted condition of the second claimant since his father had expired due to illness while the claim petition was pending. Rs.5,000/- under the head of funeral expenses and Rs.5,000/- under the head of transport. These amounts granted as additional compensation to the claimant.

12. As per Court records, it is seen that this Court had imposed a condition on the appellant to deposit entire compensation amount awarded by the Tribunal and the same has been complied with. Subsequently, the claimant has been permitted to withdraw 50% of the deposited amount. Now, this Court directs the appellant herein to deposit a sum of Rs.1,00,000/- as additional compensation amount, as per this Court's findings 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 a copy of this order.

13. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with accrued interest thereon lying in the credit of M.C.O.P.No.38 of 2005, on the file of the Motor Accidents Claims Tribunal cum Sub Court, Palani, after filing a Memo, along with a copy of this order, subject to deduction of withdrawals made, as per this Court's earlier order.

14. In the result, the appeal in C.M.A(MD)No.427 of 2009 filed by the Oriental Insurance Company is dismissed. The cross appeal in Cross Appeal (MD)No.33 of 2010, filed by the claimant is partly allowed. Consequently, the order passed in M.C.O.P.No.38 of 2005, on the file of the Motor Accidents Claims Tribunal cum Sub Court, Palani, dated 24.11.2008, is modified. There is no order as to costs. r n s To The Motor Accidents Claims Tribunal cum Sub Court, Palani.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com