

Branch Manager, Vs. 1.Rajam

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Court : Chennai

Decided On : Jan-02-2013

Judge : C.S.Karnan

Appellant : Branch Manager,

Respondent : 1.Rajam

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 01/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD) No.728 of 2004 Branch Manager, National Insurance Company Limited, Pudukottai. .. Appellant vs 1.Rajam 2.Kavitha 3.Thamizhmani 4.Akila 5.Valli 6.Gabriel (6th respondent ex-parte in lower Court) .. Respondents Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 01.10.2002, made in M.C.O.P.No.324 of 1999, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Pudukottai. !For Appellant ... Mr.N.Vijayaraghavan ^For Respondent ... Mr.R.P.Ramachandiran for R1 to R4 Mr.A.Jahagir Badhusa for R5 ex-parte for R6 :JUDGMENT The appellant/2nd respondent has preferred the present appeal in C.M.A.(MD).No.728 of 2004, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Pudukottai., for claiming compensation a sum of Rs.25,00,000/- from the respondents, for the death of the said Kathiresan, in a motor vehicle accident. It was submitted that the deceased was working as the Tahsildar of the Pudukottai Taluk Headquarters

Office and was earning Rs.9,522/- per month. On 19.07.1998, at about 10.00 p.m., when the deceased after completing his inspection work, was proceeding to his house on a TVS 5.moped and was nearing the 1st gate of the Semmapadai ground, Pudukottai, the 1st respondent's scooter bearing registration not TN-55A-7234 coming in the opposite direction and driven by its driver at a high speed and in a rash and negligent manner dashed against the moped and caused the accident. The (deceased) Kathiresan fell down on the ground and sustained grievous injuries. He was admitted in the Government Hospital but inspite of treatment, he died the next day. It was submitted that the rider of the scooter had admitted his guilt before the Chief Judicial Magistrate Court, Pudukottai and paid the fine. At the time of accident, the deceased was aged 50 years. Hence, the petitioners who are the dependants on the income of the deceased Kathiresan have filed the claim against the 1st and 2nd respondents, who are the owner and insurer of the scooter bearing registration not TN-55A-7234.

2. The 2nd respondent, in his counter has submitted that the (deceased) Kathiresan, had travelled as a pillion rider in the TVS-50 moped ridden by Kanakarathinam and that while they were proceeding on the moped, the (deceased) Kathiresan, who had hypertension, fell down from the back of moped and sustained head injuries. It was submitted that the claim was excessive. It was submitted that the F.I.R, charge sheet and motor vehicle Inspector's report had all been prepared belatedly.

3. The Motor Accident Claims Tribunal had framed two issues for consideration in the case namely: (1) Was the accident caused due to the rash and negligent riding of the 1st respondent's scooter?; (2) If so, what is the quantum of compensation which the petitioner is entitled to get? 4. On the petitioners side, two witnesses were examined and nine documents were marked as Exs.P1 to P9 namely: Ex.P1-F.I.R dated 20.07.1998; Ex.P2-copy of post mortem report dated 21.07.1998; Ex.P3-Motor Vehicle Inspector's report dated 19.07.1998; Ex.P4-copy of observation mahazar dated 20.07.1998; Ex.P5-copy of charge sheet dated 16.11.1998; Ex.P6-copy of Criminal Court judgment made in C.C.No.870 of 1998; Ex.P7-salary certificate of deceased Kathiresan dated 31.12.1998; Ex.P8-legal heir certificate dated 28.07.1998; Ex.P9-Extract of attendance register pertaining

to deceased Kathiresan. On the respondents side, one witnesses was examined and no document was marked.

5. PW.1, Tamilmani, who is the 3rd petitioner and son of the deceased Kathiresan had adduced evidence that his father, after having worked till 10.00 p.m., at the Pudukottai Taluk Office, had proceeded on a TVS-50 moped belonging to his friend, to his house and that when he was nearing AR ground, the scooter coming in the opposite direction had dashed against the moped and caused the accident. He deposed that he had come to know that the registration number of the scooter involved in the accident was TN-55A-7234, only after four months from the date of accident.

6. PW.2, Murthi, had adduced evidence that on 19.07.1998, at about 10.30 p.m., when he was proceeding on his scooter along with his mother, to the Rajaraman Hospital, in order to get medical treatment for his mother who was suffering from Asthma, he had seen a scooter travelling 50 feet ahead of him dash against a Tvs-50 moped rider had fallen down in the impact. However, on cross examination, he had stated that he is acquainted with the deceased Kathiresan and that he had not given the complaint regarding the accident. On scrutiny of Ex.P1-F.I.R, wherein it has been mentioned that the Tahsildar had fallen down from his TVS-50 moped at the first gate at AR ground on the AR ground south road.

7. On the 2nd respondent's side, it was pointed out that the F.I.R had been given on the next day to the date of occurrence of accident and that no mention has been made about the vehicle which had caused the accident.

8. On scrutiny of Ex.P4, observation mahazar, it is seen that at the south of the place of occurrence of accident, a seven feet long tyre marks of the two wheeler, from south to east was visible to prove the place where the two wheeler was braked and that no tyre marks are visible on the northern side of the place of occurrence of accident. Hence, it was contended that if another two wheeler had dashed against the vehicle driven by Kathiresan, the tyre marks of the other vehicle would also have been visible on the tar road and that it would also have been noted in the observation mahazar.

9. RW.1, Padhuniza Begum, the Sub Inspector had also adduced evidence that a seven feet tyre mark of a two wheeler was observed on the south east of the road, where the vehicle was braked and that no tyre marks were found on the north side of the tar road. However, she had admitted in her cross examination that such marks were found only if the vehicle goes at a slow or medium speed of upto 30 to 40 km/hr. In support of her evidence, she had marked the exhibits listed as R1, R2 and R3.

10. However, the Tribunal, on opining that just because the tyre marks of the offending vehicle had not been found in the place of the accident, it could not be assumed that no accident had taken place and on holding that the evidence of the eyewitness the accident i.e., PW.2, could not be rejected and on observing that the 1st respondents driver had admitted his guilt before the Criminal Court as per Ex.P6, held that the accident had been caused by the rash and negligent driving of the 1st respondents vehicle driver.

11. The Tribunal, on considering that the age of the deceased was 50 years at the time of accident and that he had another 8 years of service and that he would have got promotion and increased monetary benefits and on holding that the monthly income of the deceased was Rs.9,522/- as per Ex.P7-salary certificate, adopted a multiple of '11' and awarded a compensation of Rs.8,37,936/- (Rs.9,522/-x12x11x1/3x2). The Tribunal further awarded a sum of Rs.5,000/- to the 1st petitioner under the head of loss of consortium and Rs.2,000/- towards funeral expenses. In total, the Tribunal awarded a sum of Rs.8,44,936/- as compensation to the petitioners and directed the 1st and 2nd respondents to jointly or severally deposit the said sum together with interest at the rate of 9% per annum from the date of filing the petition till the date of deposit of compensation together with costs within one month from the date of its order.

12. Aggrieved by the award passed by the Tribunal, the 2nd respondent/National Insurance Company Limited, has preferred the present appeal. The learned counsel for the appellant the evidence of RW.1 and Ex.R1 properly and fastened liability on the insurer. It was pointed out that the lower Court ought to have seen that PW.2, Mr.Thirumalai was not a genuine eyewitness and in fact was a

Revenue Inspector working under the deceased and as such was an interested witness set up for the purpose of the claim. It was contended that the lower Court failed to see that neither Mr.Kanakarathinamn nor Mr.Namachivayam, who had seen the motorcycle TVS-50- TNP5974 were examined by the claimants. It was pointed out that the award of Rs.8,44,936/- under various heads is too high, considering the age and proven income of the victim. The learned counsel further argued that the personal expenses of the deceased had not been taken properly into account for computing the compensation. The claimant had mentioned the income of the deceased as Rs.9,522/- without deducting statutory deductions. As such, the compensation awarded is on the higher side. Further, as per the F.I.R, the mode of accident as alleged by the claimant, is not believable.

13. The learned counsel for the claimant argued that all the claimants are depending upon the income of the deceased. Besides this, all the claimants are females. Further, the Tribunal had not granted adequate compensation under the head of loss of love and affection, funeral expenses, loss of consortium as well as transport.

14. On verifying the facts and circumstances 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 discrepancy in the conclusions arrived at for determining the liability and compensation. As per Court records, the entire compensation had already been deposited. Out of such deposited amounts, the claimants were permitted to withdraw 50% of the deposited amount.

15. Now, it is open to each of the claimants to withdraw their balance apportioned share of compensation amount, with accrued interest thereon, lying in the credit of M.C.O.P.No.324 of 1999, on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Pudukottai, after filing a memo along with a copy of this order, subject to deduction of withdrawals made, if any, as per this Court's earlier order.

16. In the result, this Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed in M.C.O.P.No.324 of 1999, on the file of Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Pudukottai,

is confirmed, dated 01.10.2002, No costs. ub To 1.The Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Pudukottai. 2.The Section Officer, VR Section, High Court, Madras.

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