

The Branch Manager, Vs. 1.Jeyanthi

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Court : Chennai

Decided On : Feb-19-2013

Judge : C.S.Karnan

Appellant : The Branch Manager,

Respondent : 1.Jeyanthi

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

19. 02/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD) No.1526 of 2011 and M.P.Nos.1 of 2012 and 3 of 2011 The Branch Manager, National Insurance Company Limited, Door No.5-A, Sub Collector Office Road, Dindigul Town. .. Appellant vs 1.Jeyanthi 2.Minor.Winmalar 3.Minor.Praveenkumar 4.Minor.Kamali 5.Kalyani (Minor respondents 2 to 4 are represented through their mother and guardian 1st respondent) 6.V.Sudha Mary .. Respondents Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 28.07.2010, made in M.A.C.O.P.No.324 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dindigul. !For Appellant ... Mr.S.Ramachandran ^For Respondent ... Mr.GunasekaranMuthiahfor R1 to R5 (R2 to R4 minor rep, by R1) No Appearance for R6 :JUDGMENT The appellant/2nd respondent has preferred the present appeal in C.M.A.(MD)No.1526 of 2011, against the judgment and decree passed in M.A.C.O.P.No.324 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dindigul.

2. The petitioners, who are the wife, minor children and mother of the (deceased) kannan, have preferred the claim in M.A.C.O.P.No.324 of 2009, claiming compensation of a sum of Rs.10,00,000/- from the respondents, for the death of the said Kannan in a Motor Vehicle Accident. It was submitted that on 14.04.2009, at about 09.30 a.m., when the (deceased) Kannan was standing on the extreme left of the Dindigul-Nattham Road, at Reddiarpatti bus stand, the 1st respondent's mini lorry bearing registration not TN-N4849, coming on the same road from east towards west and driven by its driver at a high speed and in a rash and negligent manner dashed against the (deceased) Kannan and some others and caused the accident. As a result, the (deceased) Kannan received severe injuries and was immediately admitted at RajaRajeswari Hospital, Dindigul, but inspite of treatment, the (deceased) Kannan succumbed to his injuries. At the time of accident the (deceased) Kannan was working as a cook and earning Rs.7,000/- per month. In addition to this, he was earning a sum of Rs.250/- per day by working as an employee in hotel. Hence, the petitioners who are the dependents of the (deceased) Kannan have filed the above claim against the 1st and 2nd respondents, who are the owner and insurer of the mini-lorry bearing registration not TN-N4849.

3. The 2nd respondent, in his counter has denied the averments in the claim regarding age, income and occupation of the deceased. It was also submitted that as the 1st respondent's vehicle had been plied without getting a valid permit from the revenue authorities, the conditions laid down in the policy of insurance had been violated and as such the 2nd respondent cannot be held liable to pay compensation to the petitioners. It was submitted that the claim was excessive.

4. The Motor Accident Claims Tribunal framed two issues for consideration in the case namely: (1) Was the accident caused by the rash and negligent driving by the driver of the 1st respondent's mini lorry?; (2) Are the petitioners entitled to get compensation?; If so, what is the quantum of compensation which they are entitled to get? 5. In the same accident, another claim had been filed by the petitioners in M.C.O.P.No.597 of 2009, against the same respondents claiming compensation of a sum of Rs.5,00,000/- for the death of the husband of the 1st petitioner. On the request made by the learned counsel for the petitioners in both MCOP's, through a

joint memo, a joint trial was conducted and common evidence was recorded in M.C.O.P.No.324 of 2009. The 1st petitioner in M.C.O.P.No.324 of 2009, was examined as PW.1, the 1st petitioner in M.C.O.P.No.597 of 2009, was examined as PW.2 and one Sivakumar was examined as PW.3 and twelve documents were marked as Exs.P1 to P12 namely: Ex.P1-F.I.R; Ex.P2-charge sheet; Ex.P3-Post mortem report of Kannan, dated 14.04.2009; Ex.P4- death certificate; Ex.P5-Motor Vehicle Inspector's Report; Ex.P6-legal heir certificate of petitioners in M.C.O.P.No.324 of 2009, dated 18.05.2009; Ex.P7- copy of driving licence of 1st respondent's driver; Ex.P8-copy of rough sketch dated 14.04.2009; Ex.P9-Family ration card of petitioners in M.C.O.P.No.324 of 2009 for the year of 2005-2009; Ex.P10-copy of postmortem report of Mani dated 14.04.2009; Ex.P11-death certificate of Mani dated 14.04.2009; Ex.P12-legal heir certificate of petitioners in M.C.O.P.No.597 of 2009, dated 12.06.2009. On the respondent's side, three witnesses were examined and five documents were marked as Exs.R1 to T5 namely Ex.R1-requisition letter sent by Inspector of Dindigul Taluk Police Station; Ex.R2-Memo sent by 23.07.2009; Ex.R3-letter written by 1st respondent to Inspector of Dindigul Taluk Police Station dated 24.07.2009; Ex.R4-permit issued for 1st respondent's vehicle dated 22.06.2010 and Ex.R5-copy of Insurance Policy of 1st respondent's vehicle dated 22.08.2008.

6. PW.3, Sivakumar, the eyewitness of the accident adduced evidence that on 14.04.2009, at about 09.30 a.m., when he and his father Mani and the (deceased) Kannan and some others were standing in the Reddiarpatti Bus stand on the Dindigul-Natham Road, waiting to board a bus, the 1st respondent's mini lorry bearing registration not TN-N4849, coming on the same road, from east to west and driven by its driver at a high speed and in a rash and negligent manner, dashed against his father Mani and Kannan and some others caused the accident. He deposed that his father died on the spot and that the (deceased) Kannan sustained severe injuries and was admitted in hospital and inspite of medical treatment, the (deceased) Kannan had succumbed to his injuries.

7. The statements contained in the F.I.R marked as Ex.R1, was on similar lines to the statements given by PW.3 in his evidence regarding manner of accident. On scrutiny of Ex.P2, it is seen that the charge sheet has been filed against the 1st

respondent's lorry driver. On scrutiny of Ex.P5-Motor Vehicle Inspector's Report, it is seen that the accident had not been caused due to any mechanism failure in the lorry. On scrutiny of Ex.P6-rough sketch, it seen that the accident had happened in the left side of the road, i.e., the main road, wherein the (deceased) persons had been waiting to board a bus. Hence, the tribunal on scrutiny of the oral and documentary evidence held that the accident had been caused by the rash and negligent driving of the 1st respondent's lorry driver.

8. RW.1, R.Ashokan, had adduced evidence that as the lorry bearing registration not TN-N4849 was found to have carried sand illegally without getting the permission of the Government, the Inspector had written a letter to the R.D.O of Dindigul on 25.04.2009 to take action and that it had been marked as Ex.R1. He deposed that the R.D.O, based on this information had imposed and collected a fine of Rs.40,770/- from the owner of the lorry and that he had communicated the action taken by him to the Police Station as per copy of letter marked as Ex.R2. He further deposed that the owner of the lorry had admitted the payment of fine at the Police Station and that he had taken possession of the seized lorry. On 24.07.2009 and that the admission letter had been marked as Ex.R3. He had admitted in his cross examination that at the time of accident, the driver of the lorry had a valid licence and that the lorry was covered under a valid permit and that only the sand carried in the lorry had been taken illegally without getting permission.

9. RW.2, R.K.S.Shankaran, Junior Assistant, in the R.T.O, Dindigul, had adduced evidence that the lorry bearing registration not TN-N-4849 had a valid permit to ply at the time of accident and that the permit had been cancelled as information had reached their office that it was used for illegally ferrying sand and in support of his evidence, he had marked Ex.P4-permit of lorry. He deposed that he permit for the lorry had expired on 12.07.2009.

10. RW.3, Gauthaman, had adduced evidence that the lorry had been covered under a policy of insurance with them as per Ex.P5 and as the lorry had been found to be illegally ferrying sand, without getting permission from the Government authorities and as the drier of the lorry, in order to avoid being had driven the lorry

at a high speed and in a rash and negligent manner and dashed against the said Mani and some others, the 2nd respondent cannot be held liable to pay any compensation as the policy conditions of insurance had been violated.

11. On scrutiny of Ex.P1-F.I.R, it is seen that the lorry had been used to carry a sand load at the time of accident. On scrutiny of Exs.R1, R2 and R3, it is seen that the Inspector had written a letter to the R.D.O regarding illegal carrying of sand and that based on this letter, the owner of the lorry had paid the fine and taken delivery of the lorry. On scrutiny of Exs.R4 and R5, it is seen that the permit for the lorry had expired on 12.07.2009 and that the permit was valid on 14.04.2009, i.e., date of accident. On scrutiny of Ex.R5, conditions of insurance policy, it is seen that no conditions had been laid to show that carrying of sand in the lorry without getting permission from the Government is a violation of the policy. Hence, the tribunal on scrutiny of the oral and documentary evidence, held the 1st and 2nd respondents liable to pay compensation to the petitioners.

12. PW.1, the 1st petitioner had adduced evidence that her deceased husband was aged 36 years at the time of accident and that he was employed as a cook and earning Rs.7,000/- per month. She had further adduced evidence that he was also a tea master and earning not less than i.e., Rs.250/- per day. In support of her evidence, she had marked the exhibits listed as P4 to P6.

13. On scrutiny of Ex.P3, it is seen that the age of the deceased was 40 years at the time of accident. As no documentary evidence, had been marked to prove the income of the deceased, the tribunal held that the notional income of the deceased could only be taken as Rs.3,000/- per month. The tribunal, on considering that the petitioners are 5 in number opined that the personal expenses of the deceased should be taken as 1/4th of his income. On adopting a multiplier of '15', as was relevant to the age of the deceased, the tribunal awarded a sum of Rs.4,05,000/- ($\text{Rs.3,000/-} \times 1/4 \times 3 \times 12 \times 15$) as compensation to the petitioners under the head of loss of income. The tribunal awarded a sum of Rs.5,000/- towards funeral expenses and Rs.10,000/- to the 1st petitioner under the head of loss of consortium. Rs.15,000/- was awarded to the petitioners under the head of loss of love and affection and loss of estate. In total, the tribunal awarded a sum of

Rs.4,35,000/- 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 7 + % per annum from the date of filing the petition till date of deposit within one month from the date of its order.

14. Aggrieved by the award passed by the tribunal, the 2nd respondent/National Insurance Company Limited, Dindigul, has preferred the present appeal. The learned counsel for the appellant has contended that the tribunal erred in rendering a finding that owner of the lorry, had committed breach of condition of policy of insurance of transporting sand illegally in her lorry at the time of accident. It was contended that the tribunal failed to note that necessary permit shall be obtained from competent authority to transport sand and that carrying and transporting sand without having necessary permit is an offence under law and that the said illegal act is a violation committed by the 6th respondent herein of the terms of conditions of permit issued by the competent authority as well as the policy of insurance issued by the appellant in respect of the suit lorry. It was contended that the tribunal failed to render a finding that the 6th respondent herein had willfully committed breach of conditions of the policy of insurance issued in her favour in respect of the suit lorry which specifies in the clause "Limitation as to use" that the policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988. hence, it was prayed to set aside the order passed by the tribunal.

15. The learned counsel for the claimant submits that the claimants are 5 in numbers namely the young widow, three minor children and widowed aged mother and that all are depending on the income of the deceased. At the time of accident the deceased was aged 36 years old and he was earning Rs.12,000/- per month as tea master. The claimants are 5 in numbers and therefore only 1/4th of his income should be taken a personal expenses of deceased instead of 1/3rd. The tribunal had fixed the income of the deceased as Rs.3,000/- per month, which is on the lower side. The accident took place in the year of 2009. Therefore, the income should have been fixed at a minimum of Rs.6,000/- per month. The tribunal had not granted adequate compensation under the head of funeral expenses and loss of love and affection.

16. On scrutinizing the impugned award of the tribunal and on hearing the arguments of the learned counsel on both sides, this Court does not find any discrepancy in the conclusions arrived at regarding liability and quantum of compensation. This Court is of the further view that the deceased was aged 36 years and he was a tea master and that all the claimants were depending on the income of the deceased. Therefore, the quantum of compensation is not on the higher side. Further, the transportation of sand illegally is an immaterial issue in the instant case, for assessment of quantum and liability. Therefore, this Court is not inclined to interfere with the impugned award.

17. As per this Court records, it is seen that this Court imposed a condition on the appellant to deposit 50% of the award amount. Further, the major claimants were permitted to withdraw 50% of the deposited amounts. Now this Court, directs the appellant to pay the balance compensation amount with accrued interest thereon as fixed by the tribunal within a period of four weeks from the date of receipt of this order.

18. After such a deposit being made, it is open to all the major claimants to withdraw their apportioned share amount lying in the credit of M.C.O.P.No.324 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dindigul, 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. This Court further directs the learned Motor Accident Claims Tribunal, to deposit the minor claimant/Claimants share amount in a nationalized bank as fixed deposit under the cumulative deposit scheme, till they attain the age of a major and hand over the fixed deposit certificates to the 1st claimant i.e., mother of the minors.

19. In the result, the above appeal is dismissed. Consequently, the award and decree passed in M.C.O.P.No.324 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dindigul, dated 28.07.2010, is confirmed. Consequently, connected miscellaneous petitions are closed. No costs. ub .To 1.The Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Dindigul. 2.The Section Officer, VR Section, High Court, Madras.

