

The Divisional Manager, Vs. 1.Velu

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Court : Chennai

Decided On : Apr-12-2013

Judge : C.S.Karnan

Appellant : The Divisional Manager,

Respondent : 1.Velu

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:12.04.2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN
C.M.A(MD) No.975 of 2007 and M.P.(MD).No.1 of 2007 The Divisional Manager,
United India Insurance Company Limited, No.7A, West Veli Street, Madurai - 1. ..
Appellant vs 1.Velu 2.Karuppayee 3.Nagavalli 4.Jayalakshmi 5.Ramar 6.N.Malathi
.. Respondents Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicle Act, 1988, against the judgment and Decree dated 23.06.2006, passed in
M.C.O.P.No.197 of 2005, on the file of the Motor Accident Claims Tribunal,
Principal District Judge, Ramnad. !For Appellant --- Mr.K.Murugesan ^For
Respondent --- Mr.K.Kumaravel for R1 to R5 No Appearance for R6 :JUDGMENT
The appellant/2nd respondent has preferred the present appeal in
C.M.A.(MD).No.975 of 2007, against the judgment and decree passed in
M.C.O.P.No.197 of 2005, on the file of the Motor Accident Claims Tribunal,
Principal District Judge, Ramnad.

2. The petitioners, who are the parents, sisters and brothers of the (deceased)
Chakkubhai @ Lakshmanan, have filed the claim in M.C.O.P.No.197 of 2005,

claiming compensation of a sum of Rs.5,00,000/- from the respondents for the death of the said Chakkubhai @ Lakshmanan in a motor vehicle accident. It was submitted that on 02.06.2005, at about 05.00 p.m., when the (deceased) Lakshmanan was travelling, as a loadman, in the 1st respondent's Minidoor vehicle bearing registration not TN-65T-7878, from Ramanathapuram to Chattirakudi and when the vehicle was near Karungudi Village, the driver of the vehicle drove at a high speed and in a rash and negligent manner, due to which he lost control of the vehicle and the vehicle went off the road and capsized. As a result, the (deceased) Lakshmanan sustained injuries on his left forearm, left cheek, head, chest and abdomen. He was immediately admitted at Ramanathapuram Government Hospital, as an inpatient, but in spite of treatment, the (deceased) Lakshmanan succumbed to his injuries. At the time of accident, the (deceased) Lakshmanan was earning Rs.3,000/- per month. Hence, the petitioners have filed the claim against the 1st and 2nd respondents, who are the owner and insurer of the mini door vehicle bearing registration not TN-65T-7878.

3. The 2nd respondent in his counter has submitted that the accident had not occurred due to any negligence on the part of the 1st respondent vehicle, as alleged in the claim. It was submitted that as the (deceased) Lakshmanan and the other persons who were injured in the said accident had travelled along with the goods being carried in the 1st respondent's vehicle, the conditions laid down in the policy of insurance to pay compensation. It was submitted that the 3rd, 4th and 5th petitioners were living separately along with their family and are not dependents on the income of the (deceased) Lakshmanan and as such they are not entitled to get compensation.

4. The Motor Accident Claims Tribunal framed three issues for consideration in the case name: (1) Was the accident caused by the rash and negligent driving by the driver of the 1st respondent's vehicle and had the (deceased) Lakshmanan died only due to injuries sustained in the accident?; (2) Who is liable to pay compensation? And what is the quantum of compensation which the petitioners are entitled to get?. On the petitioner's side, the 1st petitioner Velu was examined as PW.1 and seven documents were marked as exhibits P1 to P7 namely: Ex.P1-F.I.R; Ex.P2- observation mahazar dated 28.02.2006; Ex.P3-rough sketch; Ex.P4-

Motor Vehicle Inspector's Report; Ex.P5-post mortem report dated 28.02.2006; Ex.P6-charge sheet; Ex.P7-copy of insurance policy for vehicle bearing registration not TN- 65T-7878. On the respondent's side, one witness was examined and two documents were marked as Exs.R1 and R2 namely: Ex.R1-insurance policy; Ex.R2-copy of RC book of vehicle.

5. PW.1, the father of the deceased had adduced evidence which is corroborative of statements made in the claim regarding manner of accident and in support of his evidence, he had marked Exs.P1 to P7. On scrutiny of Ex.P1, it is seen that the complaint regarding accident had been lodged by one Kalidas. It has been stated by him the F.I.R, that on 02.06.2005, when he and the (deceased) Lakshmanan were travelling in the 1st respondents mini door vehicle, which was carrying centering plates and when the vehicle was proceeding near Chattirakudi, the driver of the vehicle drove it at a high speed and as a result the vehicle had capsized. After scrutiny of F.I.R, the Tribunal had come to a conclusion that the accident had been caused by the rash and negligent driving by the driver of the 1st respondent's vehicle and hence held that the claimants are entitled to get compensation. The Tribunal further observed that the vehicle was insured with the 2nd respondent/Insurance Company.

6. On the side of the respondent, the Insurance Company's Officer, was examined as RW.1. He had adduced evidence that the 1st respondent's three wheeler vehicle is a goods vehicle and only meant for carrying of goods and that the deceased had travelled as unauthorised passenger. Further, the 1st respondent had not paid any premium to cover the risk of passengers.

7. On considering the evidence of both parties and on perusing the documents marked by the claimants, the Tribunal had awarded a sum of Rs.1,44,000/- as compensation to the claimants. The Tribunal directed the Insurance Company to pay the said compensation amount to the claimant and recover the same from the owner of the vehicle.

8. Against the said award and decree, the Insurance Company has filed the above appeal. The highly competent counsel contended that the said minidoor van is a one sector and as such only the driver of the van alone was permitted. In this

case, the deceased had travelled on top of the vehicle, which is in violation of the policy conditions. The learned counsel further submits that the Insurance Company had not received any additional premium to cover the risk for loadman or other unauthorized passengers.

9. The learned counsel for the claimants submits that it was an admitted fact that the deceased was travelling as a loadman. The vehicle had been driven by the driver in a rash and negligent manner and this had resulted in the accident. The claimants are five in numbers and the deceased's age was 22 years and he was the earning member of his family. But the Tribunal, had not granted adequate compensation to the claimants under the head of loss of love and affection and funeral expenses.

10. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence, liability and quantum of compensation. The pay and recovery principle adopted by the Tribunal is appropriate. This Court is of the further view that as per the F.I.R and rough sketch, it is evidence that the accident had been caused by the driver of the mini lorry. Further at the time of accident, the Insurance Policy was in force. This Court is of the further view that the claimants are five in numbers and the age of the deceased was 22 years and he was the earning member of his family. As such the quantum of compensation is not on the higher side. As per records, it is seen that this Court had imposed a condition on the Insurance Company to deposit the entire compensation with interest.

11. Now, It is open to the claimants to withdraw their apportioned share amount with accrued interest thereon, as per ratio fixed by the Tribunal lying in the credit of M.C.O.P.No.197 of 2005, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Ramnad, after filing a memo, along with a copy of this order.

12. In the result, the above appeal is dismissed. Consequently, the award and decree passed in M.C.O.P.No.197 of 2005, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Ramnad, dated 23.06.2006, is confirmed.

Consequently, connected miscellaneous petition is closed. No costs. ub To 1.The Motor Accident Claims Tribunal, Principal District Judge, Ramnad. 2.The Section Officer, VR Section, High Court, Madras.

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