(2014) 07 MAD CK 0025

In the Madras High Court

Case No : C.M.A.No.3578 of 2012

Branch Manager, M/s.Reliance General Insurance Co. Ltd., APPELLANT

Vs

M.Ganapathysundaram RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Citation : (2014) 2 TNMAC 478

Hon'ble Judges : Mr. R.Subbiah, J.

Bench : Single Bench

Advocate : Mr.M.B.Gopalan, Advocate, for the Applicant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

Mr. R.Subbiah, J.—The present Civil Miscellaneous Appeal, has been filed by M/s.Reliance General Insurance Company Limited, Salem, challenging the quantum of compensation awarded to the 1st respondent/claimant, vide judgment dated 28.03.2012 in M.C.O.P.No.444 of 2009 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Udumalpet.

2. The 1st respondent is the claimant before the tribunal and he is the younger brother of the deceased Muthalagan. It is the case of the 1st respondent/claimant before the claims tribunal, that on 28.11.2009, when the deceased Muthalagan, was driving a Platina Motorcycle, owned by one Akbar Ali, bearing Regn.No.TN59AE6089, at Udumalpet to Dharapuram Main Road, from South to North, a lorry bearing Regn.No.TAN3569, owned by the 2nd respondent and insured with the appellant Insurance Company, came in a rash and negligent manner and dashed against the two wheeler and thus, caused the accident. In the said accident, the brother of the 1st respondent/claimant died on the spot and hence, he made a claim as against the owner of the lorry and its insurer claiming a sum of Rs.15,00,000/- as compensation in M.C.O.P.No.444 of 2009 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Udumalpet.

3. On the quantum of compensation, it is the case of the 1st respondent/ claimant that his father died on 12.12.1996 and mother died on 10.01.1991 and his sister got married and is living separately. The 1st respondent/claimant is totally depending upon his deceased brother for his livelihood and hence, he made the claim as stated supra.

4. Before the claims tribunal, the 1st respondent/claimant examined himself as PW1 and adduced evidence that his brother was working as an Electrician and earned a sum of Rs.10,000/- per month. He has also marked the salary certificate of the deceased as Ex.P12.

5. The claims tribunal by relying upon the evidence of PW1, has fixed the monthly income of the deceased as Rs.10,000/- and after deducting Rs.5,000/- towards his personal and living expenses, has fixed a sum of Rs.5,000/- as loss of dependency and by applying ''17'' multiplier, has awarded Rs.10,20,000/- under the head Loss of contribution to the family. In addition, the claims tribunal has awarded Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. In all, the claims tribunal has awarded Rs.10,35,000/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

6. Aggrieved over the same, the present appeal has been filed. Now, it is the contention of the learned counsel for the appellant that except the oral evidence of PW1, no tangible evidence was produced before the claims tribunal that the deceased was earning Rs.10,000/- per month and under such circumstances, the claims tribunal ought not to have taken Rs.10,000/- as monthly income.

7. I find some force in the submission of the learned counsel for the appellant and as rightly contended, in the absence of any documentary evidence the claims tribunal ought not to have fixed the monthly income of the deceased as Rs.10,000/-. Further, the claims tribunal has applied incorrect multiplier.

8. However, considering the facts and circumstances and also the fact that the deceased was an Electrician, I am of the view that the deceased would have earned at least Rs.7,500/- per month and hence, Rs.7,500/- is fixed as the monthly income. The correct multiplier, applicable to the age of deceased viz., 24 years is ''18''.

9. In view of the above discussion, the loss of contribution to the family works out to Rs.8,10,000/-. (Rs.7,5000/- x 12 x 18 x 50%). The award under other heads are reasonable and the same is sustained. The total compensation now modified is detailed hereunder.

Loss of contribution to the family

Rs. 8,10,000/-

Loss of love and affection

Rs. 10,000/-

Funeral Expenses

Rs. 5,000/-

Total

Rs. 8,25,000/-

Award of the tribunal

Rs. 10,35,000/-

Reduction

Rs. 2,10,000/-

In the result, the Civil Miscellaneous Appeal is allowed and the award of the claims tribunal Rs.10,35,000/- is reduced to Rs.8,25,000/- with interest at the rate of 7.5% per annum, from the date of claim till the date of realisation. No costs.

10. It is represented by the learned counsel for the appellant/Insurance company that pursuant to the directions of this Court, the Insurance company has already deposited 50% of the award amount before the tribunal.

11. In view of the above, the appellant-Insurance company is directed to deposit the balance of the award amount, now modified, with proportionate accrued interest and costs to the credit of M.C.O.P.No.444 of 2009 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Udumalpet, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the entire award amount, by making necessary application.