
(2008) 03 MAD CK 0088

In the Madras High Court

Case No : C.M.A. (MD) No. 428 of 2008 and M.P. (MD) No. 2 of 2008

Branch Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

A. Mary Imelda Jayaseeli and Others

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Citation : (2009) ACJ 2865

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; M. Senthilkumar, for the Respondent

Judgement

G. Rajasuria, J.—This appeal is focused as against the judgment and decree dated 21.6.2007 passed in M.A.C.O.P. No. 2033 of 2005 by the Motor Accidents Claims Tribunal-cum-Additional District Court, Fast Track Court-II, Madurai.

2. The challenge in this civil miscellaneous appeal is relating to the quantum of compensation awarded by the Tribunal, vide judgment dated 21.6.2007, to the tune of Rs. 13,92,320 (rupees thirteen lakh ninety-two thousand three hundred and twenty) on the following sub-heads:

(i) For loss of income Rs. 13,04,320 (ii) For loss of consortium for P1 Rs. 15,000 (iii) For loss of love and affection for P2 and P3 Rs. 20,000 (iv) For loss of love and affection for P1 Rs. 15,000 (v) For loss of love and affection for P4 and P5 Rs. 10,000 (vi) For loss to estate Rs. 25,000 (vii) For funeral expenses Rs. 3,000 ----- Total Rs. 13,92,320 -----

3. Challenge in this appeal is relating to the quantum of compensation awarded by the Tribunal on the main ground that the Tribunal has chosen wrongly the multiplier 16, even though the deceased was 40 years old; the monthly income of the deceased as assessed by the Tribunal in a sum of Rs. 10,190 is also not correct.

4. The point for consideration is as to whether the Claims Tribunal awarded "just compensation"?

5. Heard both sides.

6. The learned Counsel for the insurance company drawing the attention of this Court to the salary particulars of the deceased, would develop his arguments that the Tribunal had not excluded certain items from the purview of calculation and according to him, a sum of Rs. 440 p.m. awarded towards personal development allowance, should have been excluded from assessing the compensation as such amount was only for the purpose of enabling the deceased to improve himself for his consequential increased efficiency at work.

7. Whereas the learned Counsel for the claimants placing reliance on the evidence adduced relating to future prospects of the deceased, would advance his argument that the Tribunal had not considered the future prospects of the deceased and the compensation should be much more than what was awarded by the Tribunal.

8. In this factual matrix, it is just and necessary to analyse the salary certificate. The learned Counsel on both sides relied on the copy of the salary certificate and there is no dispute regarding that. As such I would like to extract the relevant portion of the salary certificate so produced by them as under:

Basic salary Rs. 3,825 Dearness allowance Rs. 1,650 House rent allowance Rs. 2,160 Special allowance Rs. 635 Education assistance Rs. 500 Conveyance assistance Rs. 880 Washing allowance Rs. 100 Personal development allowance Rs. 440 Medical allowance Rs. 4,924 Leave travel concession Rs. 5,700
----- Total Rs. 10,190 -----

9. From the above sub-heads, it is clear that a sum of Rs. 880 p.m. was given by the employer for conveyance assistance and a sum of Rs. 100 was given towards washing allowance. Obviously, the amounts given under the aforesaid sub-heads never can be taken as income of the deceased and that should be deleted. Relating to the other sub-heads, such as, house rent allowance, special allowance, education assistance, I am of the considered opinion that those all should be treated as income and there could be no second thought over it. Regarding the medical allowance and leave travel concession, those amounts were paid only annually and that also should be taken while assessing the annual income of the deceased.

10. The contention of the learned Counsel for the insurance company that personal development allowance of Rs. 440 should not be treated as his income is neither here nor there. Whatever be the sub-head under which such allowance was paid, it was his income only which he was getting along with his pay packet and virtually while deducting 73rd of the income towards deceased's personal expenses had he been alive automatically that sum would get merged into it. It would be unjust if separately a sum of Rs. 440 is excluded and once again "/3rd

amount also is deducted from the remaining amount. As such, the sum of Rs. 440 cannot be excluded from computing the monthly income of the deceased. The calculation of the annual income of the deceased would come to Rs. 1,21,144 (rupees one lakh twenty-one thousand one hundred and forty-four) [Rs. 1,10,520 (Rs. 9,210 x 12) + Rs. 4,924 (medical allowance) + Rs. 5,700 (leave travel concession)] and after deducting 1/3rd amount towards the deceased's expenditure which he would have incurred for maintaining himself had he been alive, the annual dependency comes to Rs. 80,763 (rupees eighty thousand seven hundred and sixty-three).

11. The learned Counsel for the insurance company would submit that multiplier 16 is on the higher side. At this juncture, my mind is redolent with the following decisions of the Hon'ble Apex Court:

(i) U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, ;

(ii) The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, ; and

(iii) Mrs. Hafizun Begum Vs. Md. Ikram Heque and Others, .

12. From the perusal of the aforesaid decisions, it is very clear that choosing the multiplier will differ from case to case and there should not be any hard and fast rule. Only by taking into account the age of the deceased the multiplier cannot be chosen. Various factors as highlighted supra in those decisions should be considered and I need not dilate on that.

13. Here the wife and the two minor children are the principal claimants along with the parents of the deceased. Necessarily, the multiplier 16 has to be chosen otherwise significant compensation cannot be arrived at, which would be of some succour to the principal claimants. I am fully aware of the fact that multiplier found set out in the Second Schedule appended to the Motor Vehicles Act, need not be followed in all cases, but in this case multiplier of 16, appears to be correct for the reasons adverted supra.

14. Learned Counsel for the appellant correctly highlighted that after awarding a sum of Rs. 15,000 towards loss of consortium for the petitioner No. 1, the Tribunal was not justified in awarding a sum of Rs. 15,000 for loss of love and affection for the same petitioner No. 1 and hence it has to be deleted. Towards loss of love and affection for the minor children, a sum of Rs. 20,000 was awarded by the Claims Tribunal which could be confirmed. A sum of Rs. 10,000 awarded by Tribunal under the sub-head "loss of love and affection" towards the parents, could also be confirmed. However, the Tribunal without any evidence, awarded a sum of Rs. 25,000 under the caption, "loss to estate". It is not that for the sake of awarding compensation under that caption, simply some amount has to be awarded and that has to be deleted in the absence of evidence in that regard. Under the sub-head "funeral expenses" a sum of Rs. 3,000 was awarded which warrants no interference. Accordingly, the following formula emerges:

(i) For loss of income (Rs. 80,763 x 16) Rs. 12,92,208 (ii) For loss of consortium for P1 Rs. 15,000 (iii) For loss of love and affection for P2 and P3 Rs. 20,000 (iv) For loss of love and affection for P4 and P5 Rs. 10,000 (v) For funeral expenses Rs. 3,000 ----- Total Rs. 13,40,208 -----

15. In the result, the civil miscellaneous appeal is partly allowed and the total compensation is reduced from Rs. 13,92,320 (rupees thirteen lakh ninety-two thousand three hundred and twenty) to Rs. 13,40,208 (rupees thirteen lakh forty thousand two hundred and eight) and the rate of interest at the rate of 7.5 per cent arrived at by the Claims Tribunal is confirmed. The rest of the award of the Tribunal shall hold good. Consequently, connected miscellaneous petition is closed. No costs.