(2016) 11 MAD CK 0074

In the Madras High Court

Case No : C.M.A. (MD) No. 857 of 2008 and M.P (MD) No. 1 of 2008

Branch Manager, United India Insurance Co. Ltd. APPELLANT

Vs

B. Gayathiri RESPONDENT

Date of Decision : 02-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) 4 ACC 909 : (2017) 1 AnWR 189 : (2017) 1 TAC 643

Hon'ble Judges : Mr. M. Sathyanarayanan and Mrs. J. Nisha Banu, JJ.

Bench : Division Bench

Advocate : Mr. V. Kannan, Advocate, for the Respondent Nos. 1 to 5; II Batta Due, Advocate, for the Respondent No. 6; Mr. N. Muthukani for Mr. G. Prabhu Rajadurai, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

M. Sathyanarayanan, J. - The appellant Insurance Company who is arrayed as second respondent in M.C.O.P. No. 259 of 2004 filed by the respondents 1 to 5/ claimants on the file of the Motor Accident Claims Tribunal - Additional District Court - Fast Track Court No. II, Tirunelveli, aggrieved by the quantum of compensation, had filed this appeal.

2. The deceased, namely, R. Sridhar, is the husband of the first respondent/first claimant and father of the minor son/second respondent/second claimant. The respondents 3 and 4/claimants 3 and 4 are the parents of the deceased and the fifth respondent/fifth claimant is the sister of the deceased.

3. The deceased was aged about 34 years and had the qualification of B.Sc., P.G.D.C.A., and P.G.D.B.A., and worked as Software Engineer in M/s. e-Waken Technology, Inc., having its office at 1920 S. Highland Ave., Suite 120, Lombard, IL 60148, U.S.A., between 1996 and 2002 and at the time of the accident, on 13.10.2003, he was working as a Technical Manager, M/s. Interim Technologies Private Limited, Chennai and was drawing the salary of Rs. 83,333/- (Rupees

Eighty Three Thousand Three Hundred and Thirty Three only) and he was also issued with an appointment order/offer as Manager (Projects) in M/s. Keane India Limited, New Delhi on an annual package of Rs. 10,50,000/- (Rupees Ten Lakhs and Fifty Thousand only) and was called upon to join duty on or before 27.10.2003 and before joining the duty, died in the accident which took place on 13.10.2003.

4. According to the claimants, the deceased was riding his motorcycle bearing Registration No. TN-01-R-3515 in a normal speed with proper care and caution by observing all traffic rules at about 09.50 hours on 13.10.2003 near Theradi on T.H. Road. At that juncture, a lorry bearing Registration No. AP-23-T-1569 belonging to the sixth respondent driven in a rash and negligent manner and dashed against the motorcycle driven by the deceased and also ran over the deceased. The deceased, as a consequence, sustained grievous injuries and immediately, he was taken to Government Stanely Medical College Hospital and was declared dead on arrival. The jurisdictional police, namely, Washermanpet Range Traffic Investigation Police Station, has also registered a case against the driver of the offending vehicle in Cr.No. 186/H2/03 for the commission of the offences under Sections 279 and 304(A) I.P.C.

5. The claimants 1 to 5 had filed M.C.O.P. No. 259 of 2004 on the file of the Motor Accident Claims Tribunal - Additional District Court - Fast Track Court No. II, Tirunelveli, claiming the amounts under the following heads:

21(A).PARTICULARS OF LOSS AND EXPENSES CAUSED:

PART - I

(a) Loss of earning from 13.10.2003 to 26.10.2003:14 days at the rate of Rs. 83,833/- per month. Rs. 30,888.75

From 27.10.2003 to 26.10.2009 (26 years) at the rate of Rs. 10,50,000/- per annum. Rs. 2,73,00,000.00

Total Rs. 2,73,38,888.75

Less ?rd for personal expenses of the deceased Rs. 91,12,962.92

Rs.1,82,25,925.83

(b) Partial loss of earning from --- to --- at the rate of Rs. --- a day/week ---

Carried Over Rs. 1,82,25,925.83

(c) Transport to Hospitals ---

(d) Extra Nourishment ---

(e) Damages to clothings & articles if any caused ---

(f) Others:

1. Shock and Mental Agony Rs. 1,00,000.00

2. Transport of Corpse and Funeral Expenses Rs. 10,000.00

3. Loss of Love and Affection, Services, Protection and Marital Consortium to 1st Claimant Rs. 10,00,000.00

4. Loss of Love and Affection, Services, Protection to the Claimants 3 and 4 during their olden days Rs. 2,00,000.00

5. Loss of Love and Affection, Services, Protection and Valuable Guidance to the fifth claimant Rs. 3,00,000.00

PART - II

(g) Compensation for pain and sufferings Rs. 1,00,000.00

(h) Compensation for continuing permanent disability, if any. ---

(i) Compensation for the loss of earning power ---

TOTAL Rs. 2,09,35,925.83

Though the claimants claimed a sum of Rs. 2,09,35,925.83 (Rupees Two Crores Nine Lakhs Thirty Five Thousand Nine Hundred and Twenty Five and Paise Eighty Three only), they restricted their claim to Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lakhs only).

6. The second respondent therein/appellant herein has filed the counter denying all the averments and would contend that the deceased was only a B.Sc., Graduate with two Post Graduate Diploma courses and with that kind of qualifications, he would not have earned as claimed by the claimants and was not in a position of any fixed income and as such, the compensation claimed was very much on the higher side and prayed for the dismissal of the claim petition.

7. During the course of the trial, the wife of the deceased examined herself as P.W.1 and an eyewitness to the accident was examined as P.W.2 and the owner of the M/s. Interim Technologies Private Limited, Chennai, was examined as P.W.3 and Exs.P.1 to P.28 were marked.

8. The driver of the offending vehicle was examined as R.W.1 and the Assistant Manager of Oriental Insurance Company Limited, Tirunelveli, was examined as R.W.2 and the documents issued by the said company were marked as Ex.R.1 - series.

9. The Tribunal on consideration of oral and documentary evidence had found that on account of the demise of the husband of the first respondent/first claimant, they suffered the annual loss of income at Rs. 1,01,40,000/- (Rupees One Crore One Lakh and Forty Thousand only) and deducting ?rd amount towards his personal expenses, has found that the monthly income of the deceased is Rs. 65,000/- (Rupees Sixty Five Thousand only) and by adopting the

multiplier ''13'', has arrived at the annual loss of income at Rs. 67,60,000/- (Rupees Sixty Seven Lakhs and Sixty Thousand only).

10. The Tribunal has awarded Rs. 25,000/- (Rupees Twenty Five Thousand only) towards loss of consortium; a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) towards loss of love and affection to the minor son/second respondent/second claimant; a sum of Rs. 15,000/- (Rupees Fifteen Thousand only) each towards loss of love and affection to the respondents 3 and 4/ claimants 3 and 4; a sum of Rs. 10,000/- (Rupees Ten Thousand only) towards loss of love and affection to the fifth respondent/fifth claimant; a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) towards loss of estate; a sum of Rs. 5,000/- (Rupees Five Thousand only) towards funeral expenses; a sum of Rs. 5,000/- (Rupees Five Thousand only) towards transportation charges and in all, a sum of Rs. 68,85,000/- (Rupees Sixty Eight Lakhs and Eight Five Thousand only) with interest at the rate of 7.5% per annum from the date of petition till date of full and final settlement and also apportioned the compensation.

11. The insurer of the offending vehicle, namely, the Insurance Company, had filed this appeal.

12. While entertaining this appeal, this Court has granted an interim order of stay on 13.06.2008 and directed the appellant Insurance Company to deposit the entire award amount to the credit of M.C.O.P. No. 259 of 2004, on the file of the Motor Accident Claims Tribunal - Additional District Court, Fast Track Court No. II, Tirunelveli, with a default clause, out of which, the respondents 1 to 5/claimants 1 to 5 were permitted to withdraw 25% of their respective share, vide order dated 24.02.2014 made in M.P(MD)No. 2 of 2008 in C.M.A.(MD)No. 857 of 2008.

13. Mr. G. Prabhu Rajadurai, learned Counsel for the appellant would contend that no tenable evidence in the form of documents in sterling quality have been exhibited and marked to sustain the fact that the deceased was earning the income as projected in the claim petition and he had no fixed job and the monthly income fixed by the Tribunal is very much on the higher side.

14. It is further submitted that admittedly, the deceased was yet to join the job pursuant to the letter of offer given by M/s. Keane India Limited, New Delhi and on the date of the accident, he was not earning anything and the documents evidencing the alleged income of the deceased have been brought into subsequently to support the case of the claimants and therefore, he prays for reduction of the compensation.

15. Per contra, Mr. V. Kannan, learned Counsel for the respondents 1 to 5/ claimants 1 to 5 would contend that the Tribunal on an elaborate consideration and appreciation of entire materials placed before it has rightly awarded the compensation which is just and fair in the facts and circumstances of the case and therefore, it cannot be interfered with by this Court in exercise of its appellate jurisdiction and therefore, he prays for the dismissal of this appeal with exemplary costs.

16. This Court paid it''s best attention to the rival submissions and perused the materials available on record.

17. The Tribunal has recorded a categorical finding that the vehicle owned by the sixth respondent, driven by R.W.1 had caused the accident and in this regard, a criminal prosecution was lodged by the jurisdictional police and reached the conclusion that only on account of the rash and negligent driving of the driver of the offending vehicle/lorry, the accident had occurred and the said finding is not seriously disputed or canvassed in this appeal.

18. The sole question that arises for consideration, is as to whether the compensation awarded by the Tribunal is exorbitant and requires reduction.

19. P.W.1 - wife of the deceased/first claimant, in the course of her examination, would depose that her husband was employed as Senior Consultant between 1997 and 2003 and was earning $4,000 U.S. Dollars per month and he was deputed to join the company owned by P.W.3 and the annual package was fixed at Rs. 10,00,000/- (Rupees Ten Lakhs only) and subsequently, he has got an offer from M/s. Keane India Limited, New Delhi and before joining the duty, met with the tragic accident.

20. P.W.3, who is the owner of M/s. Interim Technologies Private Limited, Chennai, in which, the deceased was working, had deposed that there was an agreement, in terms of which, the deceased was working and he was deputed to work in the company owned by him and his annual package was fixed at Rs. 10,00,000/- (Rupees Ten Lakhs only) and for the month of February 2003, he was paid a sum of Rs. 77,381/- (Rupees Seventy Seven Thousand Three Hundred and Eighty One only) and for the month of March 2003, a sum of Rs. 83,333/- (Rupees Eighty Three Thousand Three Hundred and Thirty Three only) and the salary slips were marked as Exs.P.22 and P.23.

21. P.W.3 would further depose that the agreement between his company and M/s. e-Waken Technology, Inc., having its office at 1920 S. Highland Ave., Suite 120, Lombard, IL 60148, U.S.A., came to an end and for the month of April and May 2003, with their consent, he paid a sum of Rs. 63,000/- (Rupees Sixty Three Thousand only) and Rs. 61,286/- (Rupees Sixty One Thousand Two Hundred and Eighty Six only) respectively, to the deceased and the salary slips were marked as Exs.P.24 and 25 respectively. P.W.3, in the cross-examination, would depose that he is in possession of the records and as and when it is summoned, it would be produced and at the time of payment of salary, no amount was deducted and denied the suggestion that in order to help the claimants, he is deposing otherwise.

22. Ex.P.2 is the post-mortem certificate, wherein the age of the deceased has been stated as ''34'' years. Ex.P.10 is the xerox copy of the Driving Licence of the deceased, wherein there is no reference to his date of birth. Ex.P.11 is the original PAN Card issued to the deceased, wherein it has been indicated that he was born on 23.12.1969 and therefore, at the time of the accident on

13.10.2003, he was aged about 34 years.

23. The Tribunal by placing reliance upon the decisions of the Honourable Supreme Court in (i) Tamil Nadu State Transport Corporation Limited v. S. Rajapriya reported in II (2005) ACC 476 (SC); (ii) U.P. State Road Transport Corporation v. Krishna Bala and others reported in 2006 (2) TNMAC 127 (SC); (iii) New India Assurance Company Limited v. Smt. Kalpana and others reported in 2007 (1) TN MAC 1 (SC); and TNSTC (Managing Director) v. Sripriya reported in II (2007) ACC 50 (SC), has adopted the multiplier ''13''. However, as per the decision of the Honourable Supreme Court in Sarla Verma v. DTC reported in (2009) 6 Supreme Court Cases 121, which has been considered and approved in the decision in Reshma Kumari v. Madan Mohan reported in (2013) 9 Supreme Court Cases 65, the multiplier to be adopted is 16 and therefore, the adoption of multiplier ''13'' by the Tribunal is not correct.

24. Coming to the monthly income earned by the deceased, the following documents have to be considered:

(a) Ex.P.7 is the pay slip issued by the Interim Technologies (P) Ltd., for the month of March 2003 for a sum of Rs. 83,333/- (Rupees Eighty Three Thousand Three Hundred and Thirty Three only) and P.W.3 has also spoken about the salary paid by him as well as paid by his concern to the deceased;

(b) Ex.P.8 is the Earnings Statement issued by M/s. e-Waken Technology, Inc., having its office at 1920 S. Highland Ave., Suite 120, Lombard, IL 60148, U.S.A., wherein for the pay period between 18.02.2002 and 03.03.2002, the deceased was paid a sum of $2,477.28 U.S. Dollars and for the period between 04.03.2002 and 17.03.2002, he was paid $1,309.11 U.S. Dollars.

(c) A perusal of the original passport marked as Ex.P.13 would indicate that the petitioner was issued with H1B Visa, indicating that he was working in M/s. e-Waken Technology, Inc., having its office at 1920 S. Highland Ave., Suite 120, Lombard, IL 60148, U.S.A., and during his stay, he was also issued with social security card between 1997 and 2003 as evidenced under Ex.P.9.

(d) Ex.P.14 would indicate that M/s. e-Waken Technology, Inc., having its office at 1920 S. Highland Ave., Suite 120, Lombard, IL 60148, U.S.A., with whom the deceased was working, has addressed a letter dated 22.10.2002 to him stating that an offer and agreement has been made for his relocation to their India Office and his compensation offer is Rs. 10,00,000/- (Rupees Ten Lakhs only) as annual salary in accordance with India Office Payroll and the incentive plan will be based on incentives established in the India Office and it has been stated that the process also will be done to get his Green Card.

(e) The deceased was also issued with a Social Security Card bearing No.143-02-8302 as evidenced under Ex.P.16.

(f) Ex.P.21 is the letter of offer from M/s. Keane India Private Limited, New Delhi, dated 26.09.2003, wherein it has been indicated that he was requested to join duty on or before 27.10.2003 and his gross annual package will be discussed.

(g) The copies of the bank statements of M/s. Interim Technologies Private Limited, Chennai, have also been marked as Exs.P.24 and P.25 and the salary slip was marked as Ex.P.22.

(h) Ex.P.26 is the agreement between M/s. e-Waken Technology, Inc., having its office at 1920 S. Highland Ave., Suite 120, Lombard, IL 60148, U.S.A., and M/s. Interim Technologies Private Limited, Chennai, owned by P.W.3.

(i) The Income Tax Returns of the deceased were marked as Exs.P.33 and P.34 and the bank transaction was also marked as Ex.P.15.

25. In the light of the overwhelming documentary evidence, this Court is of the view that but for the accident, the deceased would have lived longer and earned more income and Ex.P.14 - letter of deputation given by M/s. e-Waken Technology, Inc., having its office at 1920 S. Highland Ave., Suite 120, Lombard, IL 60148, U.S.A., dated 22.10.2002 would also indicate that the process is also being done to enable the deceased to get his Green Card for his permanent residence in U.S.A.

26. The Tribunal has taken into consideration the said documentary evidence in proper perspective and fixed the annual salary at Rs. 65,000/- (Rupees Sixty Five Thousand only). In the considered opinion of this Court, the annual salary fixed at Rs. 65,000/- (Rupees Sixty Five Thousand only) requires reduction for the reason that as per the evidence of P.W.3, the deceased was initially paid with a salary of Rs. 83,333/- (Rupees Eighty Three Thousand Three Hundred and Thirty Three only) during March 2003 and subsequently, got paid a sum of Rs. 61,286/- (Rupees Sixty One Thousand Two Hundred and Eighty Six only) during May 2003 and the letter of offer given by M/s. Keane India Limited, New Delhi, marked as Ex.P.21, would also indicate that gross annual compensation package covered having been fixed and subject to negotiation and before joining the said post, the deceased died in a tragic accident.

27. Therefore, in the considered opinion of this Court, the monthly salary fixed by the Tribunal requires reduction and hence, it is just, fair and proper to fix the monthly income of the deceased at Rs. 55,000/- (Rupees Fifty Five Thousand only).

28. The Tribunal has adopted the multiplier ''13'' and in the considered opinion of this Court, in the light of the decisions rendered by the Honourable Supreme Court in Sarla Verma v. DTC reported in (2009) 6 Supreme Court Cases 121 and Reshma Kumari v. Madan Mohan reported in (2013) 9 Supreme Court Cases 65, the multiplier to be adopted should be ''16''.

29. Therefore, the annual loss of income should be Rs. 1,05,60,000/- (Rupees One Crore Five Lakhs and Sixty Thousand only) [Rs.55,000/- X 12 X 16]. Since the dependant family members are 2,?rd amount should be deducted and accordingly, the annual loss of income is fixed at Rs. 70,40,000/- (Rupees

Seventy Lakhs and Forty Thousand only) [Rs.1,05,60,000/- - Rs. 35,20,000/-].

30. In respect of the compensation awarded under various heads, this Court is of the view that the said amounts would not require any reduction.

31. Therefore, the respondents 1 to 5/claimants 1 to 5 are entitled to the total compensation of Rs. 71,65,000/- (Rupees Seventy One Lakhs and Sixty Five Thousand only) as given below:

Sl. No. Heads Amount(s)awarded by this Court

1. Loss of Income Rs.70,40,000.00

2. Loss of Consortium to the first respondent/first claimant/wife of the deceased Rs. 25,000.00

3. Loss of Love and Affection to the second respondent/second claimant/minor son of the deceased Rs. 25,000.00

4. Loss of Love and Affection to the parents of the deceased (Rs.15,000/- each) Rs. 30,000.00

5. Loss of Love and Affection to the sister of the deceased Rs. 10,000.00

6. Loss of Estate/Future Prospects Rs. 25,000.00

7. Funeral Expenses Rs. 5,000.00

8. Transportation Charges Rs. 5,000.00

Total Rs. 71,65,000.00

32. Accordingly, the award and decree in M.C.O.P. No. 259 of 2004, dated 30.10.2007, on the file of the Motor Accident Claims Tribunal - Additional District Court, Fast Track Court No. II, Tirunelveli, is modified and the respondents 1 to 5/ claimants 1 to 5 are entitled to the total compensation of Rs. 71,65,000/- (Rupees Seventy One Lakhs and Sixty Five Thousand only) with interest at the rate of 7.5% per annum from the date of petition till date of full and final settlement. The respondents 1 and 2/claimants 1 and 2 are entitled to a sum of Rs. 35,00,000/- (Rupees Thirty Five Lakhs only) each and the respondents 3 and 4/claimants 3 and 4 are entitled to a sum of Rs. 55,000/- (Rupees Fifty Five Thousand only) each and the fifth respondent/fifth claimant is entitled to a sum of Rs. 50,000/- (Rupees Fifty Thousand only).

33. In the result, this Civil Miscellaneous Appeal is disposed of accordingly and the award and decree in M.C.O.P. No. 259 of 2004, dated 30.10.2007, on the file of the Motor Accident Claims Tribunal - Additional District Court, Fast Track Court No. II, Tirunelveli, is modified to the extent indicated above. However, in the facts and circumstances of the case, there shall be no order as to costs.

Consequently, the connected miscellaneous petition is closed.

