
(2015) 02 MAD CK 0081

In the Madras High Court

Case No : C.M.A.(MD) No. 26 of 2013 and M.P.(MD) No. 1 of 2013

Cholamandalam M.S. General Insurance Co. Ltd.

APPELLANT

Vs

Selvi and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0081

Hon'ble Judges : D. Hari Paranthaman, J.

Bench : Single Bench

Advocate : S. Srinivasa Raghavan, for the Appellant; N. Govardhanan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

D. Hari Paranthaman, J.—This Civil Miscellaneous Appeal arises out of the judgment and decree dated 21.08.2012 in MCOP No. 240 of 2012 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Pudukottai. The first claimant is the wife of the deceased in a road accident and the claimants 2 to 4 are the minor children of the deceased, born through the first claimant. The fifth claimant is the mother and the sixth claimant is the father of the deceased. One Adaikkalam died in a road accident on 30.04.2008 while he was travelling in a two-wheeler viz. TVS-50. His two-wheeler was hit by a heavy vehicle Tata-ACE bearing Registration No. TN-55-Q-6820. The appellant is the insurer of the aforesaid heavy vehicle.

2. The claimants claimed a sum of Rs. 20,00,000/- as compensation before the Tribunal. At the time of accident, the deceased was aged 40 years and the same is not in dispute. The claimants claim that the deceased was earning a sum of Rs. 10,000/-through agriculture as well as timber business. On the side of the claimants, P.Ws.1 to 3 were examined and Exs. P1 to P8 were marked. On the side of the appellant, who was the second respondent in MCOP No. 240 of 2012, two witnesses have been examined and documents Exs. R1 to R4 were marked. The Tribunal directed the appellant Insurance Company to pay a sum of Rs.

12,27,000/- as compensation to the claimants, under various heads.

3. The Tribunal took the monthly income of the deceased at Rs. 8,000/- based on Exs. P6 to P8, which are the documents showing that the lands were owned by the deceased. The Tribunal provided 1/4th of the amount towards deduction for personal expenses of the deceased and thereafter arrived at the loss of dependency at Rs. 11,52,000/-. The Tribunal used the multiplier of 16, taking into account the age of the deceased as 40. Thereafter, the Tribunal awarded Rs. 10,000/- towards loss of estate, Rs. 10,000/- towards loss of consortium, Rs. 50,000/- towards loss of love and affection and Rs. 5,000/- towards funeral expenses and awarded a total sum of Rs. 12,27,000/-. The details are as under:

The Tribunal directed apportionment of the aforesaid compensation to the claimants in a particular ratio.

4. The appellant Insurance Company has filed this appeal mainly questioning the award on two grounds. Firstly, it is the contention of the appellant that the Tribunal had committed error in fixing the monthly income at Rs. 8,000/-.

5. The learned counsel for the appellant has vehemently contended that even after the death of the deceased, the lands are available and therefore, there was no loss of income from the lands and hence, the Tribunal committed error in fixing the monthly income of the deceased at Rs. 8,000/-. I am not agreeing with the above submission made by the learned counsel for the appellant. The deceased was aged 40 years and he was taking care of agriculture. The wife, who is a widow could not carry out the agricultural operation as was done by her husband. Further, there are 3 minor children who could also not carry out the agricultural operation. The parents of the deceased are aged persons and they could also not carry out the agricultural operation. Even in the absence of any proof of income, the monthly income can be fixed at Rs. 6,000/- as per the decision of this Court in *M. Sengabagam v. V. Vinod Kumar*, reported in 2013 (2) TN MAC 450 (DB).

6. In this case, admittedly, the deceased was cultivating 8 acres and the same is not seriously disputed. Hence, I do not find any merit in the submission of the learned counsel for the appellant that the monthly earning has been fixed on the higher side.

7. In fact, as rightly contended by the learned counsel for the claimants, the first claimant who is aged 28 years at the time of accident, lost her husband. In those circumstances, the Tribunal awarded a sum of Rs. 10,000/- towards loss of consortium. In *Rajesh v. Rajbir Singh*, reported in 2013 (2) TN MAC 55 (SC), the Hon'ble Supreme Court awarded a sum of Rs. 1,00,000/- towards loss of consortium. In that case, earlier the Tribunal awarded Rs. 10,000/- and the same was enhanced to Rs. 1,00,000/- by the Apex Court. Further, the learned counsel for the claimants has also contended that the Tribunal also granted a meagre sum of Rs. 50,000/- towards loss of love and affection. According to him, taking into account the minor children, the Tribunal should have given a sum of Rs.

1,00,000/- instead of Rs. 50,000/- towards loss of love and affection. The learned counsel has contended that even if the statement of the appellant is accepted and an adjustment is made reducing the monthly income from Rs. 8,000/- to Rs. 7,000/-, the total amount of compensation by taking into account the increase that could be made in the loss of consortium and loss of love and affection, there is no need to interfere in the award. The sum and substance of his argument is that there is no need to interfere in the award. I am in full agreement with the submission of the learned counsel for the claimants and there is no need for interference in this award.

8. The second contention of the learned counsel for the appellant is that the driver of the heavy vehicle which involved in the accident did not hold a valid driving license, but the Tribunal has failed to order pay and recovery.

9. The learned counsel for the appellant has brought to my notice the finding of the Tribunal in Page-10 of the award of the Tribunal that the driver of the heavy vehicle had driving license to drive only light motor vehicle as per Ex. R1, i.e., he did not have badge on that date. He obtained the badge later. As on the date of accident, he did not have the badge. Hence, as rightly contended by the learned counsel for the appellant, the Tribunal ought to have ordered pay and recovery from the seventh respondent herein.

10. The learned counsel for the appellant has relied on the judgment of the Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. v. Angad Kol and Others*, reported in 2009 (1) TN MAC 242 (SC), wherein, in paragraph-10, it was held as under:

"10. The distinction between a "light motor vehicle" and a "transport vehicle" is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The distinction between a "transport vehicle" and a "passenger vehicle" can also be noticed from Section 14 of the Act. Sub-Section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a "transport vehicle" whereas in case of any other licence, it may remain effective for a period of 20 years." 11. The learned counsel for the claimants did not seriously dispute the submission made in this behalf by the learned counsel for the appellant. As far as the seventh respondent is concerned, he has not chosen to appear before this Court though notice was served. It is settled law that if the driver of the vehicle involved in the accident did not possess valid driving license, the insurer shall pay the compensation and thereafter the insurer shall recover the same from the vehicle owner. Hence, the award is modified to the extent that the Insurance Company shall pay the compensation as ordered by the Tribunal, and recover the same from the seventh respondent, the owner of the vehicle.

12. With the above modification, the Civil Miscellaneous Appeal is disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

13. As per the order passed by this Court on 31.01.2013, the entire award

amount has been deposited by the Insurance Company. Therefore, the claimants are permitted to withdraw their respective proportionate share, from the deposited amount, as ordered by the Tribunal. In respect of the shares relating to minors, the Tribunal is directed to deposit the same, in a Fixed Deposit in any one of the Nationalised Banks, initially for a period of three years and renewed periodically, till the minors attain majority. The first claimant/the first respondent herein, is permitted to withdraw the interest once in three months, directly from the bank, which shall be utilised for the benefit and welfare of the minors.