

(2011) 10 MAD CK 0179

In the Madras High Court

Case No : C.M.A. No. 3735 and C.M.P. No. 1 of 2010

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

K. Malarkodi and Others

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Citation : (2012) ACJ 2113

Hon'ble Judges : K. Mohan Ram, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : C. Ramesh Babu, for the Appellant; N. Anand, for the Respondent

Judgement

K. Mohan Ram, J.—The civil miscellaneous appeal is filed against the judgment and decree dated 6.7.2010 passed in M.C.O.P. No. 719 of 2007 on the file of Motor Accidents Claims Tribunal (Principal District Judge) at Vellore. The respondent No. 2 in M.C.O.P. No. 719 of 2007 on the file of Motor Accidents Claims Tribunal (Principal District Judge) at Vellore is the appellant in the present appeal and the respondent Nos. 1 to 5 are the claimants in M.C.O.P. No. 719 of 2007. The respondent No. 6 is the owner of the vehicle involved in the accident.

2. In respect of the death of one Kuppan, who is the husband of the respondent No. 1, father of the respondent Nos. 2 to 5 and son of the claimant No. 6 in M.C.O.P. No. 719 of 2007, the claimants filed the claim petition in respect of his death in a motor accident on 9.9.2007 involving an auto bearing registration No. TN 23-J 5909 and Mahindra van bearing registration No. TN 23-H 1938, seeking a total compensation of Rs. 15,00,000.

3. According to the respondent Nos. 1 to 5, the accident occurred due to rash and negligent driving of the driver of the Mahindra van and as such, the respondent No. 6, being the owner of the vehicle, and the appellant, as insurer, are liable to pay the compensation.

4. According to the respondent Nos. 1 to 5, the deceased was employed as Head Constable at Katpadi Police Station and he was drawing a monthly salary of Rs.

10,000 and he was aged 49 years at the time of his death and the claimants are deprived of the income earned by the deceased.

5. The claim petition was contested before the Tribunal. The owner of the vehicle remained ex parte and the appellant alone contested the claim petition. The appellant herein contested stating that the age, income and occupation of the deceased were denied and claimants are put to strict proof that the accident occurred due to collision of two vehicles on account of rash and negligent driving of the driver of the auto. The owner of the auto and the concerned insurance company alone were liable to pay the compensation. Non-joinder of the proper parties is bad to the suit and, therefore, the petition was liable to be dismissed.

6. Before the Tribunal, on the side of the claimants, two witnesses were examined and Exhs. P1 to P11 were marked, but on the side of the insurance company and the owner of the vehicle, no oral evidence was adduced or documents were marked.

7. On consideration of the evidence adduced, the Tribunal came to the conclusion that the accident had occurred only due to rash and negligent driving of the driver of Mahindra van and, therefore, held the insurance company and the respondent No. 6 liable to pay the compensation.

8. While considering the pecuniary loss caused due to the death of the deceased, the Tribunal took into consideration Exh. P8, Tamil Nadu Police identity card of the deceased, wherein the date of birth of the deceased has been noted as 8.3.1958 and the accident had occurred on 9.9.2007. Accordingly, the Tribunal fixed the age of the deceased at the time of the accident as 49 years. The salary certificate has been marked as Exh. P9 and the gross salary of the deceased is shown as Rs. 9,793 which was rounded off to Rs. 9,800.

9. By applying the legal principles laid down in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Tribunal, taking into consideration the age of the deceased, added 30 per cent for future prospects. Therefore, adding 30 per cent to the actual salary for future prospects, the monthly income was arrived at Rs. 12,740.

10. The Tribunal, by relying upon the Second Schedule to the Act, applied multiplier 13 and taking into consideration the number of dependants, which is more than 4, deducted 1/4th for personal expenses. Pecuniary loss was arrived at Rs. 14,89,000 and adding the following conventional damages as shown below Rs. 15,64,800 was awarded as compensation:

11. The Tribunal arrived at a total compensation of Rs. 15,64,800 and the same was directed to be paid with interest at 7.5 per cent per annum. Being aggrieved by the above award, the insurance company has preferred the present appeal.

12. The learned counsel for the appellant insurance company submits that as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the proper multiplier applicable in this case is only 12, whereas the Tribunal has

erroneously applied 13.

13. The learned counsel fairly submits that no witness has been examined on the side of the insurance company and the owner of the vehicle. Appellant insurance company is not questioning the finding of the Tribunal regarding the negligence, but only the quantum of compensation. He further submits that the Claims Tribunal has not deducted any amount towards income tax.

14. Countering the above submissions, the learned counsel for respondent Nos. 1 to 5 would submit that as per the Second Schedule, the proper multiplier applicable in this case is only 13 as the deceased was aged 49 years at the time of the accident. The learned counsel also submits that the Tribunal has not awarded any compensation towards loss of love and affection to the respondent Nos. 2 to 5.

15. We have carefully considered the rival contentions put forth on either side and perused the materials available on the record.

16. As the learned counsel for appellant insurance company has not challenged the finding of the Tribunal regarding the negligence, we are not going into that.

17. As far as the quantum of compensation is concerned, the contention of the learned counsel that the Tribunal ought to have applied multiplier 12 instead of 13, is well founded in the light of the decision of the Apex Court reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, As per Sarla Verma's case, if the age of the deceased is between 46 and 50, then the proper multiplier is 12. Therefore, the contention is upheld to the extent that the Tribunal is not correct in applying the multiplier 13.

18. The learned counsel for the appellant is also right in his contention that the Tribunal has failed to deduct any amount towards payment of income tax. Normally, this court deducts 10 per cent towards payment of income tax.

19. As far as the contention of learned counsel for the respondents is concerned, it has to be pointed out that the Tribunal has not granted any compensation towards loss of love and affection to the respondent Nos. 2 to 5. When they have lost their father, normally the Tribunal should have awarded appropriate compensation towards loss of love and affection.

20. Taking into consideration all these aspects, the monthly salary of the deceased is taken as Rs. 9,793 which is rounded off to Rs. 9,800.30 per cent is added to that towards future prospects and the same comes to Rs. 12,740 per month. Therefore, so far as fixing the monthly income of the deceased is concerned, the Tribunal is perfect in its order.

21. But, the Tribunal ought to have deducted 10 per cent towards payment of income tax. If 10 per cent of Rs. 12,740, viz., Rs. 1,274 is deducted, the monthly loss of income will come to Rs. 11,466. The Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. If 1/4th of Rs. 11,466, viz., Rs.

2,866 is deducted, the same will come to Rs. 8,600. Therefore, the pecuniary loss will come to Rs. 12,38,400 (Rs. 8,600 x 12 x 12) and as rightly contended by the learned counsel for the respondents, the Tribunal has not awarded any compensation towards loss of love and affection to the respondent Nos. 2 to 5. Therefore, it is just and proper to award Rs. 10,000 to each of the respondents towards loss of love and affection.

22. It is brought to our notice that the claimant No. 1, mother of the deceased, died pending the proceedings.

23. On the aforesaid reasons, the total compensation payable is Rs. 13,53,400 which is shown as follows:

Interest of 7.5 per cent per annum awarded by the Tribunal is confirmed.

24. Learned counsel for the appellant insurance company submits that the entire compensation with accrued interest has been deposited to the credit of M.C.O.P. No. 719 of 2007 on the file of Motor Accidents Claims Tribunal (Principal District Judge) at Vellore. Therefore, the appellant insurance company is entitled to withdraw the balance amount after satisfying the aforesaid award passed by this court.

25. Out of the total compensation of Rs. 13,53,400, the respondent Nos. 2 to 5, the sons of the deceased, are entitled for a sum of Rs. 2,00,000 each and the balance of Rs. 5,53,400 shall be receivable by the respondent No. 1, wife.

26. Since the respondent Nos. 3 to 5 are minors, their shares shall be deposited in any one of the nationalised banks for three years initially and thereafter shall be renewed periodically till they attain majority.

27. The respondent No. 1, mother of the respondent Nos. 3 to 5, is entitled to withdraw the accrued interest on the fixed deposit once in six months. For the aforesaid reasons, the appeal is partly allowed. There shall be no order as to costs. Consequently, the connected MP is closed.