(2011) 02 MAD CK 0338

In the Madras High Court

Case No : C.M.A. (MD) No. 1748 of 2010

G. Kuppumani, G. Ramesh Kumar and G. Vishnukumar — APPELLANT

Vs

V. Kasthuri Rengan @ Kumar, The Branch Manger, United Insurance Company Ltd., Smt. Varthini Ammal and T.M. Krishnamoorthy — RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0338

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : A. Kannan, for the Appellant; S. Ramachandran, for R2, for the Respondent

Final Decision : Allowed

Judgement

T. Mathivanan, J.—Being not satisfied with the award of Rs. 5,36,040/-, dated 29.09.2006 and made in MCOP No. 1178 of 2001, on the file of the Motor Accidents Claims Tribunal (FCT No. 1), Madurai, the claimants, who are the wife and children of the deceased, have approached this Court by way of this appeal.

2. The facts which are absolutely necessary for the disposal of this Memorandum of Civil Miscellaneous Appeal may be summarized briefly as follows:

That on 06.01.2001 at about 8.30 p.m, a taxi bearing registration No. TN-59 2233 belonging to the first Respondent had hit against the deceased Ganamoorthy, when he was trying to take the parcel which was fallen down from his two wheeler TVS 50 bearing registration No. TN-59 H 1047 at Thiruparankundram Bye Pass near Veyilukukanda Amman temple. As a result of which, the deceased succumbed to injury on the spot. Hence, the Appellants herein being the legal-heirs of the deceased have filed a claim petition claiming a sum of Rs. 15,00,000/-.

3. While the first Respondent being the owner of the vehicle remained ex- parte,

the 2nd Respondent, the insurer with whom the above said taxi was insured at the material time, had contested the claim petition on three grounds:

1. The Insurance Company with whom the TVS 50 moped bearing registration No. TN- 59 H 1047 was issued at the relevant period, has not been impleaded a necessary party to the proceedings.

2. The accident has taken place on account of the negligence on the part of the deceased himself when he was taking ''U'' turn in order to pick up the parcel, which was fallen down from his two wheeler.

3. The 2nd Respondent Insurance Company is not at all liable to indemnify the liability of the first Respondent as the accident was taken place on account of the negligent act of the deceased himself.

4. The first Appellant being the widow of the deceased Ganamoorthy, had examined herself as PW1. Besides her, one Nevis, who is said to be the eye witness of the occurrence was examined as PW2. During the course of their examination, Exs.P1 to P11 were marked. On the other hand, the 3rd Respondent, being the mother of the deceased, had examined herself as RW1. No documentary evidence was adduced on behalf of the Respondents.

5. On appreciation of the materials available on record, the Motor Accidents Claims Tribunal had proceeded to pass an award of Rs. 5,36,040/- towards compensation to the claimants as well as to the Respondents 3 and 4 being the parents of the deceased Ganamoorthy. Being not satisfied with the quantum of award, the claimants have approached this Court by way of this appeal.

6. Heard both sides.

7. It appears from the claim petition as well as from the oral and documentary evidence that the deceased was working as post-man. As per Ex.P7, Salary Certificate, it is revealed that Ganamoorthy was working as postman at Tallakulam Head Post Office and was getting a gross salary of Rs. 5,452/- on which a deduction of Rs. 1,185/- was made. The net take home salary as on December 2000 was Rs. 4,267/-8. In this connection, the learned Counsel appearing for the Appellants has projected his argument on the following grounds:

1. Instead of taking the net salary of Rs. 4,267/-, the gross salary of the deceased Rs. 5,452/- per month ought to have been taken into consideration by the Claims Tribunal while arriving at the quantum of compensation.

2. Since the first Respondent being the widow of the deceased Ganamoorthy was aged about 35 years at the time of death of her husband, appropriate Consortium ought to have been awarded, but the Claim Tribunal has lost it''s sight upon this 5 factor while arriving at the quantum.

3. The Appellants being the legal heirs of the deceased ought to have been awarded compensation towards the loss of love and affection at least to the

extent of Rs. 10,000/- each.

4. Since the deceased was aged about 45 years, at the time of accident, had he been survived, he would have got promotional opportunity and thereby would have got more salary, but this aspect has not been considered by the Accidents Claims Tribunal at the time of calculation of the quantum.

9. It is obvious to note here that neither the first Respondent being the owner of the vehicle nor the 2nd Respondent being the insurer has challenged the award.

10. The learned Counsel appearing for the Appellants in support of his argument, has placed reliance upon the following decisions:

(1)In Oriental Insurance Company Limited, Coimbatore v. Minor Swapnalekha and others, reported in 2010(1)TN MAC 551(DB).

2. Jyoti Kaul and Others Vs. State of M.P. and Another, .

3. Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr., reported in 2009(2) TN MAC 1 (SC); and

4. National Insurance Co. Ltd., v. Madhubala and others, reported in 2010 ACJ 2774.

11. In Oriental Insurance Company Limited, Coimbatore v. 1. Minor Swapnalekha and others, reported in 2010(1)TN MAC 551(DB) , a Division Bench of this Court after placing reliance upon the decision inAsha and Ors. v. United India Insurance Company Limited, reported in 2004(1) TN MAC 479(SC) : 2004(1)ACJ 448, has held that:

It would be appropriate to take, the gross salary of the deceased at the time of his death, into account for determining the compensation.

12. In Jyoti Kaul and Others Vs. State of M.P. and Another, , it is held that:

The multiplier would depend on the facts and circumstances of each case.

13. With regard to future prospects, the learned Counsel appearing for the Appellants has laid emphasis upon the decision reported in Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr., reported in 2009(2) TN MAC 1 (SC).

14. In this connection, a Division Bench of the Hon''ble Supreme Court of India headed by his Lordship Hon''ble Mr. Justice R.V. Ravendran has held that:

Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation.

The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.

In Susamma Thomas, this Court held that the future 8 prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependents); and that where the deceased had a stable job, the Court can take note of the prospects of the future and it will be unreasonable to estimate the Loss of Dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death was Rs. 1,032/- per month.

His Lordship has also observed that the decision in Susamma Thomas was followed in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , where the deceased was getting a gross salary of Rs. 1,543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs. 3,000/-.

This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs. 2,200/- per month.

In Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , as against the actual salary income of Rs. 42,000/- per annum at the time of accident, this Court assumed the income as Rs. 45,000/- per annum, having regard to 9 the future prospects and career advancement of the deceased who was 40 years of age.

15. His Lordship further held that:

In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words ''actual salary'' should be read as ''actual salary less tax'']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision of annual increments, etc.), the Courts will usually take only the actual income at the time of death. A departure there from should 10 be made only in rare and exceptional cases involving special circumstances.

16. In National Insurance Co. Ltd., v. Madhubala and Ors., reported in 2010 ACJ 2774 , a learned single Judge of the Delhi High Court has held that:

The tribunal can take into consideration the future prospects of the deceased for determining his income and consequently amount of compensation.

17. On coming to instant case on hand, as evident from Ex.P7, the Salary

Certificate of the deceased, it is made clear that the deceased was working as postman at Gandhi Nagar Sub Post Office, Madurai. It also reveals the details of emoluments for the month of December 2000. As per this document Ex.P7, the actual pay of the deceased is Rs. 3,350/- with other perks like D.A, HRA, CCA, TPA, WA. The deceased was getting a sum of Rs. 5,452/- as his gross salary and a deduction was made to the extent of Rs. 1,185/-After deduction, his net salary was Rs. 4,267/-.

18. As held in the decisions referred to above, in order to arrive at the just compensation, the gross salary of the deceased can be taken into account. Accordingly, the deceased''s gross salary of Rs. 5,452/- can form basis to calculate the quantum. Besides this, as observed by the Hon''ble Supreme Court of India in Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. reported in 2009(2) TN MAC 1 (SC), since the deceased was aged about 40 years, 30% of his actual salary can be taken into consideration towards future prospects. Calculating 30% on his actual pay of Rs. 3,350/- towards his future prospects, it comes to Rs. 1,005/-. Hence, the gross salary of Rs. 5,452/- + 30% of his actual pay comes to Rs. 6,457/-. On the basis of this calculation, the annual dependency of the deceased would be Rs. 77,484/-. after giving deduction of 1/3rd the 2/3rd remainder would be Rs. 51,656/-. As the deceased was aged about 45 years at the time of accident as decided in SARLA VERMA case, the multiplier of 14 can be applied. On application of this multiplier system, the loss of dependency of the family comes around to Rs. 7,23,184/-.

19. On coming to the award of the Motor Accidents Claims Tribunal, as already discussed in the foregoing paragraphs, the gross salary of the deceased was not taken into account. On the other hand, on the basis of his net salary of Rs. 4,267/-, the Motor Accidents Claims Tribunal, after application of the multiplier of 15, has arrived at the quantum at Rs. 5,12,040/-. Apart from this, towards loss of love and affection, the Tribunal has awarded a sum of Rs. 10,000/- and towards loss of estate a sum of Rs. 10,000/- was awarded. Besides this, an another sum of Rs. 4,000/- towards funeral expense was also awarded. In total Rs. 5,36,040/- was awarded by the Tribunal.

20. In this appeal, the claimants have sought enhancement of compensation of Rs. 1,50,000/- in addition to the Tribunal award of Rs. 5,36,040/-. Since the claimants have restricted their total claim to the tune of Rs. 5,36,040/- + 1,50,000/-= Rs. 6,86,040/-, this Court has thought it fit that the Tribunal award of Rs. 5,36,040/- may be enhanced to Rs. 6,86,040/-, though the claimants are actually entitled to Rs. 7,23,184/-.

21. In the result, this Civil Miscellaneous Appeal is allowed. The award of the Tribunal is enhanced to Rs. 6,86,040/- from Rs. 5,36,040/-. No costs.

