

(2014) 02 MAD CK 0236
In the Madras High Court
Case No : C.M.A. No. 2773 of 2012

G. Ravichandran

APPELLANT

Vs

A. Arvind

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 02 MAD CK 0236

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

R. Mahadevan, J.—Legal heirs of the injured claimant, who were impleaded on the death of the injured claimant pending appeal, are the appellants.

2. The deceased Ravichandran had filed the claim petition seeking a compensation of Rs. 15,00,000/= for the injuries and disability sustained by him in a road accident he met with, by contending that when his father-in-law and himself were proceeding in a motorcycle bearing registration No. TN 09 F 9691 opposite Hindu College near Pattabiram, the lorry bearing registration No. K.A.04A 6039, belonging to the first respondent and insured with the second respondent, driven in a rash and negligent manner, dashed against a Tata Sumo which, in turn, dashed against the two wheeler and caused grievous injuries to him.

3. Both the respondents have remained ex parte before the Tribunal.

4. The injured claimant examined himself as PW1 and examined the Doctor as PW2 and marked 22 documents.

5. The Tribunal awarded a sum of Rs. 5,43,438/= as total compensation under various heads with interest at 7.5% per annum excepting for a sum of Rs. 1,00,000/=, which was awarded towards future medical expenses, directing the Insurance Company to pay the compensation to the claimant giving liberty to

recover the same from the owner of the vehicle viz., the first respondent.

6. Seeking enhancement of the compensation, the claimant had filed the appeal, but, pending appeal, he died and hence, his wife and two minor children were brought on record.

7. Learned counsel for the appellants would submit that the Tribunal has erred in awarding a very meager amount towards loss of earning without considering the future prospects and fixing the permanent disability at 60% when the doctor found it as 70% and the amounts awarded under other heads such as pain and suffering, extra nourishment and transport charges.

8. Learned counsel for the second respondent-Insurance Company would submit that the claimants have not produced the discharge summary to prove the injuries and disability sustained by the victim of the accident.

9. On perusal of the materials available on record, it is seen that the offending lorry dashed a Tata Sumo which, in turn, dashed against the motorcycle, which the claimant was riding, thereby causing instantaneous death to the driver of the Tata Sumo and grievous injuries to the claimant. The accident occurred on 4.11.2000 and at that time, he was 32 years old. In the year 2012, viz., after about 12 years, the claimant is no more. It cannot be said, with authority, that a person should die immediately after the accident to establish that he died only due to the injuries caused in the said accident. Death due to an injury caused in an accident can be immediate or it may happen after a prolonged treatment depending on the physical condition and nature of injuries sustained by the injured person. The death certificate issued by Apollo Hospital, now produced by the appellants, would prove that the causes of death was Septic Shock, Acute Kidney Injury and Right Gangliocapsular Bleed. Death at the age of 44 for reasons stated above cannot be viewed as a normal one especially when the person had suffered grievous injuries in a road accident. But, the Tribunal cannot be found fault with for not presuming the subsequent impacts of the accident. Even now, the appellants have not produced sufficient documents to link the death of the claimant with the injuries sustained by him. The cruel fact is that the claimant died at the age of 44, having sustained grievous injuries in a terrible accident at the age of 32. It is needless to say that not only himself, but also, his family members viz., his wife and two minor children would have suffered a lot.

10. Considering the above circumstances, while confirming the award on other heads, this court is inclined to enhance the award towards loss of earning as Rs. 1,95,000/= instead of Rs. 1,32,264/=: towards transport charges as Rs. 20,000/= instead of Rs. 5000/= and towards permanent disability as Rs. 1,00,000/= instead of Rs. 60,000/=: thus giving a total enhancement of Rs. 1,17,736/= making the total compensation as Rs. 6,61,174/=. Out of the said amount, the second appellant-wife is entitled to get a sum of Rs. 2,61,174/= and appellants 3 and 4 each are entitled to get a sum of Rs. 2,00,000/=. The second respondent is directed to deposit the above said entire award amount with interest at 7.5 for

the entire award amount from the date of petition till the date of deposit, deducting the amount already deposited, within a period of six weeks from the date of receipt of copy of this judgment. On such, deposit, the second appellant-wife is entitled to withdraw her proportionate share with interest and costs by filing appropriate application and the minors' shares shall be deposited in a nationalised bank till they attain majority. Since the owner of the vehicle as well as the Insurance Company remained ex parte before the Tribunal, the question of compliance or otherwise of the conditions of the Insurance Policy was not gone into by the Tribunal. Hence, the insurance Company is directed to pay the compensation to the appellants and may proceed to recover the same from the owner of the vehicle viz., the first respondent in the same proceedings if they are able to prove that there is any violation of the conditions of the Insurance Policy.

In the result, the civil miscellaneous appeal is allowed in part. No costs.