
(2017) 02 MAD CK 0249
In the Madras High Court
Case No : 46 of 2017

ICICI Lombard Motor Insurance Co. Ltd. APPELLANT
Vs
S.Gomathi (died) & anr. RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 151](#),
[Order 41 Rule 33](#) - Saving of Inherent
powers of Court

Citation : (2017) 02 MAD CK 0249

Hon'ble Judges : N.Kirubakaran

Bench : SINGLE BENCH

Advocate : N.Kirubakaran

Judgement

1. This Civil Miscellaneous Appeal has been preferred by the appellant-Insurance Company against the award of Rs.7,61,500/- (Rupees Seven Lakhs Sixty One Thousand and Five Hundred only) for the death of one Sudalaimuthu, aged about 61 years, doing real estate and construction business, in the accident occurred on 07.05.2009, when he was travelling in his Omni Maruti Van from Palayamkottai market to his house and having hit by a mini bus coming in the opposite direction.
2. Heard Mrs.K.R.Shiva Shankari, learned Counsel appearing on behalf of Mr.S.Srinivasa Raghavan, learned Counsel for the appellant-Insurance Company and Mr.S.P.Maharajan, learned Counsel for the respondents 1 to 3.
3. The fourth respondent remained exparte before the Tribunal and hence, notice to the fourth respondent is dispensed with, in view of the Full Bench judgment of Madhya Pradesh High Court in Mrs.Jamunabai v. Chhote Singh reported in I (2004) ACC 190 (FB).
4. The only contention raised by the learned Counsel for the appellant-Insurance Company is that the deceased was 61 years old and a higher amount has been

awarded towards loss of income and therefore, a sum of Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand only) awarded towards loss of income has to be reduced.

5. However, the learned Counsel for the respondents 1 to 3/claimants supported the award of the Tribunal.

6. The award of the Tribunal would disclose that the Tribunal based on Ex.P.8 - Form No.16 for the Financial Years 2007-2008, 2008-2009 and 2009-2010, came to the conclusion that the deceased was earning about Rs.1,22,804/- (Rupees One Lakh Twenty Two Thousand Eight Hundred and Four only) per annum. After deducting 1/3rd amount towards his personal expenses, a sum of Rs.81,869/- (Rupees Eighty One Thousand Eight Hundred and Sixty Nine only) rounded off to Rs.82,000/- (Rupees Eighty Two Thousand only) was taken as the annual contribution to the family of the deceased. The multiplier "5" was adopted according to the age of the deceased and the loss of income was determined at Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand only) [Rs. 82,000/- X 5]. Therefore, based on the available evidence and that too, Ex.P.8 - Form No.16, the Tribunal rightly determined the loss of income.

7. Though the accident occurred on 07.05.2009, during the period of treatment, the deceased passed away on 18.05.2009 and therefore, the deceased should be compensated towards pain and sufferings also, because he underwent pain and sufferings during the treatment period and he passed away after sometime. Moreover, the family members would also suffer on seeing the injured during the treatment period. Therefore, a sum of Rs.50,000/- (Rupees Fifty Thousand only) is awarded towards pain and sufferings.

8. A sum of Rs.10,000/- (Rupees Ten Thousand only) awarded towards funeral expenses is too low and hence, the same is enhanced to a sum of Rs.20,000/- (Rupees Twenty Thousand only).

9. A sum of Rs.2,86,460/- (Rupees Two Lakhs Eighty Six Thousand Four Hundred and Sixty only) awarded towards medical expenses is confirmed.

10. A sum of Rs.50,000/- (Rupees Fifty Thousand only) awarded towards loss of love and affection is enhanced to a sum of Rs.1,00,000/- (Rupees One Lakh only) including the compensation under the head "loss of consortium" to the wife of the deceased, though the wife of the deceased is solely entitled to a sum of Rs.1,00,000/- (Rupees One Lakh only) as per the settled position of law by the Honourable Supreme Court.

11. No amount was awarded by the Tribunal towards loss of estate and hence, a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) is awarded.

12. A sum of Rs.5,000/- (Rupees Five Thousand only) awarded towards transportation charges and for damage to clothes and articles, is very low and hence, the same is enhanced to a sum of Rs.10,000/- (Rupees Ten Thousand only).

13. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

14. Accordingly, the respondents 1 to 3/children of the deceased are entitled to a sum of Rs.9,01,460/- (Rupees Nine Lakhs One Thousand Four Hundred and Sixty only) rounded off to Rs.9,00,000/- (Rupees Nine Lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

15. The wife of the deceased already died during the pendency of the claim petition and only the children of the deceased, viz., the respondents 1 to 3 are the legal representatives of the deceased and therefore, they are entitled to the above compensation equally.

16. Though the appeal has been filed by the appellant Insurance Company, there is no prohibition for this Court to enhance the compensation under Order 41 Rule 33 and Section 151 of the Code of Civil Procedure, taking into consideration the available records, which were not properly appreciated by the Tribunal and this Court need not await for the appeal/cross appeal to be filed by the claimants. The power of this Court has been recognised by the Larger Bench of the Honourable Supreme Court in Nagappa v. Gurudayal Singh and others reported in 2004 (2) TNMAC 398 (SC) :2003 (2) SCC 274.

17. In the result, (i) This Civil Miscellaneous Appeal is dismissed, however, enhancing the award of Rs.7,61,500/- (Rupees Seven Lakhs Sixty One Thousand and Five Hundred only) to a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The respondents 1 to 3/claimants are entitled to a sum of Rs.3,00,000/- (Rupees Three Lakhs only) each, along with accrued interest and proportionate costs;

(iii) The respondents 1 to 3/claimants are directed to submit their Account Details along with the copies of their passbooks to the Tribunal forthwith;

(iv) The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.966 of 2009, on the file of the Motor Accident Claims Tribunal - cum - I Additional District Court, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this judgment;

(v) On such deposit, the Tribunal is directed to transfer the respective share amounts of the respondents 1 to 3/claimants directly to their respective Personal Savings Bank Account Numbers, through RTGS/NEFT system, after getting their Account Details, within a period of two weeks thereafter;

(vi) The respondents 1 to 3/claimants are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of

this judgment;

(vii) The Registry is directed to send the copies of this judgment directly to the respondents 1 to 3/claimants directly, free of costs; and

(viii) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is dismissed.