(2015) 02 MAD CK 0427

In the Madras High Court

Case No : C.M.A. No. 299 of 2015 & M.P. No. 1 of 2015

IFFCO-TOKIO, General Insurance Co. Ltd. APPELLANT

Vs

K. Elammal and Others RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0427

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : C.R. Krishnamoorthy, for the Appellant; M. Selvam, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N. Kirubakaran, J.—The Insurance Company is before this Court challenging the award of Rs. 10,74,000/- granted to the parents of one K.Prakash, aged about 18 years, II year B.Com student, who died in the accident, which occurred on 19.09.2011, when the van insured with the appellant-Insurance Company took reverse and hit the bus on the back left side resulting in the said Prakash, who was travelling on the foot board of the Transport Corporation bus, sustaining grievous injuries, leading to his death. Therefore, the claim petition was filed.

2. The Tribunal, on enquiry, found that the accident occurred because of the rash and negligent driving by the driver of the van and fixed 90% negligence on the van driver and 10% negligence on the deceased, as he was travelling on the foot board of the bus. Taking a sum of Rs. 6,500/- as monthly income; adding 50% towards future prospects; applying multiplier 18 and deducting 50% towards personal expenses, the loss of income was determined at Rs. 10,53,000/-. Including other amounts, totally, a sum of Rs. 11,93,000/- was awarded as compensation, out of which, the claimants were entitled to only 90%, namely, a sum of Rs. 10,74,000/-, as 10% contributory negligence was fixed on the deceased. The said award is being challenged on the question of quantum as well as negligence.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondents 1 and 2.

4. Though the learned counsel for the appellant would argue that the accident occurred because of the rash and negligent driving by the driver of the bus, P.W.2, Rose Ganapathy, who got injured in the same accident and examined as an eye-witness to the occurrence, deposed that it was the van, which was driven rashly and negligently. Considering P.W.2''s evidence as well as Ex.P1, FIR and Ex.P6, charge sheet filed against the van driver, the Tribunal rightly came to the conclusion that the van was driven rashly and negligently. Taking note of the evidence of R.W.1, who deposed that the deceased was travelling on the foot board of the bus, the Tribunal rightly fixed 10% negligence on the part of the deceased, as foot board travelling is prohibited. Therefore, fixing of 90% negligence on the part of the van driver and 10% negligence on the part of deceased is based on evidence and the same cannot be interfered with.

5. Further, a close scrutiny of the award would show that the driver of the van was holding driving licence only for driving a light motor vehicle and he had no badge endorsement to drive a transport vehicle like van. The said fact was proved by the appellant-Insurance company by sending a letter to the owner of the vehicle to produce the driving licence. In view of the above position, the Tribunal rightly directed the Insurance Company to pay the amount and recover the same from the owner of the vehicle.

6. Admittedly, the deceased was a 18 year old, II year B.com. student and he would come under the definition of non-earning member. Curiously, the Tribunal determined the monthly income of the deceased, a non- earning member, at Rs. 6,500/- following the judgment of the Honourable Supreme Court in Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company, (2014) 1 ACC 206 : AIR 2014 SC 1052 : (2014) AIRSCW 724 : (2014) 1 JT 569 : (2014) 1 RCR(Civil) 766 : (2014) 1 SCALE 377 : (2014) 2 SCC 735 and added 50% towards "future prospects" as per the judgment of the Honourable Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 and determined the total monthly income at Rs. 9,750/-. But, the said determination is without any basis. In the judgment of the Honourable Supreme Court in Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company, (2014) 1 ACC 206 : AIR 2014 SC 1052 : (2014) AIRSCW 724 : (2014) 1 JT 569 : (2014) 1 RCR(Civil) 766 : (2014) 1 SCALE 377 : (2014) 2 SCC 735 , the injured was a vegetable vendor, an earning member and therefore, the Honourable Supreme Court determined the monthly income at Rs. 6,500/-. By no stretch of imagination, the said judgment can be made applicable to the present facts of the case. Therefore, the determination of the monthly income at Rs. 6,500/- and adding 50% towards "future prospects" is set aside.

7. Though Mr.C.R. Krishnamoorthy, learned counsel appearing for the appellant would submit that the deceased was a non earning member and if at all, only Rs. 30,000/- can be taken as notional income as per the judgement in Kishan Gopal and Another Vs. Lala and Others, (2013) 3 ACC 878 : (2013) ACJ 2594 : (2013) 9 AD 193 : (2013) 5 CTC 212 : (2013) 11 JT 563 : (2014) 1 PLR 276 : (2013) 4 RCR(Civil) 276 : (2013) 10 SCALE 580 : (2014) 1 SCC 244 , the Hon''ble Supreme Court, in Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma, (2014) AIRSCW 6507 in respect of a first year Medical College student, who died in an accident, determined the monthly income at Rs. 25,000/-. Similarly, this Court, in United India Insurance Co. Ltd. Vs Velumyil and others reported in 2013 (2) TN MAC 846, in respect of a first year B.E. student, who died in an accident, determined Rs. 15,000/- as monthly income. In this case, the deceased was a II year B.Com student. Though, he cannot be equated to a Medical College student or an Engineering College student, at least Rs. 6,000/- per month should be taken as monthly income and adding 50% towards "future prospects", as per the judgment of Hon''ble Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, (2012) ACJ 1428 : AIR 2012 SC 2185 : (2012) 4 SCALE 559 : (2012) 6 SCC 421 : (2012) AIRSCW 2892 : (2012) 3 Supreme 197 , the total monthly income would be,

= Rs. 6000/- + 50% (Rs. 6000/-)

= Rs. 9000/-.

8. Since the deceased was a bachelor, 50% is required to be deducted towards "personal expenses" and after deducting, the monthly contribution of the deceased to the family would be,

= (Rs. 9000/-) - (50% (Rs. 9000/-))

Monthly contribution of the deceased to his family = Rs. 4,500/-.

The age of the deceased was fixed by the Tribunal, based on Ex-P4 Death Certificate and Ex-P5, Death Report as 18 years and following the judgment of the Hon''ble Supreme Court in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, (2012) ACJ 2002 : (2012) 6 JT 301 : (2012) 4 RCR(Civil) 343 : (2012) 11 SCC 738 , multiplier 18 was applied, as per the age of the deceased. Applying the said multiplier, "loss of income" is calculated as follows:

Loss of Income = Rs. 4500 x 12 x 18

= Rs. 9,72,000/-

A sum of Rs. 25,000/- was awarded towards "funeral expenses" as per the judgment of the Honourable Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , and the same is confirmed. The sum of Rs. 10,000/- awarded towards "loss of expectancy of life" is adjusted towards "transportation expenses". The sum of Rs. 1,00,000/- awarded towards "loss of love and affection" is confirmed, as the claimants lost their only son that too, at the age of 18 years. The sum of Rs. 5,000/- awarded towards "loss of estate" is deleted. In all, a sum of Rs. 11,07,000/- is awarded as compensation, of which, the claimants are entitled to only 90%, namely, a sum of Rs. 9,96,300/-, since contributory negligence at 10% is fixed on the deceased. The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

9. It is submitted by the learned counsel for the appellant that they have already deposited the entire amount, as per the award passed by the Tribunal, along with interest and costs, before the Tribunal. In view of the modified award passed by this Court, to the tune of Rs. 9,96,300/-, respondents 1 and 2/claimants are permitted to withdraw 50% of their respective shares, from the said amount, as per the ratio fixed by the Tribunal and the remaining 50% is directed to be re-invested in interest bearing Fixed Deposit in Indian Bank, High Court Branch, Chennai, atleast for a period of three years. The excess amount, lying in deposit, shall be refunded to the appellant insurance company within one week from the date of receipt of a copy of this order.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Connected M.P. is closed.

11. The matter has been brought before this Court for ?Being Spoken to? at the instance of the appellant contending that direction for pay and recovery has not been included in the judgment dated 17.02.2015, while disposing of the above appeal.

12. However, a perusal of the judgment would reveal that towards the end of paragraph No.5 of the said judgment, this Court has observed as hereunder:

"In view of the above position, the Tribunal rightly directed the Insurance Company to pay the amount and recover the same from the owner of the vehicle."

13. In view of the above observation, no further orders are necessary.

