(2012) 07 MAD CK 0057

In the Madras High Court

Case No : C.M.A. No. 3295 of 2005

M. Lalitha, M. Sree Vidhya, M. Gayathiri and M. Hariharan — APPELLANT

Vs

T. Bharathi, The Oriental Insurance Co. Ltd. and The New India Assurance Co. Ltd. — RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, 304(A), 337

Citation : (2012) 07 MAD CK 0057

Hon'ble Judges : R. Karuppiah, J

Bench : Single Bench

Advocate : M. Devaraj, for the Appellant; S. Krishnamurthy for R2 (R1 Exparte before Tribunal) No appearance for R3 and R4, for the Respondent

Judgement

Honourable Mr. Justice R. Karuppiah

1. The appellants/petitioners have filed this civil miscellaneous appeal praying for enhancement of compensation as against the award dated

8.3.2005 made in MCOP. No. 643 of 2003 on the file of the Motor Accidents Claims Tribunal (1st Addl. District Judge), Salem. The

appellants/petitioners have filed claim petition before the Tribunal for compensation of Rs. 45 lakhs for the death of one Muralidharan in motor

accident occurred on 28.4.2002. Briefly, the case of the appellants/petitioners is that on 28.4.2002, while Muralidharan and two others were

returning by a car bearing registration No. TN-30-4344, belonging to his brother, third respondent from Trichy to Salem, at about 11.30 pm,

when the car was nearing Vasanthapuram police colony pirivu road, drove by the deceased properly by following traffic rules carefully, at that

time, the first respondent lorry bearing registration No. TN-27-C-1500 drove by its driver in a rash and negligent manner, without following the

traffic rules, dashed on the car, which resulted in causing the death of Muralidharan and the accident was occurred due to rash and negligent

driving of the lorry and the police has registered a case in Crime No. 582 of 2002 for the offences under Sections 279, 337 and 304(A) IPC

against the lorry driver. The respondents 3 and 4, who are owner and insurer of the car bearing Regn.No. TN-30-4344 were impleaded as parties

for proper adjudication and the age of the deceased was 42 years at the time of accident and he was silver merchant cum agriculturist and was

earning Rs. 20,000/- pm and the petitioners are wife and children of the deceased and hence they have claimed compensation of Rs. 45 lakhs from

the respondents.

2. Before the Tribunal, both the vehicle owners, namely, 1st and 3rd respondents remained exparte and on the side of the 2nd respondent, has

filed counter, in which it denied the manner of the accident stated in the petition and further stated that the petitioners should prove the age,

employment, occupation, income of the deceased, validity of the insurance, permit, driving licence of the first respondent lorry driver and

relationship with the deceased and also contended that the amount of compensation claimed is excessive.

3. On the side of the 4th respondent, has filed counter, in which it is stated that the deceased Muralidharan and two others were returning in the car

bearing Regn.No. TN-30-4344 on 28.4.2002 from Trichy to Salem and the accident was occurred as stated in the petition i.e., due to rash and

negligent driving of the driver of the lorry and Namakkal police registered a case in Crime No. 582 of 2002 against the driver of the lorry and

chargesheet was also filed and the driver of the lorry admitted the negligence and paid a fine of Rs. 5000/- in S.T.C.No. 1390 of 2002 before the

Judicial Magistrate No. I, Namakkal on 28.6.2002 and further contended that the age, income and avocation of the deceased have to be proved

by the petitioners and the fourth respondent is unnecessary party in the above said O.P.

4. Before the Tribunal, on the side of the appellants/petitioners, have examined 3 witnesses as P.Ws.1 to 3 and marked 21 documents as Exs.P1

to P21 and on the side of the respondents, not examined any witness and not marked any document.

5. Considering the above said oral and documentary evidence, the Tribunal has held that the accident was occurred only due to rash and negligent

driving of the driver of the first respondent lorry and hence the respondents 1 and 2 are liable to pay compensation and with regard to

compensation, the Tribunal has fixed the age of the deceased as 48 years and the monthly income of the deceased as Rs. 3000/- p.m and without

deducting any amount for personal and living expenses of the deceased and applied the multiplier as 13 and calculated Rs. 4,68,000/- as loss of

income and further awarded Rs. 2000/- for transportation, Rs.5000/- for funeral expenses and awarded Rs. 20,000/- as loss of consortium to the

first petitioner and totally awarded Rs. 4,95,000/-. Aggrieved over the above said award amount, the petitioners have filed this appeal for

enhancement of compensation. On the side of the respondents, have not filed any appeal.

6. In this appeal, it is to be decided as to whether the compensation awarded by the Tribunal is correct or not? Negligence aspect need not be

discussed since respondents had not challenged the finding of the Tribunal.

7. Heard the learned counsel on either side and perused the records.

8. With regard to the age of the deceased, the Tribunal has fixed as 48 years on the basis of Ex.P1-driving licence, Ex.P2-Passport, in which the

date of birth of the deceased was given as 10.2.1954 and therefore the Tribunal has correctly fixed the age of the deceased as 48 years.

9. With regard to the income of the deceased, on the side of the petitioners, have examined PWs.1 and 3 and marked Exs.P9 to P14-income tax

acknowledgment and returns and also produced Ex.P15 document to prove that the deceased was treasurer and Assistant Secretary in Salem

Silver Chain Producers'' Association, Ex.P16-Sriram & Co. book for the year 1999-2000 and Ex.P17-income tax ledger for the year 2000-2001

and Exs.P18 to P21-ledgers and day books.

10. On perusal of the above said oral and documentary evidence, the Tribunal has assessed the income of the deceased as Rs. 5000 to 7000/-

p.m and after considering the fact that the family members of the deceased used to attend the abovesaid business, fixed the monthly income of the

deceased as Rs. 3000/- p.m and taken 13 as multiplier and calculated the loss of income as Rs. 4,68,000/-.

11. With regard to the income of the deceased, as already stated, the petitioners have produced Ex.P11-income tax return for the year 2001-

2002 showing the income as Rs. 55,000/- per year, Ex.P12-income tax return showing the income as Rs. 58,640/- per year, Ex.P13-income tax

return showing the income as Rs. 47,156/- per year and Ex.P14-income tax return showing the income as Rs. 65,000/- per year. The above said

documents reveal that the income of the deceased vary from year to year and therefore the average income of the deceased may be taken as

annual loss of income to the petitioners and hence the average loss of annual income comes as Rs. 56,449/-, which is rounded off as Rs. 57,000/-

and if 1/3 amount is deducted for personal and living expenses of the deceased, the loss of income is calculated as 38,000 x 13 = Rs. 4,94,000/-.

With regard to loss of consortium to first petitioner, the Tribunal has awarded Rs. 20,000/-, which is reasonable and no need to interfere with the

same. With regard to transportation, the Tribunal has awarded Rs. 2000/- which is meagre amount and hence enhanced as Rs. 5000/-. With

regard to funeral expenses, the Tribunal has awarded Rs. 5000/-, which is reasonable. The Tribunal has failed to award any amount for loss of

love and affection to the appellants 2 to 4/petitioners 2 to 4 in the above said O.P and therefore Rs. 10,000/- each is awarded to the petitioners 2

to 4 on the head of loss of love and affection i.e. Rs. 30,000/-.

12. Therefore, the award of the Tribunal is modified and enhanced as under:

Loss of income Loss of consortium to - Rs. 4,94,000.00

1st appellant/1st petitioner - Rs. 20,000.00

Transportation - Rs. 5,000.00

Funeral expenses - Rs. 5,000.00

Loss of love and affection to appellants 2 to 4/Rs. 30,000.00

petitioners 2 to 4 (Rs. 10,000/- each) -

Rs. 5,54,000.00

The total compensation is enhanced from Rs. 4,95,000/- to Rs. 5,54,000/- (Rupees five lakhs fifty four thousand only), which carries interest as

awarded by Tribunal (i.e) at the rate of 9% per annum. In the result, the appeal is partly allowed. Both sides admit that the entire award amount of the Tribunal has been already deposited by the 2nd respondent and received by the petitioners. Therefore, the 2nd respondent-insurance company

is directed to deposit the balance amount within a period of eight weeks from the date of receipt of copy of this Judgment and on such deposit, the

appellants/petitioners are permitted to withdraw the same. No costs.

