

(2016) 09 MAD CK 0077

In the Madras High Court

Case No : C.M.A.No. 2129 of 2016 and C.M.P.No. 15384 of 2016

Manager, ICICI Lombard General Insurance Company Ltd.,
Mumbai

APPELLANT

Vs

Selvi

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) AAC 2408

Hon'ble Judges : Mr. S. Manikumar and Mr. N. Athinathan, JJ.

Bench : Division Bench

Advocate : Mr. R. Sree Vidhya, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mr. S. Manikumar, J. - Quantum of compensation of Rs.11,58,000/- with interest at the rate of 7.5% per annum, from the date of claim, till realisation, is the challenge in this appeal, and in particular, to the determination of monthly income of the deceased at Rs.9,000/-, for the purpose of computing the loss of contribution to the family.

2. Though the wife of the deceased claimed that the deceased, aged 38 years, was running a Dhaba, in his daughter's name, "Nandhini Dhaba" and earned Rs.10,000/- per month, the Tribunal has fixed the monthly income of the deceased as Rs.9,000/- per month, for the purpose of computing the loss of contribution to the family.

3. In *Sri Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Ltd.*, reported in 2011 (2) TNMAC 190 SC, a sum of Rs.4,500/- was claimed as the monthly income for the deceased, stated to be a coolie. The claims tribunal had taken Rs.3,000/- for the purpose of computing the loss of contribution to the family. However, when the matter was taken up on appeal, the Hon'ble Supreme Court, having regard to the wages of a labourer, during the

relevant period (2004 - between Rs.100 to Rs.150/- per day) found fault with the tribunal for reducing the claim from Rs.4,500/- to Rs.3,000/- and determined the income at Rs.4,500/-.

4. In the case on hand, the accident has occurred on 16.02.2008, and on the facts and circumstances of the case and in the light of the above decision, merely because no document was produced by the respondents/claimants, to substantiate the avocation, at the time of accident, it cannot be said that the Tribunal has committed a manifest illegality, for fixing the monthly income as Rs.9,000/-.

5. Though no document has been filed to prove self employment, to provide food, shelter, clothing, education and to meet out the basic necessities, regular expenditure, such as payment of electricity charges, water tax and other incidental expenses, it could be reasonably presumed that the deceased would have engaged in some avocation. In Sri Ramachandrappa's case, the Hon''ble Supreme Court having considered the wages, which prevailed during the year of accident (2004), fixed the monthly income at Rs.4,500/-. Therefore, even as per the judgment of the Hon''ble Supreme Court, wages for even a labourer, in the year 2008, would have increased. Determination of Rs.9,000/- per month, in the year 2008, for computing the loss of income, cannot be said to be without any basis, and in our view, it is just and reasonable.

6. Following the decision of the Apex Court in Sarala Verma v. Delhi Transport Corporation Ltd., reported in 2009 (2) TNMAC 1, the Tribunal deducted ?rd towards the personal and living expenses of the deceased and after applying 14 multiplier, to the age of the deceased, computed Rs.10,08,000/- as loss of contribution to the family. That apart, the Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.25,000/- for loss of love and affection, Rs.20,000/- for transportation and Rs.20,000/- towards funeral expenses. Altogether, the Claims Tribunal has awarded Rs.11,58,000/- with interest at the rate of 7.5% per annum.

7. Sum of Rs.25,000/- awarded under the head, loss of love and affection to the minor child, is less. When the minor child aged 15 years, at the time of accident, has lost the love and affection of her father, we only record our displeasure, as to whether, it would be fair and appropriate to question the quantum of compensation of the overall compensation of Rs.11,58,000/-. Left to the conscience of those, who have challenged the overall quantum.

8. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Hon''ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards loss of love and affection. Also, left to their conscience to introspect, as to whether, compensation awarded under the head, loss of love and affection, in the light of the decision made in Rajesh's case (cited supra), is adequate?

9. In the light of the above decisions and discussion, this Court is of the view

that there is no manifest illegality in determining the award amount and the same is confirmed. Hence, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.669 of 2013, on the file of the Motor Accidents Claims Tribunal (District Judge) (Special District Court), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the same, by making necessary applications before the Tribunal. The share of the minor shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is also closed.