
(2016) 06 MAD CK 0004

In the Madras High Court

Case No : CMA(MD) No.363 of 2016 and CMP (MD) No 5199 of 2016

Manager, Reliance Insurance Co. Ltd.

APPELLANT

Vs

Thahirabanu

RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 2 MadWN(Civil) 475 : (2016) 2 TNMAC 67

Hon'ble Judges : Nooty Ramamohana Rao and S.S. Sundar, JJ.

Bench : Division Bench

Advocate : R. Shivasankari for S. Srinivasa Raghavan, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—This Civil Miscellaneous Appeal is preferred by the Insurance Company calling in question the correctness of the quantum of Compensation awarded by the Motor Accident Claims Tribunal, Ramanathapuram, in M.C.O.P. No. 28 of 2011.

2. The relevant facts are that on 14th September 2009, at about 6:00 a.m, the deceased, who was working with one of the local Colleges at Adirampattinam, as a Professor in Chemistry was proceeding on his two wheeler when the offending vehicle, a Tipper Lorry (earth moving vehicle) caused the fatal accident resulting in instantaneous death of the deceased. The deceased was in prime of his life as by the time of his premature death he was of 46 years age. His wife and his three children of whom two are of young age and the mother of the deceased are the Claimants and they sought for payment of Compensation of Rupees One Crore. In support of their claim, PW1 to PW3 were examined and the documents Exs.P1 to 18 were also exhibited. The First Respondent in the M.C.O.P was the owner of the offending vehicle, which is insured with the Second Respondent. It is the Second Respondent, who has contested the M.C.O.P. but no documentary evidence has been let in on behalf of the said Insurance Company. It is also

relevant to notice that none has been examined as witness on behalf of the Second Respondent-Company either.

3. PW2 was an Eyewitness to the entire accident. He was driving another car at that time and has witnessed the rash and negligent manner in which, the offending vehicle - Tipper Lorry was driven by its Driver. Incidentally, PV2 is the one who lodged the Complaint with the nearest Police Station bringing to their notice about the accident that had taken place. PW2 has been extensively cross-examined, but, however nothing has been extracted from him to contradict his presence at that hour on the road. This apart, when the Police after investigation laid the Charge-sheet against the Driver of the offending vehicle for causing the death of the deceased, PW2 herein was cited as the de facto Complainant even in the Criminal case. Thus, PW2 was not only a neutral individual but also present at the time of the accident occurred. There is no contra evidence on record to doubt his presence at the place where accident occurred.

4. In view of the truthful deposition as to how the accident was caused as narrated by PW2, the Tribunal has returned the finding of fact that the accident has been caused due to the negligent driving of the offending vehicle by its Driver.

5. The learned Counsel appearing for the Appellant made a vain attempt to discredit those findings of fact recorded by the Tribunal. But, however, once we have gone through the deposition of PW2, the same certainly inspires confidence in our mind for the truthfulness of the account. In that view of the matter, the findings of fact recorded by the Tribunal cannot be interfered with, more so, in the absence of any contra material.

6. A serious attempt was made by the learned Counsel appearing for the Appellant to discredit the Judgment in the matter of fixation of Compensation. PW3, the Principal of the College, wherein the deceased was teaching the subject of Chemistry, has been examined by the Claimants. The Principal, being the Pay Disbursing Officer of the Institution, has rightly, based upon Ex. P7, Salary Certificate has deposed as to how much the deceased was paid as remuneration for the month of August 2009 i.e. few days prior to the fatal accident. The Tribunal was, therefore, right in placing reliance on Ex.P7. However, the Tribunal has ignored to take into account the fact that the salary of the deceased has been revised to Rs. 75,300 per month, which has been effected in January 2010. The only ground for rejecting these amounts, is that the revision of salary took place after the death of the individual. Though such a reason is hardly a satisfactory one, for declining to take the same into account and consideration, but none the less the Tribunal has rightly taken into account and consideration the corresponding Multiplier "13" available under Schedule-II to the Motor Vehicle Act and worked out the total Compensation amount payable as Rs. 58,56,421.

7. The learned Counsel appearing for the Appellant would contend that the

income of the deceased should not have been taken completely by the Tribunal for the purpose of determining the Compensation payable due to the accidental death of a man. In this regard, all that we have to point out is that the Tribunal has taken into account and consideration the pre-revised salary of Rs. 41,635 only and thereafter, it has deducted certain amounts towards his personal expenditure and taking into consideration the bright prospects of the deceased to progress in life before his eventual retirement, 30% of his earnings have been worked out as future incremental growth factor and thereafter, worked out the total Compensation, which included a sum of Rs. 50,000 towards Loss of Consortium to the First Claimant/wife and a sum of Rs. 1,00,000 towards Loss of Affection, guidance and parental help from the deceased, for the two minor children. Going by the fact that the deceased is a Professor of Chemistry, the Compensation awarded to the two minor children is not an unreasonable amount. On the other hand, we have considered that the Tribunal had adopted a conservative scale in awarding such amount in spite of the father himself was working as Professor in a local College and it is not unreasonable for one to expect that certainly his children would have received guidance in a far more effective and meaningful way, than many other parents may have provided. Thus, awarding a sum of Rs. 50,000 each to the two minor children of the deceased towards loss of parental guidance from the deceased is a fair and reasonable component.

8. Since we have not found anything erroneous in the calculation of working out the quantum of Compensation payable to the Claimants, we see no merit in this Appeal and accordingly, we have no hesitation to dismiss it at the admission stage. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is dismissed.