

(2013) 11 MAD CK 0240
In the Madras High Court
Case No : C.M.A. No. 946 of 2012

M/s Iffco Tokkiyo General Insurance Co. Ltd.

APPELLANT

Vs

C. Suganandam

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2014) 1 TNMAC 350

Hon'ble Judges : R. Sudhakar and Pushpa Sathyanarayana, JJ.

Bench : Division Bench

Advocate : Mr. M.B. Raghavan, Advocate, for the Appellant; Mr. Krishnaprasad for M/s Sarvabhauman, Associates, for the Respondent No. 1 to 3

Final Decision : Dismissed

Judgement

Pushpa Sathyanarayana, J.—Challenging the Award dated 28.9.2011 passed by the Motor Accidents Claims Tribunal (Principal District Judge), Vellore, in M.C.O.P. No. 434 of 2008, M/s Iffco Tokkiyo General Insurance Co. Ltd. has preferred this appeal.

2. The brief facts giving rise to the filing of this Civil Miscellaneous Appeal are as follows:-

The claim arises out of a fatal accident. On 13.12.2007, at about 6 pm, while the deceased Arul Prakash, who was employed as Sales Executive in M/s Kotak Mahindra Life Insurance Company at Chennai, was proceeding in his Bajaj Pulsar Motorcycle bearing Registration No. TN-10 H 3993, near I.R.T. Bus Stop in 100 ft. Road, Tharamani, Chennai, a Mahindra Champion Load Van bearing Registration No. TN - 07 AF 3088, belonging to the Fifth Respondent and insured with the Appellant Insurance Corporation, which was coming in the opposite direction, driven by the Fourth Respondent in a rash and negligent manner, dashed against the said Arul Prakash due to which he sustained multiple grievous injuries all over the body and he was taken to Athipaty Hospital in Velachery where he was declared dead. A Criminal Case was registered in J-3 Guindy Traffic Investigation

(Saidapet Range) in FIR No. 542/S2/07 u/s 304(A) IPC.

3. The deceased was of 29 years and was survived by his father and two sisters. They have filed Claim Petition claiming compensation of a sum of Rs.50,00,000/-.

4. The claim was resisted by the Insurance Company by filing counter denying the allegations made by the claimants. The income of the deceased and the manner of accident were also denied by the Insurance Company further stating that the claim is excessive.

5. Before the Tribunal, the first claimant-father of the deceased examined himself as P.W.1 besides examining one Senthilnathan, another motor-cyclist, who was following the deceased, as P.W.2 and marked Exs. P.1 to P.5 in support of the claim. On the side of the Insurance Company, no witnesses were examined and no document was marked.

6. The Tribunal, on consideration of the oral and documentary evidence adduced by the parties, held that the accident had occurred only due to the rash and negligent driving of the van. The Tribunal calculated the compensation by taking the monthly salary of the deceased as Rs.26,000/- and considering the future prospects of the deceased, it added a sum of Rs.15,600/- and thus calculated the annual income at Rs.3,12,000/- + 15,600/- = 4,68,000/- and since the deceased was a bachelor on the date of accident, after deducting 50% towards the personal and living expenses of the deceased, it arrived at the contribution to the family as Rs.2,34,000/- per annum. Considering the age of the First Claimant-father of the deceased, the Tribunal adopted the multiplier 8 and arrived at the loss of income to the family as Rs.18,72,000/-. Adding compensation under other heads, Tribunal awarded total compensation of Rs.18,90,000/-. The compensation awarded by the Tribunal under various heads is as follows:-

Loss of dependency

Rs. 18,72,000 /-

Loss of Estate

Rs. 10,000/-

Transportation

Rs. 3,000/-

Funeral expenses

Rs. 5,000/-

Total

Rs.18,90,000/-

Feeling aggrieved, Insurance Corporation has preferred this appeal.

7. In this appeal, the quantum of compensation alone is challenged before this Court. The points that arise for consideration in this Appeal are:-

(i) Whether the quantum of compensation arrived at by the Tribunal is correct?

(ii) To what relief the claimants, viz., Respondents 1 to 3 are entitled?

8. It is not necessary for us to narrate entire facts in detail as to how the accident occurred and who was negligent and who is liable to pay compensation since all these aspects are recorded in favour of Claimants. They are not in dispute and only the quantum of compensation is under challenge by the Appellant-Insurance Company.

Point No. 1:-

9. The deceased was aged 29 years on the date of accident on 13.12.2007 and he was working as an Assistant Manager in Kotak Mahindra Old Life Insurance, Chennai. The father and two sisters are the claimants. P.W.1 states that the deceased was working as an Assistant Manager in Kotak Mahindra Old Life Insurance and was earning Rs.3,20,000/- annually. The Employment Certificate issued by the Company with salary particulars is marked as Ex.P.2. Though the gross salary is stated as Rs.3,20,000/-, as per the Salary Certificate, the deceased was drawing Rs.26,609/-, which has been rounded off to Rs.26,000/- and as such, the annual income is computed as Rs.3,12,000/-. The deceased was a permanent employee of the Insurance Company and following "Rule of Thumb" laid down by the Hon'ble Supreme Court in *Sarla Verma v. Delhi Transport Corporation* reported in (2009) 6 SCC 121, 50% of the annual salary should be added to the monthly income towards future prospects. As admittedly, the deceased was less than 48 years old, considering the future prospects of the deceased, the annual income would be Rs.3,12,000/- + Rs.15,600/- = Rs.4,68,000/-. The deceased who was a bachelor and expected to have spent 50% for his personal and living expenses, 50% should be deducted, which would be Rs.2,34,000/-. The First Claimant - father alone is the dependant of the deceased since the Claimants 2 and 3, who are the sisters, seem to have married and living outside country. The father of the deceased, viz., the first Claimant, was 58 years old at the time of accident. Considering his age, the choice of multiplier is to be determined by the age of the deceased to that of the claimant, whichever is higher. Following the *Sarla Verma* case (cited supra), this Court adopts the multiplier of 8. Therefore, the total loss of income to the family due to the death of the deceased would be Rs.2,34,000/- X 8 = Rs.18,72,000/-. The amounts awarded by the Tribunal on the other heads, viz., Rs.10,000/- towards loss of estate, Rs. 3,000/- towards transportation and Rs.5000/- for the funeral expenses, as well as the apportionment of the amounts for the claimants 1 to 3 are not disputed and hence, they are maintained as ordered by the Tribunal.

10. Though it is contended by the learned counsel for the Appellant that the deceased was employed in a Private Sector Company, still it is a permanent job, the yardstick adopted by the Tribunal cannot be said to be wrong and the First

Claimant being the only dependant of the deceased, the multiplier adopted and the computation of income of the deceased as made by the Tribunal, does not warrant any interference.

11. There is no dispute in respect of the interest granted by the Tribunal at 7.5% p.a.. Point No. 2 is answered accordingly.

Point No. 2:-

12. Since the finding of the Tribunal is based on evidence on record, we are of the view that the Award passed by the Tribunal does not warrant any interference by this Court. Hence, the Appeal fails and the same is dismissed confirming the Award passed by the Tribunal. There will be no order as to cost in this appeal.

13. This Court, by conditional order dated 26.4.2012 in M.P. No. 1 of 2012, directed the Appellant to deposit the entire amount awarded by the Tribunal. Subsequently, by order dated 26.9.2012 in M.P. No. 2 of 2012, the Claimants were permitted to withdraw 50% of the Award amount apportioned to their respective shares. In view of the same and since the Appeal preferred by the Insurance Company has been dismissed by this Court, the Claimants / Respondents 1 to 3 are permitted to withdraw the balance Award amount as per the apportionment ordered by the Tribunal and confirmed by this Court.