

(2012) 02 MAD CK 0085

In the Madras High Court

Case No : C.M.A. No. 2551 of 2010 and M.P. No. 1 of 2010 and Cross Objection No. 14 of 2012

M/s. National Insurance Company Ltd. Kangeyam, Erode District C/o. Regional Office Stock Exchange Building No. 683-686, Trichy Road Coimbatore - 641005

APPELLANT

Vs

Rajeswari and Others
Rajeswari and Others Vs M/s. National Insurance Company Ltd. Kangeyam, Erode District C/o. Regional Office Stock Exchange Building No. 683-686, Trichy Road Coimbatore - 641005, R. Pothiraj and M. Arumugam

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Citation : (2012) 02 MAD CK 0085

Hon'ble Judges : S. Vimala, J;R. Banumathi, J

Bench : Division Bench

Advocate : N. Vijayaraghavan for Respondent No. 1 C.M.A. No. 2551 of 2010 and M.P. No. 1 of 2010, N. Vijayaraghavan in C.M.A. No. 2551 of 2010 and M.P. No. 1 of 2010 and Mr. Akbar Row in Cross Objection No. 14 of 2012, for the appearing parties; Akbar Row For Respondents 1 to 5. in Cross Objection No. 14 of 2012 and Mr. N. Vijayaraghavan for Respondent No. 1 C.M.A. No. 2551 of 2010 and M.P. No. 1 of 2010, Akbar Row in Cross Objection No. 14 of 2012, for the Respondent

Judgement

S. Vimala, J.—The appeal in C.M.A. No. 2551 of 2010 has been filed by the Insurance Company challenging the quantum of

compensation awarded to the claimants. The claimants are the legal representatives/dependants of the deceased-Muthupandi. In the appeal, the

claimants 1 to 5 are arrayed as respondents 1 to 5. The respondents 1 and 2 before the Tribunal are respondents 6 and 7 in the appeal and as they

remained exparte before the Tribunal, notice has been dispensed with.

2. The brief facts of the case are as follows:-

The deceased-Muthupandi, who was aged 34 years, an Industrialist/Proprietor of the Industry, running the business in the name and style of M/s.

Sri Ganapathi Engineering Works and earning a sum of Rs. 37,902/-, met with an accident on 26.07.2008, while he was riding his TVS XL Super

Moped registration No. TN-38R-9266. He was hit by the lorry bearing Registration No. HR.47A 4141, which was driven by the 6th respondent

in a rash and negligent manner. The deceased suffered crush injury and died instantly. The wife, the minor daughter and son, father and mother of

deceased have filed the claim petition, claiming a compensation of Rs. 40,00,000/-.

3. The Insurance Company contested the claim on the grounds that:-

a) the question of indemnifying the insured would arise only if there is no violation of terms and conditions of the insurance policy and therefore, the

claimants have to prove that there is no violation of terms and conditions of the policy;

b) the deceased, who was driving TVS XL Super Moped TN-38R-9266 did not possess any valid driving licence. As the deceased himself is the

tortfeasor in having acted in violation of road traffic Rules and having been responsible for the accident, the legal heirs are not entitled to make any

claim;

c) the manner of accident and involvement of the insured vehicle in the accident were not admitted; and

d) the age, occupation, income of the deceased and the reasonableness of quantification of Rs. 40,00,000/- as compensation have to be justified

by the claimants.

4. Before the Tribunal, on behalf of the claimants, the wife of deceased has been examined as PW1 and one Jayakanthan has been examined as

PW2 and Exs.P1 to P12 have been marked. On the side of the respondents i.e., Insurance Company - appellant herein, driver and owner of

accident vehicle, no evidence has been adduced.

5. The Tribunal on consideration of evidence, has given a finding that the accident took place solely due to the rash and negligent driving of the

lorry driver. The third respondent - insurer (appellant herein) had been directed to pay the award amount of Rs. 17,22,500/- as compensation with

pro-cost and interest at the rate of 7.5% per annum, within a period of two months from the date of award. The details of compensation awarded

by the Tribunal are furnished hereunder:

Sl. No. Heads Amount awarded by

the Tribunal

1 Loss of dependency 1700000

2 Transport charges 1000

3 Damages to clothing and articles 1500

4 Funeral expenses 5000

5 Loss of consortium 5000

6 Loss of happiness and Love and affection 10000

Total 1722500

Challenging the quantum of compensation awarded under the above heads, now, the Insurance Company has preferred this appeal.

6. It is the contention of the Insurance Company that the Tribunal has adopted the multiplier of "17" ignoring the decision of the Supreme Court

and grossly erred in fixing the dependency at Rs. 1,00,000/- per annum without any credible proof or basis. In order to appreciate this contention,

it is necessary to look into the factual details with regard to the age, earnings and avocation of the deceased.

7. Being dissatisfied with the award of compensation, claimants have preferred Cross Objection in Cross Objection No. 14 of 2012. Learned

counsel for claimants would contend that for the financial year 2007-2008, deceased was getting Rs. 1,64,708/- as annual income, but the

Tribunal has taken the income only at Rs. 10,000/- per month, which is very low and thus pray for enhancement.

8. Admittedly, deceased was an Industrialist running an industry in the name and style of Sri Ganapathy Engineering Works at Coimbatore. His age

according to Ex.P2 Post Mortem Certificate was 34. As per Ex.P11-Income Tax Return, his earnings during the assessment year 2006-2007 was

Rs. 1,26,806/- and as per Ex.P12- Income Tax Return for the subsequent year i.e. 2007-2008, the income was Rs. 1,64,708/-. The deceased

admittedly was a PAN Card holder. The Tribunal has arrived at the total annual income at Rs. 1,20,000/- per annum based upon Ex.P11-Income

Tax Return, under which his earnings during the assessment year 2006-2007 was Rs. 1,26,806/.

In 2009 (1) TNMAC 629 (SC) Oriental Insurance Company Limited Vs. Deo Patodi and Others, The Supreme Court has held as follows:

Indisputably deduction of 1/3rd towards personal expenses is the ordinary rule in India. The concept of joint family unlike the western countries

where it has been wholly evaporated, although on the decline, should also be taken into consideration."

If the ratio laid down in the above case is applied to the facts of the case, then, it is evident that deduction of one third towards personal expenses

is not without exception. The deceased had lived in the joint family. He has been supporting the family consisting of five dependents.

9. Therefore, the Tribunal has very fairly deducted only 1/6th of the total income towards the personal income of the deceased having regard to the

existing five dependents. It is a normal practice to deduct either 1/2 or 1/3rd towards personal expenses. However, in this case as there are large

number of dependents, the Tribunal has deducted only 1/6th towards personal expenses. Therefore, the annual loss of dependency estimated at

the rate of Rs. 1,00,000/- cannot be said to be excessive.

10. At the time of death, deceased Muthupandi was aged 34 years. Adopting multiplier "17" in respect of age group between 30- 35, the Tribunal

has quantified the compensation in respect of loss of dependency at Rs. 17,00,000/-.

11. The Tribunal has awarded Rs. 5,000/- for loss of consortium. Considering the age of the first claimant, who lost her husband at the young age

of 33 years, Rs. 30,000/- is awarded for loss of consortium. The Tribunal has awarded Rs. 1,000/- towards transport charges and the same is

enhanced to Rs. 5,000/-. Tribunal has awarded Rs. 1,500/- for damages to clothing and articles and the same is enhanced to Rs. 5,000/-. Tribunal

has awarded Rs. 5,000/- for funeral expenses and the same is enhanced to Rs. 10,000/-. Tribunal has awarded Rs. 10,000/- for loss of happiness

and love and affection. We feel that the amount of Rs. 10,000/- awarded by the Tribunal for loss of happiness and love and affection is on the

lower side. The 2nd and 3rd claimants have lost their father at the very young age of 14 years and 11 years. Likewise, claimants 4 and 5/parents of

deceased have lost the support, comfort and love and affection of their son. The Tribunal has awarded only Rs. 10,000/- towards loss of love and

affection, which, we feel, is very much on the lower side and the same is enhanced to Rs. 1,00,000/-. The total compensation of Rs. 17,22,500/-

awarded by the Tribunal is enhanced to Rs. 18,50,000/- and the enhanced compensation amount of Rs. 1,27,500/- shall be apportioned equally

amongst claimants 1 to 5.

12. The Tribunal has considered the oral and documentary evidence in proper perspective and calculated the loss of dependency at Rs.

17,00,000/-. So far as the conventional damages, the same is enhanced as stated above in paragraph No. 12. In the result, the compensation

amount of Rs. 17,22,500/- awarded by the Tribunal in M.C.O.P.No. 65 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial

Magistrate Court), Coimbatore is enhanced to Rs. 18,50,000/-. The Appellant-Insurance Company is said to have deposited the compensation

amount of Rs. 17,22,500/- awarded by the Tribunal along with accrued interest. The appellant Insurance Company is directed to deposit the

enhanced compensation of Rs. 1,27,500/- with accrued interest within a period of six weeks from today. As per the order dated 27.10.2010, the

appellants 1, 4 and 5 have already withdrawn 50% of the compensation awarded by the Tribunal. Therefore, the claimants 1, 4 and 5 are

permitted to withdraw the balance compensation amount along with accrued interest payable to them along with their respective share of enhanced

compensation. In so far as the compensation payable to the minor claimants 2 and 3, the same shall be invested in Nationalised Bank. The 2nd

claimant, who was aged 14 years at the time of filing claim petition in 2009, is permitted to withdraw the compensation amount along with accrued

interest on attaining majority. So far as the compensation amount payable to the 3rd claimant, the same shall be invested in Nationalised Bank from

out of which the 1st claimant is permitted to withdraw interest once in three months directly from the Bank.

With the above observation, C.M.ANo. 2551 of 2010 filed by the Insurance Company is dismissed. Enhancing the compensation to Rs.

18,50,000/-, the Cross Objection filed by the claimants in Cross Objection No. 14 of 2012 is allowed in part. However, there is no order as to

costs. Consequently, connected Miscellaneous Petition stands closed.