

(2016) 04 MAD CK 0001
In the Madras High Court
Case No : C.M.A. No.2832 of 2014

M/s. New India Assurance Co. Ltd.

APPELLANT

Vs

V. Subashri

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Citation : (2016) 1 TNMAC 661

Hon'ble Judges : Mr. Huluvadi G. Ramesh and Mr. K. Ravichandra Baabu, JJ.

Bench : Division Bench

Advocate : Mr. J. Chandran, Advocate, for the Appellant; Mr. Varadakamaraj for Mr. K. Suryanarayanan, Advocates, for the Respondent Nos. 1 to 3; No Appearance, for the Respondent No. 4

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—The appellant/Insurance Company has filed this appeal challenging the award passed in M.C.O.P.No.4068 of 2011, dated 14.11.2013 on the file of Motor Accident Claims Tribunal, (VI Judge) Small Causes Court, Chennai.

2. It is a case of fatal accident. On 17.08.2011 at about 09.15 hours, while the deceased V.Rajagopal was riding his motor cycle from south to north on the East Coast Road near Kottivakkam, the bus bearing Registration No.TN 21 AB 9229, proceeding in the same direction driven in a rash and negligent manner, came from behind and dashed against the motor cycle in which the deceased was riding, due to which, the deceased suffered grievous injuries and died on the spot. A case was registered against the driver of the bus.

3. The claimants filed a claim petition in M.C.O.P.No.4068 of 2011 seeking compensation of Rs.80,00,000/-. In support of the claim, P.Ws.1 to 3 were examined and Exhibits P.1 to P.12 were marked. On behalf of the appellant/ Insurance Company, neither any witness was examined nor any document was marked.

4-5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.

Head

Amount granted by the Tribunal

1

Loss of Dependency

Rs.96,78,576/-

2

Transport to Hospital

Rs. 11,424/-

3

Funeral Expenses

Rs. 25,000/-

4

Loss of Love and Affection

Rs. 75,000/-

5

Loss of Amenities in life & Loss of Estate

Rs. 5,00,000/-

6

Loss of Consortium

Rs. 2,00,000/-

7

Loss of Expectation of Life

Rs. 10,000

Total

Rs.1,05,00,000/-

6. Insofar as the issue regarding negligence is concerned, the learned counsel for the appellant/Insurance Company has no serious objection and therefore the finding of the Tribunal on the question of negligence is confirmed. The appellant

is aggrieved only with regard to the quantum of compensation awarded by the Tribunal.

7. The learned counsel for the claimants submitted that the deceased Rajagopal was working as a Senior Consultant at HCL Technologies Ltd., Chennai and earning Rs.1,00,000/- per month. It is further submitted that considering the salary certificate of the deceased and other documentary evidence, the Tribunal has awarded the compensation as above and therefore, no interference is called for with the quantum of compensation awarded by the Tribunal.

8. On the other hand, the learned counsel appearing for the appellant/Insurance Company contended that the compensation of Rs.1,05,00,000/- awarded by the Tribunal is on the higher side and prayed for reduction of compensation on all heads.

9. Heard the learned counsel on either side and perused the materials available in the typed set of documents.

10. When the matter was taken up, learned counsel appearing for the appellant/insurance company placed before the Court a working sheet showing the compensation that would be just and reasonable and is within the claim made by the claimants before the Tribunal. Learned counsel appearing for the appellant/insurance company submitted that they are questioning the quantification of the compensation as made by the Tribunal only on the ground of "loss of amenity life & loss of estate" and "loss of dependency". Learned counsel submitted that the amount awarded under the head "loss of dependency" is on the higher side and the same may be modified in a sum of Rs.74,80,000/-. On the award of compensation of Rs.5,00,000/- under the head "Loss of Amenity Life & Loss of Estate", it is submitted that in view of the quantification of compensation under the head "Loss of Dependency", this Court may consider rejecting the amount awarded under the head "Loss of Amenity Life & Loss of Estate".

11. It was also pointed out by the learned counsel for the appellant/insurance company that the amount awarded towards "Transportation to Hospital" also is on the higher side and submitted that this Court consider modifying the amount in a sum of Rs.7,000/-, which would be just and reasonable.

12. When this Court pointed out that the amount awarded under the head "Loss of Love and Affection" is on the lower side, learned counsel appearing for the appellant/insurance company submitted that they are willing to enhance the compensation under the above head to Rs.1,00,000/- per claimant. In all, it is submitted that a sum of Rs.3,00,000/- may be awarded under the head "Loss of Love & Affection".

13. On the above quantification, this Court heard the learned counsel appearing for the claimants, who submitted that the claim made by the claimants was in a sum of Rs.80,00,000/-, since the first claimant is aged just 23 years and had hardly been married to the deceased for a year and that she has lost all the

moral support, care and affection and has been put to great loss. It is further submitted that the parents have also lost their only son and have been put to great mental turmoil. Therefore, it is submitted by the learned counsel for the claimants that the claimants would be willing to settle the matter if a sum above what has been claimed by them is ordered by this Court.

14. Learned counsel for the appellant/insurance company submitted that the working sheet given by them has taken into consideration the claim made by the claimants and they have quantified the amount above Rs.80,00,000/-.

15. Accordingly, as agreed by the learned counsel on either side, this Court feels that a lumpsum amount of Rs.74,80,000/- be paid by the appellant/insurance company to the claimants in lieu of "Loss of Dependency". Further, the sum of Rs.11,424/- as ordered by the Tribunal under the head "Transportation to Hospital" is modified in a sum of Rs.7,000/-. Under the head "Love and Affection", each of the claimants are entitled to a sum of Rs.1,00,000/- each, totalling Rs.3,00,000/-. Insofar as the compensation awarded under the head "Loss of Consortium", this Court is of the considered opinion that a sum of Rs.1,00,000/- could be awarded which would be a just and reasonable compensation. The amount awarded under the head "Funeral Expenses" is confirmed. Insofar as the compensation awarded towards "Loss of Amenities in life and Loss of Estate", this Court is of the opinion that a sum of Rs.1,00,000/- could be awarded, which would meet the ends of justice. Insofar as the compensation awarded towards "Loss of Expectation of Life", this Court is not inclined to award any amount and hence, the same is rejected. Accordingly, the award passed by the Tribunal is modified as under :-

Sl. No.

Head

Amount granted by the Tribunal

Amount granted by this court

1

Loss of Dependency

Rs.96,78,576/-

74,80,000/-

2

Transport to Hospital

Rs. 11,424/-

7,000/-

3

Funeral Expenses

Rs. 25,000/-

25,000/-

4

Loss of Love and Affection

Rs. 75,000/-

3,00,000/-

5

Loss of Amenities in life & Loss of Estate

Rs. 5,00,000/-

1,00,000/-

6

Loss of Consortium

Rs. 2,00,000/-

1,00,000/-

7

Loss of Expectation of Life

Rs. 10,000

Total

Rs.1,05,00,000/-

80,12,000/-

16. The Civil Miscellaneous Appeal is allowed as follows:

(i) The award of the Tribunal is modified to Rs.80,12,000/- from Rs.1,05,00,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition in M.C.O.P.No.4086/2011 till the date of deposit.

(iii) This Court by order dated 24.09.2014 directed the appellant /Insurance Company to deposit 50% of the award amount along with proportionate accrued interest and cost and further permitted the claimants to withdraw 50% from the amount so deposited. In view of the compensation, being modified by this court as above, the appellant/Insurance company is directed to deposit the balance

amount of compensation along with interest within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount, as apportioned by the Tribunal, by filing appropriate application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of the application.

(v) There will be no order as to costs in this appeal.