(2013) 09 MAD CK 0230

In the Madras High Court

Case No : C.M. A.No. 360 of 2010, Cross Objection No. 74 of 2012 and M.P. No. 1 of 2010

M/s. Oriental Insurance Co. Ltd. — APPELLANT

Vs

M. Ravi Adaikalavan, R. Sivakumar and N. Murugesan
M. Ravi Adaikalavan Vs M/s. Oriental Insurance Co. Ltd., R. Sivakumar and N. Murugesan — RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0230

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : J. Chandran in CMA No. 360 of 2010 and Mr. K. Varadha Kamaraj in Cross Objection No. 74 of 2012, for the Appellant; K. Varadha Kamaraj, for R. 1 in CMA No. 360 of 2010 and Mr. J. Chandran, for R. 1 in Cross Objection No. 74 of 2012, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Subbiah, J.—Questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Additional Subordinate Judge), Coimbatore, dated 26.6.2006 made in M.C.O.P.No. 669 of 2001, the Insurance Company has preferred the appeal in C.M.A.No. 360 of 2010. Seeking enhancement of compensation, the claimant preferred cross objection in Cross Objection No. 74 of 2012. The claim was made by the victim M. Ravi Adaikalavan, represented by his next friend and guardian wife R.A. Deivanai for the injuries sustained by him in the accident that had occurred on 5.6.1999 involving a lorry bearing Registration No. TN 28 E 8937, which was insured with the appellant insurance company.

2. The brief facts are, that on 5.6.1999, the victim M. Ravi Adaikalavan was driving a maruti car bearing Registration No. TN 38 A 3465 from Coimbatore to Trichy accompanied by his wife and two minor children. While proceeding so, in

the opposite direction, a lorry came in a rash and negligent manner and hit the car from wrong side, due to which the victim and his wife sustained injuries. So far as the victim M. Ravi Adaikalavan is concerned, he had sustained severe head injuries, apart from sustaining fractures on his right hand and also on hip bone. On account of the injuries sustained by him, the victim has lost his memory and hence, he has filed the claim petition represented by his wife, claiming a sum of Rs. 35,00,000/- as compensation.

3. Resisting the claim, the insurance company filed a counter stating that the accident was due to the rash and negligent act of the victim and therefore, they are not liable to pay any compensation. The insurance company also denied the age, occupation and income of the victim.

4. Before the Tribunal, R.A. Deivanai, the wife of the victim examined herself as P.W.1. Dr. Sekhar was examined as P.W.2 and one Danushkodi, the Manager, Human Resources Development, K.G. Information Systems (P) Ltd., was examined as P.W.3 and one Manickam, the owner of the car was examined as P.W.4. On the side of claimant, Exs. P.1 to P.59 were marked. On the side of the insurance company, the Driver of the lorry was examined as R.W.1 and no document was marked.

5. Upon consideration of the oral and documentary evidence, the Tribunal has come to the conclusion that the accident was due to the negligence of the lorry driver and fixed the entire liability on the part of the driver of the lorry. Consequently, the Tribunal directed the insurance company to pay the compensation amount. So far as the quantum of compensation is concerned, the Tribunal has awarded a total sum of Rs. 32,45,000/- as compensation. The details of the compensation awarded by the Tribunal under different heads are as follows:-

Aggrieved over the award passed by the Tribunal, the appellant insurance company has preferred the appeal in C.M.A.No. 306 of 2010, stating that the Tribunal has awarded exorbitant amounts under different heads, which resulted in awarding a huge sum of Rs. 32,45,000/- as compensation and therefore, a proper reduction has to be made in the amounts awarded by the Tribunal under different heads. Seeking enhancement of the compensation, the victim has filed the cross objection through his wife.

6. Since the appeal as well as the cross objection has been filed only questioning the quantum of compensation, we are not dealing with the other aspects of the award.

7. Learned counsel appearing for the appellant/insurance company has submitted that the doctor, who was examined as P.W.2 on the side of the victim, assessed the total disability suffered by the victim as 60% and with regard to the loss of earning power, he has assessed the same as 40%. But, the Tribunal, while awarding the amount under the head of loss of income, has fixed a sum of Rs. 1,20,000/- per annum and by applying the higher multiplier of 20, has awarded

an exorbitant sum of Rs. 24,00,000/- without apportioning the amount in proportion to the percentage of the disability suffered by the victim. Therefore, the amount awarded by the Tribunal under the head of loss of earning power needs proper modification. Learned counsel appearing for the appellant insurance company has also submitted that the amounts awarded under the other heads are also on the higher side and the same has to be re-assessed.

8. Per contra, learned counsel appearing for the cross objector/victim submitted that due to the head injury sustained by the victim, he has lost his memory. Now, he is not in a position to carry on any avocation. He is leading only a vegetative state of life. In fact, this Court has referred the victim to Medical Board to assess his disability. The medical report received by this Court would show that the victim cannot do any avocation in future. Under such circumstances, there is no need to interfere with the award amount.

9. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

10. The victim M. Ravi Adaikalavan is a B.E. graduate in Electrical and Electronics. He has also passed the Advanced Diploma Course in Computer Maintenance Engineering, Diploma course in Desk Top Publishing, IBM Mainframe Course and IBM AS/400 course. Few days prior to the accident, i.e., on 27.5.1999, he got an appointment order from KG Information Systems (P) Ltd., Coimbatore. Due to the accident, he did not join the said job. Further, because of the loss of memory, he is not in a position to do any avocation. In this regard, on the side of the victim, the Manager, Human Resources Development, K.G. Information Systems (P) Ltd., was examined as P.W.3. He has stated in his evidence that his company issued an appointment order to the victim on 27.5.1999 and the monthly salary was Rs. 20,500/-. Since he met with the accident, he did not join the said job. But the Tribunal has taken only a sum of Rs. 10,000/- as monthly income and by applying the multiplier of 10, awarded a sum of Rs. 1,20,000/- as loss of income. But, according to the insurance company, the Tribunal, while awarding the amount under the head of loss of earning power, has fixed a sum of Rs. 1,20,000/- per annum and by applying the higher multiplier of 20, has awarded an exorbitant sum of Rs. 24,00,000/- without apportioning amount in proportion to the percentage of the disability suffered by the victim. On a perusal of the medical report submitted by the Medical Board before this Court, we find that the disability suffered by the victim was assessed as 60%. But on a perusal of the said report we find that the said 60% is only with reference to the physical disability. In the said report, it has been stated that the petitioner is suffering from mental impairment, organic personality disorder and organic amnesia syndrome. Therefore, considering the nature of disability mentioned in the report filed by the Medical Board, we are of the opinion that carrying on any avocation by the victim M. Ravi Adaikalavan is almost diminished. In this situation, we are of the view that there is no need to apportion the amount awarded under the head of loss of earning power in

proportion to the disability assessed by P.W.3. However, we find that while making calculation under the head of loss of earning capacity, the Tribunal has adopted the higher multiplier of 20. Considering the age of the victim, who was 30 years at the time of accident, the correct multiplier that has to be adopted in this case is only 17. Therefore, by applying the multiplier of 17, the amount awarded by the Tribunal could be modified, to arrive at a just and proper compensation under the head of loss of earning power. If a sum of Rs. 1,20,000/- is fixed as loss of income per annum and if multiplier 17 is applied, then total loss of earning power works out to Rs. 20,40,000/- (1,20,000 X 17). Hence, the sum of Rs. 24,00,000/- awarded by the Tribunal under the head of loss of earning power is hereby reduced to Rs. 20,40,000/-. A sum of Rs. 60,000/- awarded under the head of permanent disability is hereby set aside. A sum of Rs. 20,000/- awarded under the head of mental agony is converted into one under the head of attendant charges since no amount was awarded under the head of attendant charges. Except this modification, the award amount is confirmed in all other aspects. Consequently, the sum of Rs. 32,45,000/- awarded by the Tribunal is hereby reduced to Rs. 28,25,000/- and the details of the same are hereunder:-

11. Thus, the quantum of compensation awarded by the Tribunal i.e., Rs. 32,45,000/- is reduced to Rs. 28,25,000/- and the same is payable with interest at the rate of 7.5% per annum.

12. In the result, the civil miscellaneous appeal is partly allowed. Consequently, the cross objection is dismissed. No costs. Connected miscellaneous petition is closed. The appellant insurance company is directed to deposit the balance amount after deducting the amount that has already been deposited by them with proportionate interest at the rate of 7.5% per annum within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the injured victim/claimant is permitted to withdraw the entire amount with proportionate interest.