(2013) 03 MAD CK 0098

In the Madras High Court

Case No : C.M.A. (MD) No. 1567 of 2010

M/s. The New India Assurance Company Limited — APPELLANT

Vs

R.S. Amutha and Others — RESPONDENT

Date of Decision : 11-03-2013

Acts Referred:

Citation : (2013) 03 MAD CK 0098

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Judgement

C.S. Karnan, J.—The appellant/second respondent-New India Assurance Company has preferred the present appeal against the judgment

and decree passed in M.C.O.P. No. 2797 of 2000, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court,

Fast Track Court-I, Tiruchirappalli. The short facts of the case are as follows:-

The petitioners, who are the wife, children and mother of the (deceased) Selvakumar have filed the claim in M.C.O.P. No. 2797 of 2000, claiming

compensation of a sum of Rs. 24,00,000/- from the respondents for the death of the said Selvakumar in a motor vehicle accident. It was submitted

that on 17.01.2000, at about 7 p.m., when the (deceased) Selvakumar was riding his ''Suzuki'' motorcycle bearing registration No. TN-45-L-

0607, on the Trichy to Mannachanallur road, and proceeding on the extreme left of the road, the first respondent''s tourist bus bearing registration

No. TN-55-0023, driven at a high speed and in a rash and negligent manner dashed behind the motorcycle. As a result, the (deceased) had fallen

down and the tourist bus ran over him and also hit against a cyclist, viz., Murugan, who was proceeding in front of him. As a result, the (deceased)

Selvakumar sustained grievous injuries and fracture of bones and died on the spot. At the time of accident, the (deceased) was running a hotel and

restaurant and earning a sum of Rs. 25,000/- per month. Hence, the petitioners have filed the claim against the first and second respondents, who

are the owner and insurer of the bus bearing registration No. TN-55-0023.

2. The second respondent, in his counter has submitted that the accident was not caused due to any rash and negligent driving of the bus as alleged

in the claim and was only due to the negligence of the motorcyclist, who had suddenly tried to take his vehicle across the road. The averments in

the claim regarding age, income and occupation of the deceased was also not admitted. It was submitted that the claim was excessive.

3. The Motor Accidents Claims Tribunal had framed two issues for consideration in the case, viz.,

(i) Was the accident caused by the negligence of the first respondent''s bus driver?

(ii) What is the quantum of compensation which the petitioners are entitled to get?

4. On the petitioners side, the first petitioner, Amudha was examined as P.W. 1 and seven documents were marked as Exs. P1 to P7, viz., Ex.

P1-copy of F.I.R., dated 17.01.2000, Ex. P2-copy of postmortem report dated 18.01.2000, Ex. P3-driving licence of Selvakumar, Ex. P4-copy

of partnership deed entered into between one Venkataraman and Selvakumar dated 28.03.1991, Ex. P5-copy of sale deed given in favour of

Selvakumar by one Abdul Hamid Rawnthar dated 30.09.1991, Ex. P6-sale deed in favour of Raman Reddiar and others given by Saroja dated

11.10.1989, Ex. P7-copy of family ration card for the year 1998-2003. On the respondents side, no witness, no documents.

5. P.W. 1, Amudha had adduced evidence that on 17.01.2000, when her husband Selvakumar was riding his motorcycle bearing registration No.

TN-45-L-0607, from Trichy towards Mannachanallur and when he was proceeding on the extreme left of the Kollidam bridge, the first

respondent''s bus bearing registration No. TN-55-0023, coming in the opposite direction and driven at a high speed and in a rash and negligent

manner had dashed against the motorcycle and that, in the result, her husband had fallen down and the bus had then run over the hip of her husband and had also dashed against a cyclist. It is seen on scrutiny of Ex. P1, F.I.R., that based on the complaint given by one Venkatesan, a

criminal case had been filed against the first respondent''s bus driver. The Tribunal on observing that no documentary or oral evidence had been let

in on the part of the respondent''s side, to rebut the claim regarding manner of accident and on scrutiny of evidence of P.W. 1 and Ex. P1, held that

the accident had been caused by the rash and negligent driving by the driver of the first respondent''s bus.

6. On scrutiny of Ex. P2, postmortem report and Ex. P3-driving licence, the Tribunal observed that the deceased''s age was between 35 and 39

years. P.W. 1, in her evidence had deposed that her husband was running hotels at Trichy and Mannachanallur and earning Rs. 25,000/- per

month. She deposed that her husband and his father were partners of Hotel Sarathi and that out of the income of her husband, she had purchased

a house valued at Rs. 1,90,000/- (Ex. P5), and that her husband, his father Raman Chettiar, and his wife, and brothers had purchased a house

valued at Rs. 4,50,000/- as per Ex. P6. She deposed that after the death of her husband, the income coming from the Co-operative firm had been

stopped. She deposed that her husband was an income tax assessee. The Tribunal, on considering the oral and documentary evidence held that the

deceased could have earned a monthly income of Rs. 7,000/-, on deducting 1/3rd of this for his personal expenses and on adopting a multiplier of

''16'', the Tribunal awarded a sum of Rs. 8,96,000/- as compensation to the petitioners under the head of ''loss of income'' (Rs. 7,000 x 2/3 x 12 x

16); Rs. 20,000/- was awarded to the first petitioner under the head of ''loss of consortium'' and Rs. 15,000/- was awarded to the petitioners

under the head of ''loss of love and affection; Rs. 5,000/- was awarded for funeral expenses. In total, the Tribunal awarded a sum of Rs.

9,36,000/- as compensation to the petitioners and directed the first and second respondents to jointly and severally deposit the said sum together

with interest at the rate of 7.5% per annum from the date of filing the petition till the date of deposit of compensation, with costs, within two months

from the date of its order.

7. Aggrieved by the award passed by the Tribunal, the second respondent/New India Assurance Company Limited, Dharmapuri has preferred the

present appeal.

8. The learned counsel for the appellant has contended in his appeal that the Tribunal erred in fixing the monthly income of the deceased as Rs.

7,000/- per month without any acceptable evidence, when there is no proof for avocation and income. It was contended that the Tribunal failed to

note that the claimants are getting Rs. 5,000/- as income from the alleged hotel business even after the demise of the deceased and consequently,

the Tribunal has failed to note that the income of the deceased was only Rs. 5,000/- per month as the income tax returns which were not marked.

It was contended that the award of Rs. 8,96,000/- towards loss of income and Rs. 20,000/- towards consortium, Rs. 15,000/- towards love and

affection and Rs. 5,000/- for funeral expenses are high and excessive. Hence, it was prayed to set-aside the award passed by the Tribunal.

9. The learned counsel for the claimants has submitted that the first claimant is the young widow of the deceased and the second and third

claimants are minor children of the deceased and the fourth claimant is the aged mother of the deceased. All are depending upon the income of the

deceased. The deceased was getting multiplier income from various business sources, like, hotel business and through a partnership firm and in

order to prove his source of income, documents for purchase of house properties had been produced. As such, it was proved that the deceased

was earning not less than Rs. 15,000/- per month. But, the Tribunal had fixed the income of the deceased as Rs. 7,000/- without assigning any

valid reasons. Regarding negligence, F.I.R. has been registered against the driver of the offending vehicle, i.e., tourist bus. Therefore, the claimants

have proved the case against the Insurance Company and only then the Tribunal had awarded the compensation, which is reasonable.

10. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the

impugned award of the Tribunal, this court does not find any discrepancy in the conclusions arrived at regarding liability. However, the quantum of

compensation is on the higher side. The claimants have not produced relevant documents to prove the income of the deceased. This Court is of the

further view that the partnership deed, sale deed and another sale deed in the name of the father of the deceased marked by the claimants as proof of income are not relevant documents to prove the income of the deceased. These documents only show that the claimants have assets. Therefore,

the income of the deceased fixed as Rs. 7,000/- per month, by the Tribunal, especially considering that the accident had happened in the year

2000, is on the higher side. Therefore, this Court, on holding that the income of the deceased is Rs. 6,000/-, restructures compensation as

follows:-

Rs. 7,68,000/- is awarded under the head of ''loss of income'' (Rs. 6,000 x 2/3 x 12 x 16); Rs. 10,000/- is awarded under the head of ''loss of

consortium to the first claimant''; Rs. 10,000/- is awarded to each of the claimants 2, 3 and 4 under the head of loss of love and affection; Rs.

10,000/- is awarded towards funeral expenses. In total, this Court awards Rs. 8,18,000/- to the claimants as compensation as it is found to be

appropriate in the instant case. The rate of interest, i.e. 7.5% per annum fixed by the Tribunal, remains unaltered. The first claimant is apportioned

a sum of Rs. 2,80,000/- with accrued interest; the fourth claimant is apportioned a sum of Rs. 68,000/- with accrued interest; the second claimant

is apportioned a sum of Rs. 2,35,000/- with interest and the third claimant is apportioned a sum of Rs. 2,35,000/- with interest.

11. As per Court records, it is seen that the entire compensation amount has been deposited and that out of the said compensation amount, the

first claimant was permitted to withdraw a sum of Rs. 2,50,000/- with accrued interest.

12. Now, it is open to the first and fourth claimants, to withdraw their apportioned share amount with accrued interest, as modified by this Court,

lying in the credit of M.C.O.P. No. 2797 of 2000, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast

Track Court-I, Tiruchirappalli, after filing a Memo, along with a copy of this order, subject to deduction of withdrawals made, as per this Court''s

earlier order. Likewise, the appellant/Insurance Company is at liberty to withdraw the excess compensation amount with interest thereon, after

filing a Memo.

13. This Court directs the learned Additional District and Sessions Court, Fast Track Court-I, Tiruchirappalli, to deposit the apportioned share

amount of the minor claimants 2 and 3 in their name, as modified by this Court, in a nationalized bank, as fixed deposit, under the cumulative

deposit scheme, till they attain the age of the major and hand over the fixed deposit certificates to the first claimant, i.e., the mother of the minor. In

the result, the above appeal is partly allowed. Consequently, the order passed in M.C.O.P. No. 2797 of 2000, on the file of the Motor Accidents

Claims Tribunal, Additional District and Sessions Court, Fast Track Court-I, Tiruchirappalli, dated 23.09.2008 is modified. There is no order as

to costs.