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(2011) 04 MAD CK 0391

In the Madras High Court

Case No : C.M.A. No. 1736 of 2007 and M.P. No. 1 of 2008

N. Jayanthi, Vignesh Aravind and Saravana Santhosh — APPELLANT

Vs

P. Kumarasamy, National Insurance Company Limited and The Director of Agriculture — RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 171
Penal Code, 1860 (IPC) — Section 279, 304(A), 337, 338

Citation : (2011) 3 TAC 449

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : G. Rajan, for the Appellant; J. Chandran, for R2, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Appellants/Claimants have preferred the present Civil Miscellaneous Appeal as against the Award, dated 22.02.2003 in M.C.O.P. No. 853 of 1999, passed by the Motor Accident Claims Tribunal/Principal District Judge, Tiruvannamalai.

2. The Claims Tribunal/Learned Principal District Judge, Tiruvannamalai, while passing the impugned Award, dated 20.02.2003 in M.C.O.P. No. 853 of 1999, has among other things observed that ''the Appellants/Claimants are entitled to receive a compensation of Rs. 3,02,000/-together with interest at 9% per annum from the date of filing of the petition till date of realisation, payable by the Respondents 1 and 2, jointly and severally and resultantly, passed an Award thereto.

3. Being dissatisfied with the quantum of Award passed by the Claims Tribunal/ Learned Principal District Judge, Tiruvannamalai in MCOP No. 853 of 1999, the Appellants/Claimants as an aggrieved persons have projected this Civil Miscellaneous Appeal before this Court.

4. The Appellants/Claimants in the present Civil Miscellaneous Appeal have claimed enhanced compensation as against the Award dated 20.02.2003 in MCOP No. 853 of 1999 passed by the Claims Tribunal/Principal District Judge, Tiruvannamalai.

5. According to the Learned Counsel for the Appellants/Claimants, the Award passed by the Claims Tribunal/Learned Principal District Judge, Tiruvannamalai in MCOP No. 853 of 1999, dated 20.02.2003, is contrary to law, evidence and probability of the case.

6. The Learned Counsel for the Appellants/Claimants submitted that the tribunal has committed a grave error in arriving at the income of the deceased Sivanandam and also that it failed to take note of the fact that the total income received by the deceased Sivanandam has been at Rs. 4,199/-per month (as a Government employee).

7. The Learned Counsel for the Appellants/Claimants urges before this Court that the Tribunal has arrived at a monthly dependency of a sum of Rs. 2,00,000/-, ignoring the Ex.A.8 Salary Certificate relating to the deceased Sivanandam.

8. The main contention advanced on behalf of the Appellants/ Claimants is that the deceased Sivanandam had been alive, he would have earned an annual income of Rs. 50,388/-. Considering the fact that he had 18 years of service and accordingly, the loss of income works out to Rs. 9,06,984/-after deducting 1/3 towards personal expenses of the deceased Sivanandam, then, the Appellants/ Claimants are entitled to a sum of Rs. 6,04,656/-which has not been taken into consideration by the tribunal while passing the impugned award.

9. Lastly, it is the contention of the Learned Counsel for the Appellants/Claimants that the tribunal should have considered the promotional chance of the deceased and the age of the Appellants. Since the tribunal has not adverted to the material, factual aspects of the matter in a proper and real perspective, it has caused serious prejudice to the Appellants/Claimants resulting in miscarriage of Justice.

10. The Claimants/Appellants are the wife and children of the deceased Sivanandam. The deceased Sivanandam was working as a Record Clerk in the third Respondent office. On 06.02.1999, he and others went to Vandavasi on official duty. They were returning to Tiruvannamalai in Tax Jeep vehicle. On the way to Tiruvannamalai at about 05.00pm, on 06.02.1999, at Thozupadu Bridge, G.S.T. Road, (Chennai to Thindivanam Road), the first Respondent''s Lorry was coming from opposite direction and the driver of the lorry drove the vehicle in a rash and negligent manner in a high speed without control over his vehicle and dashed against the jeep, resulting in the death of four persons and caused grievous injuries to the driver of the jeep and two other persons. The accident had happened due to the rash and negligence driving of the first Respondent''s vehicle driver. The offending lorry was insured with the second Respondent/ Insurance Company. Hence, they were liable to pay the compensation jointly and

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severally to the Appellants/Claimants. The third Respondent is the Owner of the Tax Jeep in which the deceased Sivanandam and other employees were traveling at the time of the accident.

11. PW3 (Jeep driver) in his evidence has deposed that the accident has taken place on 06.02.1999 at about 05.00pm and that he has driven the jeep bearing Registration No. TN-07-G-0232 and on the date of the accident, he has been returning to Tiruvannamalai from Vandavasi and after crossing the Bridge, at the opposite direction, the Lorry came and dashed against their jeep and the lorry driver came at a fast speed dashed against the jeep and that he sustained injuries on his chest resulting in crushing of four bones at his heart and a surgery has been done on his left hand upper portion and the plate has been fixed. Ex.A.1 is the First Information Report. The Achirupakkam Police have registered a Criminal case in Crime No. 37 of 1999 under Sections 279, 337, 338 and 304(A) of IPC against K. Selvaraj, the driver of the lorry bearing Registration No. TCE 9646.

12. A charge sheet has been laid against the lorry driver before the Learned Judicial Magistrate, Maduranthagam. The charge sheet is Ex.A.19. The Motor Vehicle Report in respect of both the vehicles have been marked as Ex.A.2 and Ex.A.3. In view of the fact that PW3 (jeep driver) has given the cogent, convenience and clear cut evidence as to the manner and mode of occurrence viz., that the offending lorry driver had hit against the Tax jeep on 06.12.1999 at about 05.00pm and in view of the fact that the Motor Vehicle Inspector has opined that the accident is not due to any mechanical defects in both the vehicles and also because of the fact that the charge sheet has been laid against only the offending lorry driver as per Ex.A.19, this Court comes to an inevitable conclusion that the accident has taken place due to the rash and negligent act of the offending lorry driver K. Selvaraj, bearing Registration No. TCE 9646 and that is squarely held responsible for the happening of the accident and the point is answered accordingly.

13. It is to be noted that the rate of interest awarded by the Motor Accident Claims Tribunal must be a reasonable and just one depending upon the facts and circumstances of each case. Factors like spiraling rise in prices of Essential Commodities, inflation, change of Economy and policy adopted by the Reserve Bank of India from time to time will have to be taken into consideration by the Motor Accident Claims Tribunal, while awarding interest to the damages/ compensation.

14. Section 171 of the Motor Vehicles Act speaks of the power of a tribunal to direct that in addition to the amount of compensation simple interest shall also to be paid at such rate and from such date not earlier than the date of making the claim as may be satisfied in this behalf.

15. It is to be remembered that interest is not awarded as damages but the same is granted only for being let out of money which should have been paid to

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the claimants. It takes care relating to the period between the date of claim and the final payment of compensation. Also, not awarding interest to an enhanced compensation will be a cruel blow to the Claimants, who have lost their sole bread winner of the family.

16. The Appellants/Claimants in the claim petition have claimed a total compensation of Rs. 8,00,000/-payable by the first and second Respondents. At the time of the death of the deceased Sivanandam, his age has been mentioned as 40 years in the claim petition by the claimants. But, in Ex.A.7 Postmortem Certificate in respect of the deceased Sivanandam, his age has been mentioned as about 30 years. The deceased Sivanandam has been the sole bread winner of the family. The Appellants/Claimants after the death of Sivanandam have lost their bread winner.

17. The first Appellant/first Claimant is the wife of the deceased Sivanandam and the second and third Appellants/Claimants are the sons of Late. Sivanandam. The first Appellant/first Claimant''s age viz., PW2 has been mentioned as 41 in the preamble portion of her deposition. She has stated in her evidence that her husband deceased Sivanandam''s age at the time of his death has been at 39 years. In view of the fact that PW2, wife of the deceased Sivanandam herself stated in her evidence that her husband''s age at the time of the death has been at 39 years and since in the petition, his age has been mentioned as 40 years, this Court in the absence of any concrete evidence by means of a document determines the age of Sivanandam at the time of his death as 40 years. The income of the deceased Sivanandam, as per Ex.A.8 Salary Certificate, has been shown as Rs. 4,199/-per month. Therefore, this Court takes the monthly salary of the deceased Sivanandam at the time of the death @ Rs. 4,200/- (as a rounded off figure). Since at the time of the death, Sivanandam''s age has been determined as 40 years, this Court adopts the multiplier of 15 as per the Second Schedule to Section 163-A of the Motor Vehicles Act. Out of the monthly salary of Rs. 4,200/-per month, if Sivanandam had been alive, then, he would have taken 1/3 viz., Rs. 1,400/-towards his personal expenses and deducting this Rs. 1,400/-per month towards personal expenses, the monthly dependency income of the family works out to Rs. 2,800/- (Rs. 4,200 - 1,400 = 2800/-). Per year, the amount works out to Rs. 2,800/-x 12 =33,600/-. By adopting 15 multiplier, then, it works out to Rs. 33,600/-x 15 = 5,04,000/- (Rupees five lakhs and four thousand only) (including the no fault liability), to which sum the Appellants/ Claimants are entitled to receive compensation for the death of Sivanandam. Towards funeral expenses, this Court awards a sum of Rs. 2,000/-and towards Loss of Estate, this Court grants a sum of Rs. 2,500/-. Also, this Court awards Rs. 5,000/-towards loss of consortium to the first Appellant/first Claimant. Thus, the Appellants/Claimants in all are entitled to receive a total compensation of Rs. 5,13,500/-for the death of Sivanandam. The trial Court has awarded a sum of Rs. 3,02,000/-as compensation to the Appellants/Claimants together with interest at 9% per annum from the date of filing of the petition till date of payment. Apart from this amount awarded by the Tribunal, this Court holds that

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the Appellants/Claimants are entitled to receive the enhanced balance compensation of Rs. 2,11,500/- (Rs. 5,13,500 - 3,02,000 = 2,11,500/-) (Rupees two lakhs eleven thousand and five hundred only) together with interest only at the rate of 6% per annum from the date of claim petition till the date of realisation payable by the second Respondent/Insurance Company on behalf of the first Respondent/ owner of the offending Lorry.

18. Lawyer''s Fee for enhanced compensation is determined at Rs. 8,730/- to be paid by the second Respondent/Insurance Company.

19. The second Respondent/Insurance Company is directed to deposit the enhanced compensation to the credit of MCOP No. 853 of 1999 on the file of the Motor Accident Claims Tribunal viz., the Principal District Judge, Tiruvannamalai, within a period of two months from the date of receipt of a copy of this order. On such deposit being made, it is open to the Appellants/Claimants to receive the enhanced compensation in equal terms by filing necessary application before the Claims Tribunal as per Rule 166 of the Civil Rules of Practice. The said application is directed to be disposed of by the tribunal in any event within a period of two weeks from the date of filing of the said application, of course, after providing opportunity to other side, if situation so necessitates.

20. M.P. No. 1 of 2008 is closed. In view of the closure of M.P. No. 1 of 2008 by this Court, if the Appellants/Claimants are entitled to receive any balance compensation (if not already withdrawn) towards their share amount, they are entitled to receive the same from the Tribunal in accordance with the Award dated 20.02.2003 in MCOP No. 853 of 1999, then, it is open to the Appellants/ Claimants to file necessary Interlocutory Application before the Tribunal and to seek redressal of their grievance in the manner known to law.

Accordingly, the Civil Miscellaneous Appeal is allowed in above terms, leaving the parties to bear their own costs.

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