(2016) 03 MAD CK 0083

In the Madras High Court

Case No : C.M.A. No. 4171 of 2008

National Insurance Co. Ltd.	APPELLANT
Vs	
Chokkalingam and Others	RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Citation : (2016) 03 MAD CK 0083

Hon'ble Judges : R. Sudhakar and S. Vaidyanathan, JJ.

Bench : Division Bench

Advocate : N. Vijayaraghavan, for the Appellant; A.R. Suresh, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Sudhakar, J.—1. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/claimants.

2. The appellant/insurer of the vehicle has filed the appeal challenging the Award dated 24.06.2008 passed by the Motor Accident Claims Tribunal (Principal District Judge), Namakkal, made in M.C.O.P. No. 1291 of 2002.

3. It is a case of fatal accident. On 09.06.2002, at about 6.30. a.m. while the deceased Om Prakash was riding his TVS Suzuki Motor Cylce bearing Registration No. TN 34 A 1118, along with his brother Vilwaraj, at Kumaramangalam to Thiruchengode Main Road, near Andikkadu Diversion Road, a Tipper Lorry bearing Registration No. TN 53 U 1029 came in a rash and negligent manner and dashed against the motor cycle of the deceased, as a result, the deceased was thrown out and sustained multiple injures. Immediately, the deceased was taken to the Government Hospital at Tiruchengode and thereafter to C.K. Hospital at Erode and again to K.G. Hospital, Coimbatore, where he died on 25.6.2002. Hence, the claimants, who are father, aged 50 years, mother, 44 years and sister, aged 25 years of the deceased, have filed claim petition claiming a sum of Rs. 45,00,000/- as compensation. According to the claimants, the deceased Om

Prakash was a leading agent in United India Insurance Company Limited and also owner of one Export Tailoring Unit in Kumarapalayam and was earning a sum of Rs. 35,000/- per month.

4. In support of the claim petition, the mother of the claimant was examined as P.W.1; Vilwarasa, brother of the deceased and also injured claimant in M.C.O.P. No. 1150 of 2002 was examined as P.W.2; Rajarathnam, Regional Officer, United India Insurance Co. Ltd. was examined as P.W.3; Dr. Sivalingam, was examined as P.W.4; Dr. Krishnasamy was examined as P.W.5; Dr. Sekar, was examined as P.W.6 and Dr. M. Rajeswari was examined as P.W.7 and Exs.P-1 to P-26 were marked, the details of which are as follows:-

5. On the side of the respondents, no witnesses were examined, however, Ex.R1 - Ex. Servicemen Identity Card (Xerox) and Ex.R2 - Pension Certificate (Xerox) were marked.

6. The Tribunal based on the oral evidence of witnesses, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant-Insurance Company to refute the evidence as to the rash and negligent driving of the tipper lorry, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the tipper lorry, and therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads:-

7. In all, the Tribunal awarded a compensation of Rs. 40,10,000/= with interest at the rate of 7.5% from the date of claim petition till the date of payment/ deposit excluding the period from 15.3.2005 to 24.6.2007. Aggrieved by the said award, the insurer of the Tipper Lorry is before this Court by filing this appeal.

8. Learned counsel appearing for the appellant-Insurance Company submitted that the income fixed by the Tribunal is on the higher side and the deduction towards personal expenses, i.e., 1/3rd is incorrect, as the deceased is a bachelor. Per contra, it is submitted by the learned counsel for the claimants that the sister of the deceased is a special child and dependent on the income of the deceased. P.W.7 - Dr. Rajeswari was examined to assess the mental status of the sister of the deceased and she deposed about the mental condition of the sister of the deceased. A certificate in this regard has also filed before the Tribunal, which was marked as Ex.P.26. Hence, the Tribunal is correct in deducting 1/3rd towards personal expenses of the deceased and therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, on a perusal of the order, this Court is of the considered opinion that the multiplier adopted by the Tribunal is incorrect. As per

the dictum of the Honourable Apex Court in Sarla Verma - v. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC), the correct multiplier is 18. Hence, the multiplier adopted by the Tribunal is modified to 18.

10. With regard to the contention of the learned counsel appearing for the appellant that monthly income fixed by the Tribunal is on the higher side, it is seen that the Tribunal, after taking into consideration the TDS deducted by the insurance company for the period from 4.12.2001 to 31.3.2002 fixed the contribution of the deceased to the family at Rs. 2,50,000/- per annum. Taking note of the commission statement with regard to the payment of commission by the Insurance Company, which is a variable factor, we can at best, discern with the possible income of Rs. 15,000/- per month. Taking note of his future prospects, 50% of the monthly income can be granted.

11. As far as the contention of the learned counsel appearing for the Insurance Company that since the deceased was a bachelor and hence, 50% should be deducted towards personal expenses, it is seen from the order of the Tribunal, that the sister of the deceased, who is a special child, is dependent on the income of the deceased. P.W.7 - Dr. Rajeswari, who deposed about the mental condition of the sister of the deceased, states that the sister of the deceased has suffered from constant mental disorder and would require medical treatment throughout her life. Therefore, as per the dictum laid down by the Honourable Apex Court in Sarla Verma - v. -Delhi Transport Corporation, , 2009(2) TNMAC 1 (SC), that if the family of the bachelor is dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

12. In view of the above, since the sister of the deceased is a special child, which was proved by the evidence of P.W.7, the doctor, who assessed the child and deposed that she requires medical treatment throughout the life, the Tribunal is correct in fixing the contribution of the deceased to the family at 2/3rd.

13. Insofar as the argument advanced by the learned counsel for the appellant that no amount have been deducted under the head of income tax is concerned, a perusal of the order of the Tribunal reveals that the Tribunal had not deducted any amount towards income tax. Hence, after deducting 10% towards income tax, the monthly income along with future prospects comes to Rs. 20,250/- (Rs. 15,000/- + Rs. 7,500/-=Rs. 22,500/- - 10% = 20,250/-). Accordingly, the loss of income to the family is Rs. 20,250/- x 12 x 18 x 2/3 = Rs. 29,16,000/-.

14. Accordingly, the compensation awarded by the Tribunal is modified as hereunder:-

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above modification as follows:

"(i) The award of the Tribunal granting compensation to the tune of Rs.

40,10,000/- is reduced to Rs. 32,71,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) This Court by order dated 21.01.2009, directed the appellant/Insurance Company to deposit a sum of Rs. 10,00,000/- and thereafter, by order dated 22.1.2010, permitted the claimants to withdraw a sum of Rs. 5,00,000/- from and out of the amount deposited and the balance amount should be invested in the Nationalised Bank on reinvestment plan.

(iv) Learned counsel appearing for the appellant seeks time to deposit the balance award amount now ordered by this Court.

(v) The appellant is granted eight weeks time to deposit the balance award amount with interest and costs as ordered by this Court.

(vi) On such deposit being made, a sum of Rs. 10,00,000/- shall be deposited in the name of the sister of the deceased in the same bank on which deposit has already been made for a period of three years under reinvestment scheme, which shall be renewed periodically till the life time of the sister of the deceased.

(vii) The father and mother of the deceased are permitted to withdraw the balance amount along with interest and costs.

(viii) the mother of the special child, viz., Kowsalya is permitted to withdraw the interest accrued on such deposit once in three months directly from the bank.

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

