

(2013) 10 MAD CK 0178

In the Madras High Court

Case No : C.M.A. No. 2419 of 2010, Cross Objection No. 95 of 2013 and M.P. No. 1 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

M. Shanmugham and Others
M. Shanmugham and Others Vs National Insurance Co. Ltd., Sakthivel and P. Balamurugan

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0178

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

Bench : Division Bench

Advocate : N.B. Sureka in C.M.A. No. 2419 of 2010 and Mr. T.P. Manokaran in Cross Objn. No. 95 of 2013, for the Appellant; T.P. Manokaran for R. 1 to R. 5 in C.M.A. No. 2419 of 2010 and Ms. N.B. Sureka for R. 1 in Cross Objn. No. 95 of 2013, for the Respondent

Judgement

R. Subbiah, J.—Being aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal and Additional District Court, Fast Track Court No. 4, Bhavani, Erode District in M.C.O.P. No. 397 of 2004, by an award dated 27.6.2008, the insurance company has filed the appeal in C.M.A. No. 2419 of 2010. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed Cross Objection No. 95 of 2013 in the appeal filed by the insurance company for enhancement of the compensation amount.

2. For the sake of convenience, the parties are referred to as they are referred in C.M.A. No. 2419 of 2010.

3. Respondents 1 to 5 in this appeal are the father, mother, wife, minor daughter and minor son respectively of the deceased S. Saravanan, who had died in the accident that had occurred on 24.8.2004.

4. It is the case of the claimants before the Tribunal that on 24.8.2004 at about 8.30 a.m., when the deceased S. Saravanan was riding a TVS Suzuki Motor Cycle

bearing registration No. TN 34 9498 from Erode to Komarapalayam on the NH 47 Road, (Chithode to Sankagiri) and when he was riding over the Cauveri river bridge, a 407 Tempo bearing registration No. TAE 1144 insured with the appellant insurance company, came from the opposite direction in a rash and negligent manner and dashed against the motor cycle in which the said S. Saravanan was riding and thus, caused the incident, due to which he sustained fracture injuries. Immediately, he was taken to Lotus Hospital. On account of the injuries sustained by him, he fell into coma. Since the victim S. Saravanan was taking treatment in an unconscious stage, the claim petition was filed through the third respondent herein, who is the wife of the victim, claiming a sum of Rs. 25,00,000/- as compensation. Subsequently, during the pendency of the said claim petition, the victim had died on 27.9.2005 in the coma stage itself. Thereafter, the legal heirs of the deceased viz., respondents 1 to 5 herein impleaded themselves and prosecuted the claim petition.

5. Resisting the claim petition, the insurance company has filed a counter stating that the accident is the result of rash and negligent driving of the two wheeler by the victim S. Saravanan and the driver of the insured vehicle cannot be held responsible for the said accident. The insurance company has also denied the age, occupation and income of the deceased. Further, in the counter affidavit, it has been stated that the compensation claimed under various heads are imaginary and unsustainable. Thus, the counter affidavit sought for the dismissal of the claim petition.

6. In order to prove the claim, on the side of the claimants, one Yasodha, the wife of the deceased examined herself as P.W. 1 and one Sreedhar was examined as P.W. 2 and Dr. John Gurupatham was examined as P.W. 3 and one Sivalingam was examined as P.W. 4. On the side of the claimants, 17 documents were marked as Exs. P. 1 to P. 17. On the side of the respondents, no evidence was adduced.

7. The Tribunal, after analysing the entire evidence, both oral and documentary, came to the conclusion that the accident is the result of rash and negligent driving of the driver of the 407 Tempo bearing registration No. TAE 1144 insured with the appellant insurance company. By coming to such a conclusion, the Tribunal has assessed the compensation under different heads and awarded a sum of Rs. 19,75,756/- as compensation.

8. Now, questioning the quantum of compensation awarded by the Tribunal, the appeal in C.M.A. No. 2419 of 2010 has been filed by the insurance company. Similarly, the claimants have filed Cross Objection No. 95 of 2013 seeking enhancement of compensation awarded by the Tribunal.

9. It is the submission of the learned counsel appearing for the appellant insurance company, that the Tribunal has fixed a sum of Rs. 9,000/- as monthly income of the deceased, but, absolutely no documentary evidence was produced by the claimants before the Tribunal to prove that the deceased was earning a

sum of Rs. 9,000/- per month. Hence, by fixing a lesser sum as monthly income of the deceased, the amount awarded by the Tribunal under the head of loss of income has to be modified. Further, the learned counsel appearing for the appellant insurance company has submitted that it is the case of the claimants that the deceased was earning income by doing agricultural operations and finance business. So far as the agricultural operations are concerned, even after the demise of the deceased, his family members can carry on the agricultural operations. Therefore, on that account, absolutely there is no loss of income and hence, the amount awarded by the Tribunal under the head of loss of income has to be modified.

10. Per contra, learned counsel appearing for the claimants submitted that in order to prove the income of the deceased, on the side of the claimants, the partnership deed was marked as Ex. A. 16 and the Tribunal, while fixing the monthly income of the deceased, by placing reliance upon Ex. A. 16, fixed a sum of Rs. 9,000/- as monthly income of the deceased as against the claim of Rs. 20,000/- per month. With regard to this contention, by inviting the attention of this Court to the evidence of P.W. 1, the wife of the deceased, learned counsel appearing for the claimants has submitted that after the demise of the deceased, the family is not in a position to carry on the agricultural operations and therefore, there is a heavy loss of income to the family of the deceased and by considering these aspects, the Tribunal ought to have fixed a sum of Rs. 20,000/- as monthly loss of income. Therefore, by fixing a sum of Rs. 20,000/- as monthly income, the amount awarded by the Tribunal has to be enhanced.

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

12. We find that it is the case of the claimants before the Tribunal that the deceased was doing finance business and was also carrying on agricultural operations and earning a sum of Rs. 20,000/- per month. In order to prove the income of the deceased, only the partnership deed was marked as Ex. A. 16. Except Ex. A. 16, no other tangible evidence was produced before the Tribunal to prove the monthly income of the deceased. Under such circumstances, we are of the opinion that a sum of Rs. 9,000/- fixed by the Tribunal as monthly income of the deceased is on the higher side and hence, a sum of Rs. 5,000/- could be fixed as monthly income of the deceased from the finance business. Further, from the evidence available on record, we find that the deceased was owning agricultural lands. Ex. A. 13, which are the chitta and adangal in respect of the said agricultural lands, would show that the deceased was owning agricultural lands and doing agricultural operations. It is contended by the learned counsel appearing for the appellant insurance company that even after the demise of the said S. Saravanan, his family members can carry on the agricultural operations. However, at the same time, we find that had the deceased been alive, he would have taken care of the agricultural operations in the managerial position by doing supervision. In view of the death of the deceased, the family would definitely find

it difficult to carry on agricultural operations on their own. Therefore, on this account, some addition has to be made in the monthly income of the deceased along with the income earned from the financial business. In our considered opinion, a sum of Rs. 2,500/- could be fixed in addition to the income from the finance business. Thus, a total sum of Rs. 7,500/- (Rs. 5,000/- (+) Rs. 2,500/-) could be fixed as the monthly income of the deceased. Since the dependants are five in number, 1/4th of the amount could be deducted from the monthly income of the deceased towards personal expenses as per the dictum laid down by the Hon"ble Supreme Court, in the case of Sari a Verma (Smt.) and others v. Delhi Transport Corporation and another reported in (2009) 6 Supreme Court Cases 121, and if 1/4th amount is deducted, it works out to Rs. 5,625/- (Rs. 7,500/- (-) Rs. 1,875/-). Hence, a sum of Rs. 5,625/- is fixed as the monthly loss of income to the family. The deceased was aged about 41 years at the time of accident and the correct multiplier that has to be applied is 15. If so, the total loss of income works out to Rs. 10,12,500/- (Rs. 5,625/- x 12 x 15).

13. Further, the Tribunal has not awarded any amount towards pain and suffering. Considering the fact that the deceased was unconscious from the date of accident i.e., 24.8.2004 till the date of death i.e., 27.9.2005, a sum of Rs. 50,000/- could be awarded under the head of pain and suffering to the claimants considering the long duration of the treatment undergone by the deceased at coma stage. Under such circumstances, there is no need for reducing the amount of Rs. 10,80,000/- awarded by the Tribunal under the head of loss of income.

14. Further, a sum of Rs. 6,20,756/- awarded towards medical expenses was supported by the medical bills and the same is hereby confirmed. The Tribunal has awarded a sum of Rs. 1,00,000/- towards loss of love and affection. Considering the fact that the third claimant has lost her husband and the minor children had lost their father at their tender age, the amount awarded under the head of loss of love and affection cannot be said to be an excessive one. The Tribunal has also awarded a sum of Rs. 1,00,000/- towards attendant charges. Considering the fact that the deceased was under coma stage for nearly one year, the amount awarded under the head of attendant charges also cannot be said to be an excessive one.

15. That apart, the Tribunal has also awarded a sum of Rs. 50,000/- towards loss of consortium, a sum of Rs. 5,000/- towards funeral expenses, a sum of Rs. 20,000/- towards transport charges and those amounts are very reasonable and therefore, there is no scope for reducing the said amounts.

16. Considering the above facts and circumstances, we are of the opinion that there is no need to interfere with the amount awarded by the Tribunal.

17. In fine, the award dated 27.6.2008 passed by the Motor Accident Claims Tribunal and Additional District Court, Fast Track Court No. 4, Bhavani, Erode District in M.C.O.P. No. 397 of 2004 is confirmed and C.M.A. No. 2419 of 2010 and Cross Objection No. 95 of 2013 are dismissed. No costs. Consequently,

connected miscellaneous petition is closed. It is represented that the insurance company has already deposited the entire compensation amount awarded by the Tribunal along with accrued interest. Hence, claimants 1 to 3 are permitted to withdraw their shares along with interest. So far as the minors are concerned, since their shares were already deposited in a nationalised bank, the mother of the minors, namely, the third claimant herein is permitted to withdraw the accrued interest on the minors' deposit once in three months directly from the bank until they attain majority.