

(2011) 04 MAD CK 0402

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1713 of 2010 and M.P. No. 1 of 2010

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Sulochana and N. Prabhakaran

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0402

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

Bench : Single Bench

Advocate : J. Chandran, for the Appellant; M. Selvam, for R1, for the Respondent

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant/National Insurance Company Limited against the award and decree passed in M.C.O.P. No. 933 of 2007, dated 24.02.2010, on the file of Motor Accident Claims Tribunal, Principal District Judge at Krishnagiri, on awarding a compensation a sum of Rs. 5,74,000/- with interest at the rate of 6% per annum.

2. The short facts of the case are as follows:

On 16.01.2005, the deceased, his mother and brother were standing at the Sappadi bus stop at Hosur to Krishnagiri National Highways Road, when at that point of time, the first Respondent's lorry bearing registration No. KA01-D-1121, driven by its driver in a rash and negligent manner from Krishnagiri towards Hosur and hit the deceased, as a result, he had sustained grievous injuries and died on the spot. Hence, the claim petition filed against the Respondents for compensation a sum of Rs. 20,00,000/- with interest.

3. The second Respondent/National Insurance Company had filed a counter statement and resisted the claim petition. The Respondent stated that the offending lorry was not registered with the Insurance Company and the lorry has not having valid records to operate the vehicle on the public road. However, the driver of the lorry was not in possession of valid driving licence. The age, income and occupation of the deceased are denied. Actually, on 16.01.2003, the

deceased had attempted to cross the road all of a sudden and invited the said accident. The driver of the lorry had driven the vehicle with due caution and a moderate speed. The Respondent further submitted that the claim amount a sum of Rs. 20,00,000/- is on the higher side.

4. On the plea of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Whether the accident took place due to the rash and negligent driving of the driver of the first Respondent's vehicle?

(ii) Whether the Respondents are liable to pay compensation? If so, what is the quantum of compensation the Petitioner is entitled to receive?

5. On the side of the claimant three witnesses had been examined viz., PW1-claimant, PW2-eyewitness, PW3-employer of the deceased.

6. PW1 had adduced evidence stating that on 16.01.2005 she and her two sons were standing on the extreme mud portion of the road and at that time, the first Respondent's lorry bearing Registration No. KA01-D-1121 driven by its driver in a rash and negligent manner from Krishnagiri towards Hosur and dashed against the deceased, as a result, he had succumbed to his injuries on the spot. PW2-eyewitness is corroborated to the evidence of PW1 regarding the accident. PW1 further adduced evidence stating that at the time of accident her son age was 27 years and was working as Manager-cum-Engineer in HUJA Industries at Hosur and was earning a sum of Rs. 7,500/- per month. PW3 employer of the deceased had adduced evidence stating that the deceased was working at his company from 06.11.2003 to 15.01.2005 and he gave a sum of Rs. 6,000/- towards monthly salary. On the side of the claimant the below mentioned documents were marked: Ex.P1-First Information Report, Ex.P2-Postmortem Certificate, Ex.P3-B.E. Certificate of the deceased, Ex.P4-Death Certificate, Ex.P5-Transfer-cum-Conduct Certificate, Ex.P6-Legal-heir Certificate, Ex.P7-copy of the Insurance Policy, Ex.P8-Copy of the Inquest Report, Ex.P9-Charge Sheet, Ex.P10-copy of M.V.I. Report, Ex.P11-Copy of judgment, Ex.P12-Salary Certificate issued by PW3 to the deceased, Ex.P13-Register of Wages maintained by PW3's Company.

On the side of the Respondent, no witness, no documentary evidence.

7. On considering the evidence of the witnesses and documentary evidence, the Tribunal had awarded the compensation a sum of Rs. 5,74,000/- together with interest at the rate of 6% per annum. The breakup of compensation which are as follows:

Rs. 5,61,000/- towards loss of dependency (Rs. 5,500/- x 12 x 17 x ? = Rs. 5,74,000/-)

Rs. 10,000/- towards loss of estate;

Rs. 3,000/- for funeral expenses;

8. Aggrieved by the said award, the Appellant/Insurance Company has filed the above appeal.

9. The learned Counsel for the Insurance Company argued that at the time of accident the deceased's age was 27 years and he was a bachelor. The claimant alone claiming compensation against the Respondents for her son death in the said accident. The claimant was not depending upon the income of the deceased, since she being an earning lady. The Tribunal fixed the income of the deceased as Rs. 5,500/- per month without vital records. PW3 is the employer of the deceased, his salary certificate was not authenticated one. Further, the deceased had himself invited the said accident in a negligent manner, as such contributory negligence is attributed in this case, this was not considered by the learned Tribunal.

10. The learned Counsel for the claimant argued that there was no dispute regarding the qualification of the deceased that he had studied B.E. Mechanical Engineering, in order to prove the same, the claimant was marked Ex.P3-Educational qualification certificate. In order to prove the age of the deceased Ex.P5-transfer and conduct certificate was marked. The Tribunal had not awarded an adequate compensation under the head of "funeral expenses". The claimant is an widowed mother and she is a deserted condition, she was depending her deceased son's income who was the sole breadwinner of the family. The learned Counsel for the claimant further argued that the claimant is entitled to receive compensation under the heads of loss of expectation of life, loss of love and affection, these heads were not considered by the Tribunal.

11. In view of 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 is of the considered opinion that the award amount is slightly on the higher side, hence this Court modified the compensation which are as follows:

Rs. 4,08,000/- towards loss of dependency; (Rs. 4,000 x 12 x 17 x ?)

Rs. 25,000/- for love and affection;

Rs. 10,000/- towards funeral expenses;

Rs. 6,000/- against transport charges;

Rs. 25,000/- loss of expectation of life;

In total, this Court awards a sum of Rs. 4,74,000/- as compensation to the claimant which is fair and justifiable in the instant case, this amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. Therefore, this Court scale down the compensation from Rs. 5,74,000/- to Rs. 4,74,000/-.

12. On 19.07.2010, this Court imposed condition on the Appellant/Insurance Company to deposit a sum of Rs. 3,50,000/- to the credit of M.C.O.P. No. 933 of

2007, on the file of Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri District. Therefore, this Court directs the Appellant/Insurance Company to deposit the balance modified compensation amount as fixed by this Court to the credit of M.C.O.P. No. 933 of 2007, on the file of Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri District within a period of six weeks from the date of receipt of the order. After such a deposit being made, it is open to the claimant to withdraw the modified compensation amount lying in the credit of M.C.O.P. No. 933 of 2007, on the file of Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri District, after filing a Memo along with this order.

13. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal on the file of Principal District Judge, Krishnagiri District made in M.C.O.P. No. 933 of 2007, dated 24.02.2010 is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.