(2008) 04 MAD CK 0182

In the Madras High Court

Case No : C.M.A. No. 4056 of 2005

National Insurance Co. Ltd. APPELLANT

Vs

Tasneem Kowser and Others RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Citation : (2008) ACJ 367

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : K.S. Narasimhan, for the Appellant; G. Jermiah, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—This appeal is preferred by the insurance company against the award dated 3.4.2004 made in M.C.O.P. No. 1253 of 2000 on the file of the Third Judge, Small Causes Court, Chennai.

2. Background facts in a nutshell are as follows:

On 7.11.1999 at about 11 a.m., the deceased John Basha was proceeding on his TVS Suzuki motorbike bearing registration No. TN 05-B 3251 towards Tiruttani. At that time, another TVS Suzuki bearing registration No. TN 09-J 4761 driven by the respondent No. 2 which came from the back side in a rash and negligent manner dashed against the deceased, as a result of which the deceased lost control, went off the road and dashed against Palmyra tree and died on the spot. Claimants are the wife and daughters of the deceased. They claimed a sum of Rs. 20,00,000 as compensation before the Tribunal. The appellant insurance company resisted the claim. On pleadings, the Tribunal framed the following issues:

(1) Whether the accident had occurred due to rash and negligent driving of the driver of TVS Suzuki bearing registration No. TN 09-J 4761?

(2) What is the compensation the claimants are entitled to? If so, what is the amount and from whom?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to rash and negligent driving by the driver of TVS Suzuki motor cycle bearing registration No. TN 09-J 4761 and awarded a compensation of Rs. 15,91,060 with interest at 9 per cent per annum from the date of the petition, the details of which are as under:

Loss of income Rs. 15,61,560 Loss of consortium Rs. 5,000 Loss of love and affection Rs. 20,000 Funeral expenses Rs. 2,000 Loss of expectation of life Rs. 2,500 ________________ Total Rs. 15,91,060 ________________

Aggrieved by that order, the insurance company has filed the present appeal.

3. Learned Counsel appearing for the appellant insurance company questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and that therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the respondents-claimants submitted that the Tribunal had considered all the relevant materials and the evidence on record and came to the right conclusion by awarding a just, fair and reasonable compensation. Hence, the order of the Claims Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel. On the side of the claimants, PWs 1 to 3 were examined and documents, Exhs. P1 to P11 were marked. On the side of the appellant insurance company, no witness has been examined and no document was marked to support their claim. PW 1, Summiya Sultana is the daughter of deceased John Basha. PW 2 is one Manickam, who is an eyewitness to the occurrence. PW 3 is one Krishnamurthy, who is the co-employee of the deceased working in the office of the Superintending Engineer, Chennai Electricity Distribution Circle Central, Chennai-34. Exh. P1 is the salary certificate. Exh. P2 is the first information report. Exh. P3 is the post-mortem report. Ex. P4 is the death certificate. Exh. P5 is the charge-sheet. Exh. P6 is the driving licence. Exh. P7 is the RC book. Exh. P8 is the copy of the policy. Exh. P9 is the legal heir certificate. Exh. P10 is the salary certificate. Exh. P11 is the salary deduction details. After considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to rash and negligent driving of the driver of the other TVS Suzuki bike bearing registration No. TN 09-J 4761 and the finding is based on valid materials and evidence.

6. At the time of accident, the deceased John Basha was aged about 52 years. He was employed as AEE/O&M/ESPL in the office of the Superintending Engineer, Chennai Electricity Distribution Circle Central, Chennai-34. PW 2, who is an eye-witness to the accident, has deposed that the respondent No. 2 had driven the bike in a rash and negligent manner and dashed against the deceased. PW 3, who is the co-employee has deposed that the deceased was earning Rs. 17,745. Exhs. A1 and A10 are the salary certificates. Considering the oral and

documentary evidence, the Tribunal has taken the salary of the deceased at Rs. 17,745 p.m. and arrived at the annual income at Rs. 2,12,940 (Rs. 17,745 x 12). Out of the said amount, after deducting 1/3rd, viz., Rs. 70,980 towards the personal expenses, the balance sum of Rs. 1,41,960 (Rs. 2,12,940 - Rs. 70,980) was fixed as the deceased''s annual contribution to the family. After taking into consideration the age of the deceased as 52 years, the Tribunal has adopted the multiplier of 11 and arrived at an amount of Rs. 15,61,560 (Rs. 1,41,960 x 11) for loss of income. But learned Counsel appearing for the insurance company contended that the Tribunal ought to have deducted 10 per cent amount for tax payable by the deceased. The learned Counsel appearing for the respondents-claimants has not seriously disputed the same. Considering the above facts, we feel that it would be appropriate to modify the award amount. Accordingly, taking into consideration Exhs. P1 and P10--salary certificates, the salary of the deceased is fixed at Rs. 17,745. If 10 per cent tax is deducted (Rs. 1,774.50), the balance amount of Rs. 15,970.50 (rounded off to Rs. 16,000) can be taken as the monthly salary. [See National Insurance Company Ltd. Vs. Indira Srivastava and Others,]. Considering the promotional prospects and increment, both the counsel agreed to fix the monthly salary at Rs. 17,000 and the annual income thus arrived at would be Rs. 2,04,000 (Rs. 17,000 x 12). Out of the said amount, if 1/3rd towards the personal expenses, viz., Rs. 68,000 is deducted, the annual contribution of the deceased arrived at would be Rs. 1,40,000. If the remaining period of service is taken, i.e., six years, the loss of income till his retirement would be Rs. 8,40,000 (Rs. 1,40,000 x 6). His earnings after retirement can be fixed at Rs. 10,000 p.m. and the annual income would be Rs. 1,20,000. If the contribution after retirement is taken for a period of five years, the total amount works out to Rs. 4,00,000 (Rs. 1,20,000 x 5 x 2/3). Total loss of income would be Rs. 12,40,000 (Rs. 8,40,000 + Rs. 4,00,000). Accordingly, the loss of income is to be modified to Rs. 12,40,000 as against the sum of Rs. 15,61,560 as awarded by the Tribunal. The Tribunal has further awarded a sum of Rs. 5,000 towards loss of consortium, Rs. 20,000 towards loss of love and affection, Rs. 2,000 for funeral expenses and Rs. 2,500 for loss of expectation of life. Learned Counsel for respondents-claimants submitted that the amount awarded towards conventional damages is very low. The age of the widow is 48 years at the time of death of her husband. Hence, it would be appropriate to award a sum of Rs. 30,000 towards loss of consortium as against the sum of Rs. 5,000. The Tribunal has awarded a sum of Rs. 20,000 towards loss of love and affection (each daughter Rs. 10,000), which we feel is very reasonable and the same is confirmed. Claims Tribunal has awarded a sum of Rs. 2,000 towards funeral expenses, which we feel is very low and the same is modified to Rs. 5,000. The Tribunal has also awarded a sum of Rs. 2,500 towards loss of expectation of life. Considering the age of the deceased, it would be appropriate to award a sum of Rs. 5,000 under this head. The Tribunal has awarded interest at 9 per cent per annum. The accident had occurred in the year 1999. At that time, the prevailing rate of interest was 7.5 per cent per annum. Hence, it is reasonable to reduce the rate of interest from 9 per cent to 7.5 per cent per annum. The details of the modified compensation as per the above discussion are as under:

Loss of income Rs. 12,40,000 Loss of consortium Rs. 30,000 Loss of love and affection Rs. 20,000 Funeral expenses Rs. 5,000 Loss of expectation of life Rs. 5,000 ________________ Total Rs. 13,00,000 _________________

Therefore, the claimants are entitled to the modified compensation of Rs. 13,00,000 with interest at 7.5 per cent per annum as against the compensation of Rs. 15,91,060 awarded by the Tribunal.

7. The appellant insurance company is directed to deposit the award amount of Rs. 13,00,000 with interest at 7.5 per cent per annum from the date of petition within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited. Respondents-claimants are permitted to withdraw their proportionate shares after adjusting the amount, if any, already withdrawn.

8. With the above modification, the civil miscellaneous appeal is disposed of. No costs.