(2013) 09 MAD CK 0345

In the Madras High Court

Case No : C.M.A. No. 1117 of 2010 and M.P. No. 1 of 2010

National Insurance Company Limited — APPELLANT

Vs

Deivathal and Others — RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0345

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

Bench : Division Bench

Advocate : M.L. Ramesh for N.B. Surekha, for the Appellant; G. Arulmurugan, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Subbiah, J.—The present appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal, in and by an award dated 12.08.2009 made in M.A.C.T.O.P. No. 261 of 2003 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Dharapuram. The respondents herein are the claimants before the Tribunal and they are the legal heirs of the deceased Duraiswamy Gounder. The 1st respondent is the wife, respondents 2 & 3 are the sons and respondents 4 & 5 are the mother and father of the deceased Duraiswamy Gounder respectively.

2. It is the case of the respondents herein/claimants that on 10.03.2003 at about 8.30 p.m., the deceased Duraiswamy Gounder was riding his scooty bearing registration No. TN 37X 4466 from Kadiyur to Goundamapalayam and when he was coming near Uthiriyan Kadu keeping at the very left extreme of Coimbatore to Kangayam Main Road from west to east in a moderate speed, a car bearing Registration No. TN 48 D 4444 came in the same direction in a rash and negligent manner and dashed the scooty and as a result of which, the rider of the scooty viz., the deceased Duraiswamy Gounder was thrown away and he sustained multiple injuries all over the body and he died on the way to hospital. Hence, the respondents made a claim against the owner of the car and its

insurer/appellant herein claiming a sum of Rs. 1 crore as compensation.

3. Though the said claim was resisted by the appellant herein/insurance company by taking the defence that the accident occurred only due to the rash and negligent act of the deceased Duraiswamy Gounder, the Tribunal on consideration of evidence adduced on either side has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the car, which has been insured with the appellant herein and thus, the Tribunal passed an award of Rs. 67,38,784/- as against the claim of Rs. 1 crore. Aggrieved by the quantum of compensation awarded by the Tribunal, the present appeal has been filed by the Insurance Company.

4. Since this appeal has been filed challenging only the quantum of compensation, We are not dealing with the other aspects of the award.

5. So far as the quantum of compensation is concerned, it is the case of the respondents/claimants that the deceased Duraiswamy Gounder was a Managing Partner of Maharaja Modern Rice Mills, Shanmuga Rice and Oil Mills and he was also the owner of Sri Venkatachalapathy Modern Rice Mills. He owned about 10 acres of P.A.R. Ayacut land and he was doing business for lost 10 years and in the assessment year 2002-2003, his total income was a sum of Rs. 13,98,000/- from his business. He paid income tax for the said financial year. On the side of the respondents/claimants, in order to prove the income earned by the deceased Duraiswamy Gounder, Income Tax Return filed by the deceased Duraiswamy Gounder for the assessment year 2002-2003 has been marked as Ex. P. 8.

6. On the basis of Ex. P. 8, the Tribunal has come to the conclusion that the annual income of the deceased during the assessment year 2002-2003 is Rs. 13,98,288/-, which includes the taxable income of Rs. 4,89,390, Agricultural income of Rs. 1,00,000/- and income derived from the share profit of the partnership business viz. Rs. 8,08,898/-. After deducting a sum of Rs. 4,66,096/- (13,98,288/3=4,66,096) towards personal expenses and a sum of Rs. 93,219/- towards loss of earning per year (10%), the Tribunal has fixed a sum of Rs. 8,38,973/- as the annual loss of income to the family of the deceased. Thereafter, by applying the multiplier of 8, the Tribunal arrived at a sum of Rs. 67,11,784/- as total loss of income to the family of the deceased.

7. The Tribunal has also awarded a sum of Rs. 10,000/- under the head of loss of love & affection and another sum of Rs. 10,000/- under the head of loss of consortium. A sum of Rs. 5,000/- has been awarded by the Tribunal towards Funeral Expenses. For Transport Expenses a sum of Rs. 1,000/- and for damages to cloth and articles, a sum of Rs. 1,000/- have been awarded by the Tribunal. In total, a sum of Rs. 67,38,784/- has been awarded by the Tribunal as compensation to the respondents.

8. Now, questioning the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present appeal.

9. It is the contention of the learned counsel for the appellant/Insurance Company that even after the death of the deceased Duraiswamy Gounder, his family is carrying on the business run by the deceased Duraiswamy Gounder and in fact, the wife of the deceased/R1 herein was inducted as a partner in the business and therefore, absolutely no loss of income has been caused to the family. But, without analysing this aspect properly, the Tribunal has fixed the total annual loss of income as Rs. 8,38,973/- and by applying the multiplier of 8, the Tribunal has awarded an exorbitant sum of Rs. 67,11,784/- as compensation towards loss of income. Therefore, a proper reduction has to be made in the award passed by the tribunal.

10. Per contra, the learned counsel for the respondents/claimants submitted that after the death of the deceased Duraiswamy Gounder, the family is not able to run the business properly and therefore, on that account there is heavy loss of income to the family. Under such circumstances, the compensation amount awarded by the Tribunal cannot be said to be excessive.

11. Keeping the submissions made by the learned counsel on either side, We have carefully gone through the entire materials available on record.

12. From the Income Tax Return marked as Ex. P. 8, We find that the actual total annual income of the deceased was Rs. 13,98,288/-, which includes the taxable income of Rs. 4,89,390/-, agricultural income of Rs. 1,00,000/- and income exempted from the income tax i.e., the share profit derived from the partnership business viz., Rs. 8,08,898/-(since the said amount was paid to the income tax from the partnership account, the same was exempted u/s 10(A)(2) of the Income Tax Act). The Tribunal by taking the sum of Rs. 13,98,288/- as annual income of the deceased, after deducting 1/3 towards personal expenses viz., a sum of Rs. 4,66,096/-(13,98,288/3=4,66,096) and a sum of Rs. 93,219/- {(13,98,288 4,66,096=9,32,192) (9,32,192 X 10/100=93,219)} towards loss of earning per year, the Tribunal has fixed a sum of Rs. 8,38,973/- as annual loss of income to the family of the deceased. By applying the multiplier of 8, the Tribunal awarded a sum of Rs. 67,11,784/- under the head of loss of income alone. That apart, the Tribunal has awarded a sum of Rs. 10,000/- towards loss of love and affection and another sum of Rs. 10,000/- towards loss of consortium, a sum of Rs. 5,000/- towards funeral expenses, a sum of Rs. 1,000/- towards transport expenses and another sum of Rs. 1,000/- for damages to the cloth and articles. Thus, the Tribunal has passed an award for a sum of Rs. 67,38,784/- as compensation.

13. But, the evidence on record would show that even as on date the family of the deceased is carrying on the partnership business, which was run by the deceased. Under such circumstances, We are of the opinion that even as on date, the claimants would be getting the share profit from the partnership business. Though the learned counsel for the respondents/claimants submitted that after the death of the deceased Duraiswamy Gounder there is loss in business, the respondents/claimants have not produced any tangible evidence to prove the

same before the Tribunal. Considering all these aspects, We are of the opinion that a sum of Rs. 2,50,000/- could be taken as loss of share profit from the partnership business, instead of Rs. 8,08,898/.

14. So far as the taxable income of Rs. 4,89,390/- is concerned, We find that the said amount consist of remuneration drawn by the deceased from the partnership business, interest derived by him from the investments made by him and also housing property income. So far as interest from the deposits made by the deceased and the housing rent income is concerned, even as on date there cannot be any loss to the respondents since they would be getting the same even as on date. Therefore, a sum of Rs. 1,20,000/- derived by the deceased per annum as remuneration can be taken as a loss of income to arrive at a fair and proper compensation.

15. Similarly, We find that as loss of income from agricultural operations, a sum of Rs. 1 lakh has been taken into consideration by the Tribunal based on Ex. P. 8. But, even as on date, the respondents/claimants are carrying on the agricultural operations. However, on account of the death of the deceased Duraiswamy Gounder, the claimants had lost the assistance of the deceased Duraiswamy Gounder in carrying on agricultural operations. Therefore, a sum of Rs. 30,000/- could be taken as loss of agricultural income. Thus, the total loss of annual income of the deceased works out to a sum of Rs. 4,00,000/-. The details of the annual loss of income arrived at are as follows:-

if 1/3rd amount viz., Rs. 1,33,000/- towards personal expenses of the deceased is deducted from the annual income of the deceased, the balance is Rs. 2,67,000/-. if the multiplier of 8 is applied, the total loss of income comes to Rs. 21,36,000/-(2,67,000 x 8=21,36,000). Hence, the award amount of Rs. 67,11,784/- under the head of loss of income awarded by the Tribunal is hereby reduced to a sum of Rs. 21,36,000/-.

16. Further, We find that the Tribunal has awarded only a sum of Rs. 10,000/- towards loss of consortium, which is in our considered opinion very meager. Hence, the same is enhanced to Rs. 25,000/-. Similarly, a sum of Rs. 10,000/- awarded by the Tribunal towards loss of love and affection is hereby enhanced to Rs. 1 lakh. A sum of Rs. 5,000/- awarded by the Tribunal towards funeral expenses is hereby enhanced to Rs. 10,000/-. The award passed by the Tribunal under the heads of transport expenses and damage to cloth & articles, viz., Rs. 1,000/- each, is hereby set aside.

17. Consequently, the total award amount of Rs. 67,38,784/- awarded by the Tribunal is hereby reduced to Rs. 22,71,000/-. The break up details of the modified award amount are as follows:-

In the result, the appeal is partly allowed and the award passed the Tribunal is modified and the award amount of Rs. 67,38,784/- awarded by the Tribunal is hereby reduced to Rs. 22,71,000/-.

It is reported by the learned counsel for the appellant/Insurance Company that pursuant to the order dated 30.04.2010 passed by this Court in M.P. No. 1 of 2010, the appellant has deposited a consolidated amount of Rs. 25 lakhs. Since a consolidated amount of Rs. 25 lakhs has already been deposited, the appellant/ insurance company is directed to deposit the balance amount, if any, if the interest is calculated at the rate of 7.5% pm for the modified award amount of Rs. 22,72,000/-, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order.

Further, the modified award amount is apportioned to the claimants as follows:- The 1st respondent/wife is entitled to Rs. 10 lakhs with proportionate interest and the respondents 2 & 3 are entitled for Rs. 5 lakhs each and the balance amount shall be equally apportioned between the respondents 4 & 5 respectively. The respondents/claimants are permitted to withdraw their respective share amount with proportionate interest, after deducting the amount that has already been withdrawn by them.

There is no order as to costs.

Connected Miscellaneous Petition is closed.

