(2007) 01 MAD CK 0166

In the Madras High Court

Case No : C.M.A. (MD) . No. 1626 of 2006 and M.P. No. 1 of 2006

National Insurance Company Limited — APPELLANT

Vs

Revathi, Jayachandran and Packiam — RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2008) 3 BC 6

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S. Srinivasa Raghavan, for the Appellant; Vijayakumar Advocate for R3, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Minor daughter of the respondents died in an accident which occurred 18.1.2003. They claimed compensation of RS.2,00,000/-.

2. The Tribunal has awarded compensation of Rs. 1,50,000/- with interest at the rate of 9% per annum. Aggrieved by the quantum of compensation, the Insurance Company has preferred this appeal.

3. Though several grounds have been raised in the memorandum of appeal, learned Counsel for the appellant fairly submitted that the law as regards compensation for the death of an infant child is settled. Therefore, there is no necessity to go into the grounds raised in this appeal.

4. The Hon''ble Supreme Court in Lata Wadhwa and Others Vs. State of Bihar and Others, has held "that the claim for compensation on a mere speculative possibility of benefit is not sufficient for the parents to be entitled to compensation for the death of an infant." The Apex Court has awarded compensation of Rs. 2,00,000/-, amongst which Rs. 1,50,000/- as proper compensation and an additional compensation of Rs. 50,000/-.

5. In The President, Malikdhinar English Medium School and United India Insurance Co. Ltd. Vs. A. Babudeen, Sheemati and Thangappan, , the Division Bench of this Hon''ble Court has held as follows:

7. In our opinion it is the mental agony of the parents of the child which is the real determining factor for awarding damages in such cases. It must be remembered that in such cases there is bound to be a permanent mental scar in the mind, particularly of the mother of the child, which is likely to last throughout her life. The mother will be thinking of that child the rest of her life, and would be imagining what the child would have done on growing up, she would imagine about the marriage of the child, the future of the child, and so on. That is the natural and normal mentality of every mother. Hence, the agony of such a mother, whose child has been killed for the rest of her life is indescribable and unimaginable. The compensation, therefore, must be awarded taking this factor into account. Wounds of the mind can be as damaging and bitter (if not more) than the wounds of the body, and the law cannot ignore this.

6. In United India Insurance Company Limited rep. by its Branch Manager, Madurai v. Nedunchelian and Ors. reported in 2005 (5) CTC 645, the Division Bench of this Court has held as follows:

It is true that there can be no fixed formula on the basis of which notional income could be calculated in respect of a child aged about 5 years. However, it is settled proposition that though in the case of death of an infant there may be no actual pecuniary benefit derived by the parents during the child''s life time, yet, it may not necessarily bar the claim of the parents and prospective loss will be found to be a valid claim, provided the parents establish that they had a reasonable expectation of pecuniary benefits if the child had lived.

7. The Division Bench of the Kerala High Court reported in National Insurance Co. Ltd. Vs. Muneer, has held as follows:

7.Going by the structured formula u/s 163-A of the Motor Vehicles Act, it is evident that the deceased in this case-a four years old child, is one how had not started earning. A child aged 4 years according to us would certainly fall under the head of non-earning persons under Clause 6 (a) of the Second Schedule to the Motor Vehicles Act. We find no merit in the contention that a deceased person must be ''of the age of earning'' and then only the assumption of notional income under Clause 6 of the Schedule can be invoked. This approach is obviously incorrect as we find the first entry in Clause 1 up to 15 years''. It is idle to assume that the legislature was not aware of the embargo against child labour in this country and had while fixing the quantum of compensation payable for persons up to 15 years of age assumed that such children would also be working and earning the income stipulated under the Table in the Second Schedule. Obviously, therefore the conclusion appears to be inevitable that non-earning persons in entry 6(a) of the Second Schedule must take within its sweep all non-earning persons, including children irrespective of the question whether they can at all be expected to earn at that age or not. According to us notional income can be pressed into service under Second Schedule in cases where the persons concerned are not actually earning or have not reached the age of earning. In both cases the notional income under Clause 6 of the Second Schedule can be assumed. Any contra interpretation would stultify the purpose of Section 163-A and the laudable objectives which the amendment was intended to achieve. For all children up to 15 years, compensation would be payable depending on their earnings if any or the notional income which they are assumed to earn. For persons aged up to 15 years and who earn (or are assumed to earn) Rs. 15,000, RS.3,00,000 is the compensation payable in respect of death as per the Table in Clause 1 of the Second Schedule. Out of this one-third has to be reduced. In that event also Rs. 2,00,000 would be payable as compensation. In the instant case the compensation awarded is only Rs. 1,50,000/-. The claimants do not appear to have preferred any appeal. This appeal at the instance of the appellant insurer does therefore, in these circumstances, deserve to be dismissed. Appeal does not deserve admission.

8. In Manju Devi v. Musafir Paswan reported in 2005 ACJ 1999 adopted the multiplier to award compensation for the death of 13 year old boy. The award of Rs. 90,000/- was enhanced to Rs. 2,25,000/- by applying the multiplier as per the Second Schedule to Section 163-A of the Motor Vehicles Act treating the deceased child as non-earning person.

9. In an unreported judgment of the Division Bench of this Hon''ble Court in C.M.A. No. 1071 of 2005 dated 22.11.2005, it was held that "the multiplier method is the proper method for determining the income of the infant who died in an accident."

10. In view of the settled legal position, as regards compensation for death of infant, the compensation of Rs. 1,50,000/- awarded to the claimants cannot be termed as bonanza. The respondents/claimants will have to undergo pain and suffering and mental agony till the rest of their life. Therefore, I do not find any error in the order passed by the Tribunal.

11. The fairness of the learned Counsel for the appellant in placing all decisions relating to this aspect is appreciated.

12. However, considering the date of accident, the interest rate is scaled down to 7.5% per annum from the date of claim till the realization. The respondents/ claimants are permitted to withdraw the compensation by filing necessary application before the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is dismissed. There will be no order as to costs. Consequently, connected M.P. is closed.