(2007) 11 MAD CK 0156

In the Madras High Court

Case No : C.M.A. No. 2991 of 2007

National Insurance Company Ltd. APPELLANT

Vs

A.S. Ganesan, G. Sivakami and A.D. Devasy RESPONDENT

Date of Decision : 28-11-2007

Acts Referred:

Citation : (2007) 11 MAD CK 0156

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : N.B. Sureka, for the Appellant; S.S. Swaminathan, for R1 and R2, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—This appeal is preferred by the Insurance Company against the award dated 30.09.2005 made in MCOP No.

966 of 2002 by the Motor Accident Claims Tribunal, (Additional District Judge), Fast Track Court No. 5, Coimbatore at Tirupur.

2. Background facts in a nutshell are as follows:

On 02.12.2000 at about 12.00 hours the deceased was proceeding in a motor cycle as a pillion rider, bearing registration No. TN-39 1497 from

West to East in Kovai Main Road. When the deceased was nearing Car Street junction at Avinashi, a lorry bearing registration No. KL-8-G-

3477 came in a rash and negligent manner from West to East in the same road without adhering to the traffic rules and dashed against the

deceased. Due to the accident, the deceased sustained grievous injuries all over his body. He was taken to the CMC Hospital, Coimbatore and

inspite of treatment, he died. The claimants are the father and mother of the deceased. They claimed a sum of Rs. 15,33,000/- as compensation but restricted their claim to Rs. 15,00,000/-. The lorry was insured with the appellant/Insurance company who resisted the claim. On the pleadings

the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the lorry driver or not?

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 the rash and negligent driving of

the driver of the lorry and awarded a compensation of Rs. 6,15,000/- with 12% interest per annum from the date of petition. Aggrieved by that

order, the claimants have filed the present appeal.

3. Learned Counsel appearing for the appellant-Insurance company submitted that the Tribunal is wrong in holding that the accident had occurred

only due to the rash and negligent driving of the driver of the lorry bearing registration No. KL-8-G-3477. Further it is contended that the Tribunal

erred in adopting the multiplier of 15 and the amount awarded by the Tribunal is excessive and exorbitant, without basis and justification and that

therefore, the order 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 1 and 2/claimants submitted that the Tribunal had considered all the relevant materials and

evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in

accordance with law and the same has to be confirmed.

5. Heard the counsel. On the side of the claimants, P.Ws. 1 to 4 were examined and documents Exs. P1 to P8 were marked. On the side of the

appellant-Insurance Company, no one was examined and no document was marked to support their claim. P.W. 1 is the father of the deceased.

PW2 is one Manickam, who is an eye witness to the accident. PW3 is one Periasamy, who is the rider of the motor cycle. PW4 is the employee

of Arun Traders and Maheswara Textiles, Tirupur. Ex. P1 is the First Information Report. Ex. P2 is the post-mortem certificate. Ex. P3 is the

Death certificate. Ex. P4 is the Legal heirship certificate. Ex. P5 is the share document. Ex. P6 is the copy of the registration certificate of Sri Arun

Traders. Ex. P7 is the copy of the driving licence. Ex. P8 is the registration certificate of Sri Arun Traders. In Ex. P1-First Information Report it is

stated that the lorry driver has caused the accident. PW2 is an eye witness to the occurrence. He deposed that the accident had occurred only due

to the rash and negligent driving of the driver of the lorry. After considering these oral and documentary evidence, the Tribunal had given a

categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and the finding is based on

valid materials and evidence and hence the same is confirmed. The Tribunal has awarded a compensation of Rs. 6,15,000/- with interest at 9%

p.a. from the date of petition and the details of the same are as under:

Loss of income Rs. 6,00,000/-

loss of love and affection Rs. 10,000/-

(each Rs. 5,000/-)

Funeral expenses Rs. 5,000/-

Total.... Rs. 6,15,000/-

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At the time of accident, the deceased was aged about 36 years and he was the partner in Arun Traders and Maheswara Textiles, Tirupur. PW4-

Ramakrishnan is the other partner. He deposed that the deceased was earning Rs. 4,000/- as monthly salary and deriving Rs. 11,000/- as profit

from the firm. But he has not filed any document to substantiate the claim. Hence, the Tribunal has taken (Rs.4,000/- + 1,000/-) Rs. 5,000/- as the

monthly income of the deceased and calculated the annual income at Rs. 60,000/- (Rs. 5,000/- x 12). After deducting 1/3rd of the amount

towards personal expenses of the deceased, the Tribunal arrived at an amount of Rs. 40,000/- as the deceased''s contribution to the family. The

age of the deceased was 36 years at the time of accident. Hence, the Tribunal adopted 15 multiplier and arrived at the loss of income at Rs.

6,00,000/- (Rs. 40,000/- x 15). Learned Counsel appearing for the claimants submitted that the firm was started only in the year 2000 i.e., just six

months before the death of the deceased and hence there is no statement of profit and loss account. Considering the facts and circumstances of the case, it would be just and reasonable to fix the monthly income of the deceased at Rs. 4,500/- as against Rs. 5,000/- fixed by the Tribunal.

Accordingly the annual income works out to Rs. 54,000/-. If 1/3rd of the amount is deducted towards personal expenses of the deceased, the

deceased''s contribution to the family works out to Rs. 36,000/-. The Tribunal has not adopted the correct multiplier. The correct multiplier that

should be adopted is 12. If multiplier 12 is adopted, the loss of income works out to (Rs. 36,000/- x 12) Rs. 4,32,000/-. Accordingly, the loss of

income is modified to Rs. 4,32,000/- as against the amount of Rs. 6,00,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs.

10,000/- towards loss of love and affection. Considering the age of the deceased, the amount awarded by the Tribunal is very low. Hence, it

would be appropriate to award Rs. 10,000/- more towards this head. The Tribunal has also awarded a sum of Rs. 5,000/- towards funeral

expenses, which is very reasonable and hence the same is confirmed. The details of the modified compensation as per the above discussion are as

under:

Loss of income : Rs.4,32,000/-

Loss of love and affection : Rs. 20,000/-

Funeral expenses : Rs. 5,000/-

Total Rs. 4,57,000/-

Therefore, the claimants are entitled to the modified compensation of Rs. 4,57,000/- as against the compensation of Rs. 6,15,000/- awarded by

the Tribunal. The interest rate awarded by the Tribunal at 9% p.a. from the date of petition is excessive. Hence, it would be appropriate and

reasonable to reduce the rate of interest awarded by the Tribunal to 7.5%.

6. It is stated that the appellant-Insurance company has already deposited the entire award amount. Therefore, the claimants are entitled to

withdraw Rs. 4,57,000/- with interest at 7.5% p.a. from the date of petition. The appellant-Insurance company is also permitted to withdraw the

balance amount available in the deposit, on making proper application.

7. With the above modification, the Civil Miscellaneous Appeal is disposed of. No

costs. Consequently, M.P. No. 2 of 2007 is closed.