

(2016) 02 MAD CK 0208

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3384 of 2014, M.C.O.P. No. 3886 of 2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Indubai

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2017) 1 ACC 430 : (2016) ACJ 2579 : (2016) 1 TNMAC 713

Hon'ble Judges : Mr. R. Sudhakar and Mr. S. Vaidyanathan, JJ.

Bench : Division Bench

Advocate : Mr. M. Krishnamoorthy, Advocate, for the Appellant; Mr. K. Suryanarayanan, Advocate, for the Respondents Nos. 1 and 2

Final Decision : Allowed

Judgement

S. Vaidyanathan, J.— Heard the learned counsel for the appellant/ Insurance Company and the learned counsel appearing for the respondents 1 and 2/claimants.

2. Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai, by its judgment dated 25.09.2013 in M.C.O.P.No.3886 of 2012, the Insurance Company has come up with the present appeal.

3. This is a case of fatal accident of a 21 year old M.B.B.S. student, by name, T.Madhan Kumar. On 15.05.2002, about 6.00 p.m., when the deceased was driving a Maruthi Car bearing Registration No.TN-05-B-1234 from south to north direction by the western edge of 200 feet road, Mettukuppam, a Lorry bearing Registration No.TN-49-X-0180, came from the opposite direction on the wrong side of the road in a rash and negligent manner, endangering public safety and dashed against the Maruthi Car, thereby taking away the life of the deceased. Alleging that the driver of the Lorry is solely responsible for the accident and that

the owner of the Lorry and the Insurance Company with which the Lorry is insured are liable to pay compensation, the respondents 1 and 2/claimants filed a claim petition before the Tribunal seeking a sum of Rs. 1,00,00,000/- as compensation.

4. The owner of the Lorry, who is the 3rd respondent in this appeal remained ex-parte before the Tribunal. The appellant/Insurance Company resisted the claim petition before the Tribunal questioning the liability of the accident and the quantum of compensation claimed by the claimants.

5. Before the Tribunal, in support of the claim, the 1st claimant, viz. Mr. T.Sudhakar Reddy was examined as P.W.1; an eye-witness to the accident, viz. Mr. N.Subramani was examined as P.W.2 and Exs. P1 to P9 were marked, the details of which are as follows:

Ex.P-1

Copy of FIR in Crime No.362/2002 registered at E-4, Maduravoyal Police Station, Maduravoyal

Ex.P-2

Death Certificate

Ex.P-3

Legal Heir Certificate

Ex.P-4

Copy of Sketch

Ex.P-5

Copy of Driving Licence of the deceased

Ex.P-6

Postmortem Certificate

Ex.P7

Death Report

Ex.P8

Copy of MBBS Mark Sheet of the deceased

Ex.P9

X-ray

6. On the side of the appellant/Insurance Company, no witness was examined and no document was marked.

7. The Tribunal, taking note of the oral evidence of P.W.1 and the corroborating evidence of P.W.2, an eye-witness to the accident coupled with Ex.P1-F.I.R., held that the accident took place due to the rash and negligent driving of the driver of the Lorry bearing Registration No.TN-49-X-0180 and awarded a sum of Rs. 51,24,000/- as compensation to the claimants with interest at 7.5% per annum, from the date of filing of the claim petition, under the following heads:

Loss of pecuniary benefits

Rs. 47,74,000.00

Transportation to Hospital

Rs. 25,000.00

Funeral expenses

Rs. 25,000.00

Loss of Love and Affection

Rs. 1,00,000.00

Loss of estate

Rs. 2,00,000.00

Total

Rs. 51,24,000.00

8. Learned counsel for the appellant/Insurance Company would intensely contend that the Tribunal has erred in fixing the monthly income of the deceased at Rs. 75,000/-, thereby awarding an exorbitant sum of Rs. 47,74,000/- towards loss of pecuniary benefits. Also, he would contend that the Tribunal erred in deducting income tax after deducting personal expenses and that income tax ought to have been deducted on the income fixed and as such 30% ought to have been deducted towards income tax.

9. On the other hand, learned counsel appearing for the respondents 1 and 2/ claimants would submit that the compensation awarded by the Tribunal can by no means equal the loss of the deceased to the claimants, since the deceased was pursuing M.B.B.S. at the time of accident and hence sought dismissal of the appeal.

10. Heard the rival submissions of the learned counsel and carefully perused the materials available on record.

11. The prime question raised by the Insurance Company is the fixation of monthly income of the deceased. Whether the income of the deceased arrived at by the Tribunal is justified or on the higher side is the issue for discussion.

12. Admittedly, at the time of accident, the deceased was aged 21 years,

pursuing III year M.B.B.S. Course. Had he been alive, he would have certainly reached a high position in life. Of course, the claimants would have spent lot of money on the education of their deceased son. But, at the time of accident, he was still a student. Also, the contention of the Insurance Company that while arriving at the compensation towards loss of pecuniary benefits, income tax has been deducted from the income after deducting 50% towards personal expenses, has to be taken note of.

13. Initially, the Tribunal fixed a sum of Rs. 50,000/- as the monthly income of the deceased and adding 50% of the same, i.e. a sum of Rs. 25,000/- towards future prospects and then deducting 50% towards personal expenses, a sum of Rs. 37,500/- was taken as the monthly income of the deceased. After deducting a sum of Rs. 1,09,000/- towards Income Tax from the annual income of Rs. 4,50,000/- (Rs. 37,500/- x 12), a sum of Rs. 3,41,000/- was arrived as the actual income per annum. Applying the multiplier of "14" on the basis of the age of the mother of the deceased, the Tribunal arrived at a sum of Rs. 47,74,000/- as compensation towards 'Loss of pecuniary benefits'. Since the compensation awarded under this head is too high, this Court is inclined to modify the same.

14. Accordingly, taking the monthly income of the deceased at Rs. 25,000/- and adding 50% of the same i.e. a sum of Rs. 12,500/- towards future prospects, a sum of Rs. 37,500/- is arrived at. Further, deducting a sum of Rs. 1,09,000/- (calculated as per the Income Tax slab for the assessment year 2001-2002) towards income tax from the annual income of Rs. 4,50,000/- (Rs. 37,500/- x 12), a sum of Rs. 3,41,000/- is arrived as the actual income per annum. After deduction of 50% towards the personal expenses of the deceased, a sum of Rs. 1,70,500/- is arrived at. And, applying the correct multiplier of "18" as per the ratio laid down by the Supreme Court in *Sarla Verma v. Delhi Transport Corporation* and another 2009 (6) SCC 121, the revised compensation towards "Loss of pecuniary benefits" comes to Rs. 30,69,000/- (Rs. 1,70,500/- x "18").

15. Further, the compensation of a sum of Rs. 1,00,000/- awarded towards "loss of love and affection" and Rs. 25,000/- awarded towards "Funeral expenses" are confirmed. Compensation under other heads "loss of estate" and "transportation to hospital" are struck down.

16. In all, the compensation awarded by the Tribunal is modified and the respondents 1 and 2/claimants are entitled to a sum of Rs. 31,94,000/- (Rupees Thirty One Lakhs Ninety Four Thousand only) as compensation. The rate of interest awarded by the Tribunal at 7.5% per annum from the date of filing the claim petition till the date of deposit is confirmed. Break-up details of the revised award would run thus:

Loss of pecuniary benefits

Rs. 30,69,000.00

Funeral expenses

Rs. 25,000.00

Loss of Love and Affection

Rs. 1,00,000.00

Total

Rs. 31,94,000.00

17. It is needless to state that if the Insurance Company has not deposited any amount so far, it is directed to deposit the entire award amount as ordered by this Court together with accrued interest to the credit of M.C.O.P.No.3886 of 2002 on the file of the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai, within a period of six (6) weeks from the date of receipt a copy of this judgment. On such deposit being made, the respondents 1 and 2/ claimants are permitted to withdraw the award amount. It is also made clear that the award amount shall be paid to the claimants by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company.

18. The Civil Miscellaneous Appeal is allowed with the above modification. No costs. Consequently, connected M.P.No.1 of 2014 is closed.