(2014) 02 MAD CK 0012

In the Madras High Court

Case No : C.M.A. No. 3510 of 2013 and M.P. No.1 of 2013

New India Assurance Co. Ltd. APPELLANT

Vs

R. Vijaya Kumar RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Citation : (2014) 2 TNMAC 685

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : J. Micheal Viswasam, Advocate, for the Applicant; R. Kalaiarasan for N.M. Muthurajan, Advocate, for the Respondent Nos. 1 to 4

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—The Insurance Company has come up with the present Appeal challenging the Award passed in M.C.O.P. No.4792 of 2006 dated 21.3.2012 on the file of the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes), Chennai.

2. Originally, the Claim Petition, seeking a Compensation of Rs.6,00,000/-, came to be filed by the victim of the accident viz., R. Vijaya Kumar, a Barber by profession, for the injuries and disability sustained by him in a road accident he met with on 18.9.2006 by contending that when he was riding a TVS Super XL bearing registration No.TN-07-AE-8077 from Thuraipakkam to Kanthanchavadi along Old Mahabalipuram Road in South to North direction, the TATA Goods Vehicle (ACE) bearing registration No.TN-07-AH-3205, driven in a rash and negligent manner, came from along MGR road from west to east direction and dashed against the TVS Super XL causing injuries to the said Vijayakumar. Pending the Claim Petition, the injured Vijayakumar died on 5.8.2008 and hence, the claim was amended at the instance of his wife, two daughters and the mother, who got impleaded. Though they had calculated the Compensation to the tune of Rs.7,50,000/-, they have restricted the same to Rs.6,00,000/-. According to the Claimants, the death of Vijayakumar was due to the injuries he sustained

in the accident.

3. The Insurance Company, while questioning the validity of the Insurance Policy itself, contested the claim by attributing negligence on the part of the deceased and contending that the deceased did not possess valid and effective driving licence and the Compensation sought for is an exaggerated one.

4. Finding that the Insurance Company does not come forward with evidence to substantiate their contest, on the basis of the oral and documentary evidence produced on the side of the Claimants viz., PWs.1 to 4 & Exs.P1 to P15, the Tribunal held that the Driver of the offending vehicle viz., TATA Goods vehicle was rash and negligent in driving the vehicle and causing the accident, fixed the vicarious liability upon the Insurance Company and awarded the Compensation to the tune of Rs.5,90,000/- with interest at 7.5% per annum.

5. Learned Counsel for the Appellant-Insurance Company strenuously argued that the victim of the accident died only after about two years of the accident and there is no evidence to establish that he died only due to the injuries sustained by him in the accident, that Post-mortem was also not conducted and the FIR was also given after a delay of four days from the date of accident that the Doctor, who gave the medical opinion regarding the death, was not a Specialist to give any such opinion and hence, the claim cannot be sustained as if the death was due to the injuries sustained by him. He relied upon the decisions reported in Mayur Panabhai Shah v. State of Gujarat, AIR 1983 SC 66; Pandiyan Roadways Corporation v. S. Rajalakshmi, 2000 (4) CTC 528; Sakunthala & 2 others v. R. Gopal & another, 2007 (1) TN MAC 221: 2007 (2) CTC 529; and New India Assurance Co Ltd. v. S. Pooranam, W/o. Sithivinayagam, 2011 (1) TN MAC 826, in support of his contention.

6. Learned Counsel for Claimants/Respondents 1 to 4 would submit that the poor Claimants all being women, were left with the responsibility of taking care of the injured Claimant, who was the only bread winner and male member of the family could not track with the evidence to establish the continuous treatment provided to the deceased during the period between the accident and his death and hence, craved indulgence of the Court to exercise its power under Order 41, Rule 33 of the Code of Civil Procedure and the award passed by the Tribunal may be confirmed. He also relied upon the decision reported in Jothi & another v. Viruthasarani & others, 2007 (2) TN MAC 374, to substantiate his case.

7. With regard to the cause of death, the Doctor, PW4 has given evidence to the effect that the death might be due to the injuries sustained by the deceased and has issued his opinion, Ex.P15. Of course, a Division Bench of the Honourable Apex Court has held in Mayur Panabhai Shah v. State of Gujarat, AIR 1983 SC 66, that there cannot be any presumption that the Doctor is always a witness of truth. But, such a finding came to be rendered in a Criminal Appeal filed by an accused challenging the dismissal of his Appeal by the learned Single Judge of High Court. The Honourable Apex Court observed that the evidence of the Doctor

has to be appreciated like that of any other witness. Such an observation went in favour of the Accused therein. The same principle cannot be adopted in the case on hand as against the Claimants to avoid the liability in the beneficial legislation.

8. In the decisions reported in Pandiyan Roadways Corporation v. S. Rajalakshmi, 2000 (4) CTC 528; Sakunthala & 2 others v. R. Gopal & another, 2007 (1) TN MAC 221; and New India Assurance Co Ltd. v. S. Pooranam, W/o. Sithivinayagam, 2011 (1) TN MAC 826, it was found factually that the death was not caused due to the injuries sustained in the accident. It cannot be denied that each case differs on its own facts.

9. In a case similar to the case on hand viz., Jothi & another v. Viruthasarani & others, 2007 (2) TN MAC 374, wherein the victim of the accident died after about 18 months from the date of the accident, this court has held as follows:

''12. Doctor, PW2, deposed before the tribunal that after a perusal of the Medical records pertaining to Mannan, he was of the opinion that Mannan''s death was due to the injuries received in the road traffic accident. He gave Ex.A8-Certificate, wherein he mentioned that Mannan died on 12.4.1995 due to post traumatic complications of a road traffic accident, in which he sustained poly trauma, including head injury.

13. ... There is no evidence available with the Appellants that Mannan met with his death due to some other reasons. The injured was aged about 50 years at the time of accident and had there been any other reason for his death, it might have been unearthed by the Insurance Company after the Claim Petition was amended for enhanced Compensation after the death of Mannan, by appointing its own investigators. The silence on the part of the Insurance Company has to be noted. Preponderance of Probabilities in this matter goes a long way to establish that Mannan died owing to the injuries, which he received in the road traffic accident and not by any other means. Hence, the finding of the Tribunal in this regard deserves to be confirmed.''

10. In the present case also, the deceased had sustained head injuries, multiple brain contusions and speech impairment apart from multiple injuries all over the body. There is also no evidence on the side of the Insurance Company to prove that the death was due to some other reasons. No ill-health was attributed to the deceased by the Insurance Company. At the time of the accident, the deceased was 41 years old and he died at 43. Hence, the Theory of Preponderance of Probabilities as laid down in the above decision has to be adopted in the present case also and it has to be concluded that the victim of the accident died due to the injuries he sustained in the accident.

11. With regard to the quantum, it is found that PW2, a co-employee of the deceased has spoken to the effect that he is earning about Rs.15,000/- per month, and the deceased also might have earned equally had he been alive. Therefore, The Tribunal has rightly fixed a reasonable monthly income of Rs.3,000/- after deducting ? towards Personal Expenses, but, adopted a wrong

multiplier of 15, whereas the correct Multiplier for the age group of 41 to 45 as provided in Sarla Verma & ors. v. Delhi Transport Corporation & another, 2009 (2) TN MAC 1, is only 14. Hence, adopting the proper Multiplier of 14, the Loss of Earning is arrived at Rs.5,04,000/- (Rs.3,000 x 12 x 14). However, the Tribunal has awarded a sum of Rs.10,000/- towards Funeral Expenses. In the decision reported in Rajesh v. Rajbir Singh, 2013 (2) TN MAC 55 (SC): 2013 ACJ 1403, the Honourable Apex Court has held in Para 21 as follows:

''We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of Compensation under the head ''Funeral Expenses''. The ''price index'', it is a fact, has gone up in that regard also. The head ''funeral expenses'' does not mean the fee paid in the crematorium or the fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of ''Funeral Expenses'', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-.''

Following the above ratio, this Court feels that a sum of Rs.25,000/- can be awarded towards Funeral Expenses.

12. The Tribunal has also awarded a sum of Rs.20,000/- each under the heads of Loss of Love and Affection and Loss of Consortium and has not awarded any amount towards Damage to Clothes and Articles. In the above decision, the Honourable Apex Court has awarded Rs.1,00,000/- each towards Loss of Love and Affection and Loss of Consortium. Considering the irreparable loss caused to the members of the family of the deceased, this Court is of the view that an additional sum of Rs.10,000/- over and above the amount awarded by the Tribunal can be awarded under those two heads and a sum of Rs.1,000/- is awarded towards Damage to Clothes and Articles. Summing up the above amounts, the Total Compensation is arrived at Rs.5,90,000/-. Hence, this court is of the view that except the above modification, the Award passed by the Tribunal need not be disturbed.

13. The Appellant-Insurance Company is directed to deposit the entire award amount with interest and costs as awarded by the Tribunal deducting the amount already deposited by them within a period of six weeks from the date of receipt of copy of this Judgment and on such deposit, the Claimants are entitled to withdraw the same by filing appropriate Application.

14. In the result, the Civil Miscellaneous Appeal is disposed of with the above modification. No costs. The connected Miscellaneous Petition is closed.