(2011) 06 MAD CK 0132

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1863 of 2009

New India Assurance Co. Ltd. APPELLANT

Vs

Sasikala Devi (deceased), S. Nagamathan and S. Swarnalakshmi RESPONDENT

Date of Decision : 16-06-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 140

Citation : (2011) 06 MAD CK 0132

Hon'ble Judges : M. Duraiswamy, J;K. Mohan Ram, J

Bench : Division Bench

Advocate : K. Suryanarayanan, for the Appellant; V.M. Ravichandran, for G. Mannar Mannan, for R-1, for the Respondent

Judgement

K. Mohan Ram, J.—Originally in respect of the death of her son, Mahibalan, in a motor accident that occurred on 09.04.2006, involving the

car bearing Registration No.TN09 AP 7510 with the tanker lorry bearing Registration No. TN33 AC 2755, the mother of the deceased filed,

MCOP No. 3 of 2007 before the Motor Accident Claims Tribunal, Fast Track Court No. I, Poonamallee, claiming a total compensation of Rs.

30,00,000/- contending that the accident had occurred only due to the rash and negligent driving of the tanker lorry by its driver. The second

Respondent herein is the owner of the tanker lorry and the Appellant herein is its insurer. Since pending the said MCOP, the mother died, the first

Respondent herein, who is the brother of the deceased, was impleaded.

2. The Tribunal, on a consideration of the evidence on record, holding that the driver of the tanker lorry was solely responsible for the accident,

held that the accident had occurred only due to the negligence on the part of the driver and accordingly held that the second Respondent, as

owner, and the Appellant herein, as its insurer, are liable to pay compensation of Rs. 17,70,000/- with interest at 7.5% per annum.

3. Heard the learned Counsel on either side.

4. Learned Counsel for the Appellant submitted that the first Respondent was not depending upon the deceased for his livelihood and it was not

even his case that he was a dependant and he was also an earning member and therefore, the Tribunal erred in awarding the compensation to the

first Respondent. He further submitted that the Tribunal has not properly considered the decision of the Apex Court reported in the case of Smt.

Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, wherein the Apex Court has held that the maximum compensation of Rs.

50,000/- being the compensation payable under No Fault Liability alone is payable in the absence of dependancy; similarly, the Tribunal has not

followed the same principle which was followed in Mrs. Hafizun Begum Vs. Md. Ikram Heque and Others, and 2007 (2) TNMAC 478 (Shymala

and Ors. v. Madheswaran and Ors.). Alternatively, the learned Counsel for the Appellant submitted that the multiplier method adopted by the

Tribunal as ''17'' is erroneous and the age of the mother should have been taken into consideration for fixing the multiplier.

5. Countering the said submissions, the learned Counsel for the first Respondent submitted that the Tribunal, inspite of claimants producing Exs.P-7

and P-8, the salary certificates, which clearly show that the deceased was getting a monthly salary of Rs. 27,218/- per month, had erroneously

taken his basic pay of Rs. 13,000/- alone into consideration; the Tribunal has also erred in not taking into consideration the future prospects of the

deceased. He further submitted that since the mother of the deceased is entitled to the compensation and after her death, as her legal

representative, the first Respondent is entitled to receive the entire compensation that is payable to the mother, even if there is no dependency on

the part of the first Respondent herein. He further submitted that even in the absence of any cross objection or a separate appeal, this Court is

entitled to pass an award for just compensation and therefore submitted that by taking into consideration the future prospects of the deceased, an

enhanced compensation may be ordered.

6. We have carefully considered the aforesaid submissions made by the learned Counsel on either side and perused the materials available on

record.

7. Since the learned Counsel for the Appellant had not questioned the finding of the Tribunal as far as the negligence is concerned, we are not

going into that question.

8. The accident had occurred on 09.04.2006. The claim petition was filed by the mother of the deceased and pending the claim petition, the

mother died on 25.12.2007 and thereafter, the first Respondent was impleaded as her legal representative. Though the death of the mother,

pending the proceedings, was within the knowledge of the Tribunal, the Tribunal has not considered the question as to whether the first

Respondent herein, who is the brother of the deceased, is entitled to claim compensation. A perusal of the evidence of P.W.1, who is the first

Respondent herein, shows that he is also earning as software engineer and nowhere in his evidence he has stated that he was depending upon the

income of the deceased and therefore, in the light of the well settled principle of law that unless the dependancy is proved, the claimant is not

entitled to claim compensation for the death of the deceased and it has to be held that the first Respondent cannot claim any compensation for the

death of his brother, the deceased.

9. In an unreported decision rendered in the case of G. Deivasigamani and five Ors. v. Metropolitan Transport Corporation Limited dated

09.01.2008, in CMA No. 1340 of 2002, a learned Judge of this Court, after referring to the decisions of the Apex Court reported in Custodian of

Branches of Banco National Ultramarino Vs. Nalini Bai Naique,) and 2007 AIR SCW 4840 (referred to supra) has held that a claimant, who is

not a dependant, is entitled to claim only the compensation payable u/s 140 of the Motor Vehicles Act i.e., for No Fault Liability and accordingly,

has awarded only a sum of Rs. 50,000/- payable under No Fault Liability. A similar view has been taken by a Division Bench of the Jharkhand

High Court in a decision reported in Sita Devi and Another Vs. Shailesh Kumar Sinha and Another, which was a judgment rendered by our

Honourable Chief Justice, as the Chief Justice of Jharkhand High Court.

10. In the decision reported in I (1998) ACC 382 (National Insurance Co. Ltd. v.

Smt. Sarojini) a learned Single Judge of the Karnataka High

Court, taking into consideration of the fact that the claimant/mother died pending the claim petition, has held that had the mother been alive until

that year, she would have qualified for compensation and therefore the Court needs to take cognizance of the fact that the mother did prefer the

claim petition and that she was alive until the particular date and hence the actual pecuniary loss till the date of her death is payable. We are in

complete agreement with the aforesaid view of the learned Single Judge of the Karnataka High Court.

11. In this case, the accident had occurred on 09.04.2006 and the mother had filed the claim petition and pending the claim petition, she died on

25.12.2007 and therefore for the period from 09.04.2006 to 25.12.2007 i.e., roughly for twenty one (21) months, the mother was entitled to

claim compensation as a dependant of the deceased on the basis of the actual pecuniary loss and therefore, we have to consider as to what would

have been the pecuniary loss suffered by the mother.

12. In this case, as rightly contended by the learned Counsel for the first Respondent, Exs.P-7 and P-8 clearly establish that the deceased on the

date of his death was receiving a monthly salary of Rs. 27,218/-. But the Tribunal without recording any reason whatsoever has taken only the

basic salary of the deceased and the Tribunal has also not taken into consideration the future prospects. Therefore, we are unable to accept the

finding of the Tribunal on this aspect.

13. If the monthly income of the deceased is taken as Rs. 27,000/-, he, being a bachelor, 50% has to be deducted out of that towards his personal

expenses and if 50% is deducted, i.e., Rs. 13,500/- is deducted from Rs. 27,000/-, the monthly dependancy will come to Rs. 13,500/- and for

twenty one months, it will come to Rs. 13,500 x 21 = Rs. 2,83,500/-. The Tribunal has awarded a sum of Rs. 2,000/- towards funeral expenses

and if that is added, the total compensation will come to Rs. 2,85,500/-. This amount is payable to the first Respondent by the Appellant. As

aforesaid, the first Respondent, being not a dependant, is not entitled to claim any other amount. On the aforesaid amount of Rs. 2,85,500/-, 7.5%

interest per annum is payable by the Appellant.

14. For the aforesaid reasons, the above Civil Miscellaneous Appeal is partly

allowed. If the Appellant had already deposited the entire

compensation amount as has been awarded by the Tribunal, it is entitled to withdraw the balance amount after adjusting the aforesaid

compensation awarded by this Court. No costs.

