
(2015) 07 MAD CK 0032
In the Madras High Court
Case No : C.M.A.(MD) No. 455 of 2008

New India Assurance Company Limited	APPELLANT
Vs	
R. Santhi	RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Citation : (2016) 1 TNMAC 265

Hon'ble Judges : Ms. V.M. Velumani, J.

Bench : Single Bench

Advocate : Mr. G. Prabhu Rajadurai, Advocate, for the Appellant; Mr. K.P. Narayanakumar, Advocate, for the Respondent Nos. 1 to 5, 8 and 9

Final Decision : Disposed Off

Judgement

Ms. V.M. Velumani, J.—The Civil Miscellaneous Appeal is filed against the Judgment and decree dated 30.11.2007, passed in MACOP.No.37 of 2006, on the file of Motor Accidents Claims Tribunal / District Judge, Kanyakumari at Nagercoil, Nagercoil.

2. The appellant, Insurance Company is the third respondent in MCOP.No.37 of 2006 on the file of Motor Accidents Claims Tribunal / District Judge, Kanyakumari at Nagercoil, Nagercoil. The respondents 1 to 5 are the claimants. The respondents 8 and 9 are the parents of the deceased. The 6th respondent is the driver of the vehicle. The 7th respondent is the owner of the vehicle.

3. The respondents 1 to 5 filed claim petition, claiming compensation of Rs.10,00,000/-, for the death of the husband of the first respondent and father of the respondents 2 to 4 and son of the respondents 8 and 9. The deceased died in the accident, due to rash and negligent driving by the sixth respondent, the driver of the vehicle belonging to the seventh respondent, that occurred on 10.10.2004. The vehicle was insured with the appellant. The deceased was working as a Carpenter / Machinery Operator. He was aged about 33 years at the time of accident. Therefore, they claimed compensation against the appellant

and the respondents 6 and 7.

4. The appellant denied, the vehicle belonging to the seventh respondent was involved in the accident. In order to claim compensation, the vehicle of the seventh respondent, was implicated. The accident took place at 7.00 p.m on 10.10.2004 and the First Information Report was lodged only on 11.10.2004 at 7.00 a.m., on the next day. Therefore, the appellant prayed for dismissal of the claim petition.

5. Before the Tribunal, the first respondent was examined as PW1 and one Jayachandran examined as PW.2 and marked 7 documents as Exs.P1 to P7. The appellant examined one K. Kollappan as RW.1 and marked Ex.R.1.

6. The Tribunal considering the pleadings and evidence and materials available on record, held that the accident took place only due to rash and negligent driving of the sixth respondent, driver of the vehicle, belonging to the seventh respondent, insured with the appellant. The Tribunal, by order dated 30.11.2007 awarded a sum of Rs.8,25,500/- as compensation. Against the said order, the present appeal has been filed.

7. The learned counsel for the appellant contended that the Tribunal is not correct in holding that the accident took place only due to rash and negligent driving by the sixth respondent, driver of the vehicle. The seventh respondent, owner of the vehicle, was implicated. The accident took place in the night and nobody would have noticed, the Registration Number of the vehicle. The First Information Report was lodged on next day only i.e on 11.10.2004. The Tribunal is not correct in fixing the salary of the deceased at Rs.7,500/- per month in the absence of any concrete evidence to that effect. The respondents failed to produce the evidence to substantiate the salary of the deceased, especially when he was alleged to have worked in a Private Company.

8. Per contra, the learned counsel for the respondents 1 to 5, 8 and 9 contended that the Tribunal was not correct in applying multiplier 13, whereas in the Second Schedule of the Motor Vehicles Act prescribed Multiplier is 17. As per the Judgement reported in 2009 (2) TN MAC 1 (SC) (Smt. Sarla Verma v. Delhi Transport Corporation and another), the correct multiplier is 16. The Tribunal has awarded very meagre amount towards loss of consortium and love and affection and prayed for enhancement of compensation, as per Order 41 Rule 33 of CPC.

9. Heard the learned counsel appearing for the parties.

10. The respondents 1 to 5 have proved that the accident took place only due to rash and negligent driving by sixth respondent, driver of the vehicle belonging to the seventh respondent. PW.2-eye witness, deposed the manner in which the accident took place and has categorically stated that the accident took place only due to rash and negligent driving by the sixth respondent. No contra evidence was let in by the appellant. Therefore, the finding of the Tribunal that the accident took place only due to rash and negligent driving by the sixth

respondent driver, is correct.

11. As far as the quantum of compensation is concerned, the Tribunal has taken note of the fact that the deceased was paid daily wages. Taking in to consideration of this fact, the Tribunal fixed the daily wages of deceased at Rs.250/- per day and fixed Rs.7,500/- as monthly income. After deducting 7rd ,notional income of the deceased was fixed at Rs. 60,000/- (Rs.5,000/- x 12). The Tribunal taking note of the fact that the deceased was paid daily wages erred in calculating the income of the deceased for all 30 days in a month. The income of the deceased must be calculated, on the basis that he would have employed only for 25 days in a month. Therefore, the deceased would have earned Rs.6,250/-. His monthly income fixed at Rs.6,000/-. After deducting 7rd towards hi personal expenses, the notional income fixed at Rs.4,000/-. The Tribunal is not correct in applying the multiplier of 13 as per Judgment reported in 2009 (2) TN MAC 1 (SC) (Smt. Sarla Verma v. Delhi Transport Corporation and another), and the correct multiplier is 16. Therefore, the loss of income arrived at Rs.7,68,000/- (4,000/- x 12 x 16)

12. Further, the amount awarded by the Tribunal towards loss of consortium and loss of love and affection is very low. As far as the loss of consortium is concerned, Rs.5,000/- awarded by the Tribunal, is hereby enhanced to Rs.50,000/-. A sum of Rs.35,000/- awarded by the Tribunal towards loss of love and affection is hereby enhanced to Rs.25,000/- each to the respondents 2 to 5 and 8 and 9. In all other aspects, the amount awarded by the Tribunal is hereby confirmed. Therefore, the award of the Tribunal is enhanced from Rs.8,25,500/- to Rs.9,73,500/- in the following manner:-

S.No

Description

Amount awarded by Tribunal

Amount awarded by this Court

Award confirmed or enhanced or granted

1

Loss of earning

7,80,000.00

7,68,000.00

Reduced by Rs.12,000/-

2

Transportation Charges

500.00

500.00

Confirmed

3

Damage to Cloth

500.00

500.00

Confirmed

4

Funeral expenses

2,000.00

2,000.00

Confirmed

5

Loss of Consortium

5,000.00

50,000.00

Enhanced by Rs. 45,000/-

6

Loss of love and affection to R2 to R5 and R8, R9

35,000.00

1,50,000.00 (Rs. 25,000/- each)

Enhanced by Rs. 1,15,000/-

7

Loss of estate

2,500.00

2,500.00

Confirmed

Total

8,25,500.00

9,73,500.00

Enhanced by Rs. 1,48,000/-

13. The learned counsel for the appellant contended that the interest awarded by the Tribunal at the rate of 12% per annum, is very excessive. Hence, the interest at the rate of 12% per annum is hereby reduced to 7.5% per annum.

14. For the reasons aforesaid, the Civil Miscellaneous Appeal filed by the appellant / Insurance Company is disposed of and the amount awarded by the Tribunal is enhanced to Rs.9,73,500/- (Rupees Nine Lakhs Seventy Three Thousand and Five Hundred only). The appellant is directed to deposit the above said amount with interest at 7.5% per annum, to credit of MCOP.No.37 of 2006, on the file of Motor Accidents Claims Tribunal / District Judge, Kanyakumari at Nagercoil, Nagercoil, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent would be entitled to Rs.2,23,500/-, and the respondents 2 to 5 would be entitled to a sum of Rs.1,50,000/- each, and the respondents 8 and 9 would be entitled to a sum of Rs.75,000/- each, with respective proportionate interest and costs, less the amount, if any already withdrawn. The Tribunal shall deposit the share of the respondents 2 to 5, who are minor claimants, in a Fixed Deposit in any one of the Nationalized Banks, which shall be renewed periodically till they attain majority. The first respondent - mother of the minors is permitted to withdraw interest on the share of her minor children vis., the respondents 2 to 5 herein, once in three months from the Bank directly. No costs. Consequently, connected Miscellaneous Petition is closed.

15. C.M.A. disposed of enhancing Compensation amount - No costs - M.P. closed.