(2009) 07 MAD CK 0485

In the Madras High Court

Case No : C.M.A. No. 592 of 2009 and M.P. (MD) No. 2 of 2009

New India Assurance Company Ltd. APPELLANT

Vs

Pushpam and Others RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Citation : (2009) 07 MAD CK 0485

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : S. Ramachandran, for the Appellant; M. Jeyakumar, for R.1 and R.2, for the Respondent

Final Decision : Dismissed

Judgement

N. Kirubakaran, J.—This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award of Rs. 4,33,000/- (Rupees Four Lakhs and thirty three thousand only) to the respondents/claimants.

2. The learned Counsel for the appellant does not dispute the negligence and the manner of accident. He has canvassed only point that the multiplier adopted by the Tribunal was wrong and in the absence of any evidence, the Tribunal was wrong in taking the monthly income as Rs. 3,000/-(Rupees three thousand only) for arriving the loss of income.

3. The learned Counsel for the appellant pointed out that the Tribunal adopted multiplier "17", considering the age of the deceased being "30". Even according to the learned Counsel for the appellant, the Tribunal was at right in adopting multiplier of "17" if the Tribunal took the age of the deceased as per Second Schedule appended to the Motor Vehicles Act. However, he found fault with the award passed by the Tribunal by relying upon the judgment of the Honourable Apex Court in The Managing Director, TNSCTC v. Sripriya and Ors. reported in 2007 (1) TN MAC 319 wherein the multiplier adopted by the lower Court as "16" was reduced to "12". In that case, the monthly income of the deceased was Rs.

6,040/-(Rupees six thousand and forty only). Taking into consideration of fixing higher amount as monthly income, the multiplier was reduced to "12". Moreover, the deceased in that case was a driver of the Transport Corporation, where the claimants were in a position to prove the monthly income of the deceased. Whereas, in the case on hand, the deceased was a poor coolie. Even though, there was no evidence available on record to prove that the coolie was earning about Rs. 4500/- (Rupees four thousand and five hundred only) as claimed in the claim petition, the Tribunal only took monthly income as Rs. 3000/- (Rupees three thousand only) in the absence of any evidence. It is very difficult for most of our fellow citizens to prove before the Court about the earnings. Moreover, the Court cannot expect that the coolie will be able to get a documentary evidence or will be able to maintain a record to show his income. Apart from that, it is common knowledge that nobody works for a daily wages below Rs. 100/- and the Tribunal rightly fixed the monthly income of Rs. 3000/-(Rupees three thousand only) and applied the multiplier "17" considering the age of the deceased and because of the age of the widow as "25" at the time of filing the petition. As per the Second Schedule, either the age of the deceased or the age of the claimant whichever is higher, has to be taken. The Tribunal rightly followed the same.

4. Another judgment relied upon by the learned Counsel for the appellant is by this Court in The Managing Director, TNSTC v. Jeyalakshmi and four Ors. reported in 2008(2) TN MAC 577 wherein, a 37 years old man, who was running poultry farm died and the Tribunal arrived at the monthly income as Rs. 3000/-(Rupees three thousand only) and adopted multiplier "16". On appeal by the Transport Corporation, the monthly income was enhanced from Rs. 3000/-(Rupees three thousand only) to Rs. 3450/-(Rupees three thousand four hundred and fifty only) and the multiplier was reduced from "16" to "12". Thus, in the above judgment, the monthly income was increased accordingly, the multiplier was reduced.

5. On the other hand, the learned Counsel for the respondents/claimants supported the multiplier "17" adopted by the Tribunal, according to the 2nd Schedule and relied upon the judgment of the Apex Court in Krishna Devi and Ors. v. Union of India and Ors. reported in 2009 ACJ 1080. In that case, the annual income of the deceased fixed was at 19,980/-(Rupees nineteen thousand nine hundred and eighty only) and the multiplier "13" was adopted by the Tribunal. In appeal, the High Court enhanced the award to Rs. 2,76,740/-(Rupees two lakhs seventy six thousand seven hundred and forty only) from Rs. 2,15,740/-(Rupees two lakhs fifteen thousand seven hundred and forty only). On further appeal, the Apex Court varied the multiplier from 13 to 17 and awarded a sum of Rs. 3,39,660/-(Rupees three lakhs thirty nine thousand six hundred and sixty only). The Honourable Apex Court based on the Second Schedule to the Motor Vehicles Act alone varied the multiplier from "13" to "17".

6. As far as applying multiplier is concerned, there are divergent judgments were given by the Honourable Supreme Court as well as various High Courts. In the recent Supreme Court Judgment in Rani Gupta and Others Vs. United India

Insurance Co. Ltd. and Others, , it was held that multiplier suggested in the Second Schedule should be taken to be a guideline. In another case reported in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, the Honourable Supreme Court held that the second Schedule should not ordinarily be deviated from.

7. Taking into consideration the aforesaid judgments, no extraordinary case has been made out by the appellant company which requires deviation from the Second Schedule. Moreover, the Tribunal merely followed the Second Schedule and the Second Schedule has been appended to the statue and based on that only the Tribunal passed the award. Moreover, the age of the deceased was more, than the age of the widow and therefore it was taken into consideration for adopting the suitable multiplier. Hence, the multiplier adopted by the Tribunal cannot be found fault with and the same is confirmed.

8. Accordingly, the above appeal deserves to be dismissed and accordingly the same is dismissed and the award of the Tribunal is confirmed. No Costs.