(2014) 03 MAD CK 0019

In the Madras High Court

Case No : C.M.A. No. 2172 of 2012

Royal Sundaram Alliance Insurance Co. Ltd. — APPELLANT

Vs

Manimekalai — RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 2 TNMAC 481

Hon'ble Judges : S. Rajeswaran and S. Vaidyanathan, JJ.

Bench : Division Bench

Advocate : N. Vijayaraghavan, Advocate, for the Applicant; G. Mannarmannan, Advocate, for the Respondent Nos. 1 to 3; Ex-parte, for the Respondent No. 4

Final Decision : Disposed Off

Judgement

S. Rajeswaran, J.—Being aggrieved by the quantum of Compensation of Rs. 20,27,784/- awarded by the learned Judge, Motor Accident Claims Tribunal, Fast Track Court No.2, Poonamallee, the Insurance Company has filed this Appeal.

2. The brief facts are that on 30.3.2010, at about 5.30 p.m., when the deceased Selvaraj was proceeding to his residence at Ambattur from his office at Tambaram, viz., ''Mathiya Arasu Thozhilalar Mandale Nalavariyam'', in his Motorcycle bearing Registration No.TN-02-AE-9939, via Maduravoyal By-Pass Service Road, in South-North direction, the Tipper Lorry bearing Registration No.TN-20-AM-8709, driven by its driver, came in a rash and negligent manner in the same direction and dashed the deceased from behind. In the said accident, the deceased sustained grievous injuries on his right and left hands and all over his body and he died instantaneously. A Criminal case in Cr. No.390/2010 was also registered and the FIR was marked as Ex.P1 before the Tribunal. The deceased was aged 59 years at the time of accident and he was working as Department Supervisor and was earning a sum of Rs. 33,159/- per month. The deceased was earning not less than Rs. 3,50,000/- per annum. Alleging that the accident was due to the rash and negligent driving of the Lorry Driver, the wife and children of the deceased have filed Claim Petition under Section 166(1) of

the Motor Vehicles Act, 1988, claiming a Compensation of Rs. 30,00,000/- in MCOP No.548/2010.

3. Before the Tribunal, the First Claimant/wife of the deceased examined herself as PW1, eyewitness was examined as PW2 and one other witness was examined as PW3. On the side of the Claimants, Exs.P1 to P9 were marked. On the side of the Respondents, neither any witness was examined nor any document was marked.

4. Upon consideration of the oral and documentary evidence, the Tribunal has observed that the monthly contribution of the deceased to his family would be Rs. 20,654/-, after deducting ?rd of the total salary for his Personal Expenses and adopted the Multiplier Rs. 8'' as the deceased was 59 years at the time of the accident and calculated the Loss of Dependency at Rs. 19,82,784/-. The Tribunal has awarded a Total Compensation of Rs. 20,27,784/-, the break-up of which is as under:

Loss of Income/Dependency

Rs. 19,82,784.00

Funeral Expenses

Rs. 10,000.00

Transportation Charges

Rs. 5,000.00

Mental Agony (Rs. 10,000 x 3)

Rs. 30,000.00

Total

Rs. 20,27,784.00

5. At the time of admission of the Appeal, the learned Counsel for the Appellant had put forth his arguments stating that the quantum of Compensation awarded by the Tribunal was on the higher side and hence, the quantum of Compensation awarded above is under challenge.

6. Today, the learned Counsel for the Appellant-Insurance Company submitted that the Tribunal erred in relying upon the evidence of PW1 and the monthly income of the deceased taken arrived at by the Tribunal at Rs. 30,981/- is very much on the higher side and the Loss of Dependency arrived at by the Tribunal at Rs. 19,82,784/- is also without any basis. It was further contended that the Tribunal failed to take into consideration, the fact that the deceased is left with only one year of service and the actual take home salary of the deceased after deduction is only Rs. 15,095/- and not Rs. 20,654/-. Hence, the learned Counsel for the Appellant prayed to reduce the quantum of Compensation.

7.Per contra, learned Counsel for the Claimants/Respondents 1 to 3 submitted that the amount awarded by the Tribunal warrants no interference of this Court as the Tribunal has considered all the aspects in detail.

8. We have heard the submissions made by the learned Counsel for the Appellant/Insurance Company and the learned Counsel for the Respondents 1 to 3/Claimants. We have also gone through the documents made available on record, including the impugned judgment of the Trial Court.

9. The learned Counsel for the Respondents 1 to 3/Claimants would add that the Tribunal has failed to consider the factum of awarding Compensation towards Loss of Consortium to the wife of the deceased and also towards the Loss of Love Affection for the Third Claimant/son of the deceased and PW1. Thus, his case is that the Tribunal ought to have awarded some Compensation under these heads, but, failed to do so.

10. Now, coming to the amounts awarded by the Tribunal under each head, it could be seen that at the time of accident, the deceased was aged 59 years and he was earning a monthly salary of Rs. 33,159/- and Salary Certificate was also produced before the Tribunal to that effect. The Tribunal has correctly calculated the monthly contribution of the deceased as Rs. 20,654/- after deducting ?rd from the total salary of Rs. 30,981/-. Going by the Second Schedule to the Act, the appropriate Multiplier to be adopted is 8. Hence, the Tribunal has correctly arrived at Rs. 19,82,784/- (Rs. 20,654/- x 12 x 8 = Rs. 19,82,784/-) towards Loss of Dependency and hence, the same is confirmed.

11. Insofar as Conventional Damages, the Tribunal has awarded Rs. 10,000/- for Funeral Expenses; Rs. 5,000/- for Transport Expenses and Rs. 30,000/- for Mental Agony. The amounts awarded under the Heads ''Transportation Expenses'' and ''Mental Agony'' are confirmed as they are just and fair and warrant no interference of this Court. This Court is of the view that granting Rs. 15,000/- towards the Funeral Expenses, in addition to Rs. 10,000/- which had already been awarded by the Tribunal, would be just and reasonable. Accordingly, the Compensation awarded under the heading ''Funeral Expenses'' is enhanced to Rs. 25,000/-.

12. Coming to award of Compensation under the heading ''Loss of Love & Affection'' to the 3rd Claimant, the Tribunal has not awarded any compensation which, in our considered view, is not justified. At the time of filing of the Petition, the Third Claimant was aged 20 years. Having regard to the age of the Third Claimant, it would be appropriate to award Compensation of Rs. 50,000/- under the heading ''Loss of Love & Affection''. As the 2nd Claimant/daughter of the deceased was already given in marriage, no Compensation under the head ''Loss of Love & Affection'' can be awarded to her. Insofar as Loss of Consortium to the First Claimant, the Tribunal has not awarded any Compensation, which, in our opinion, is not correct. Hence, awarding a sum of Rs. 1,25,000/- towards Loss of Consortium to the First Claimant, would meet the ends of justice.

13. Thus, the Compensation amount awarded to the Claimants is enhanced to Rs. 22,17,784/- as under:

S. No.

Headings

Amount Awarded by the Tribunal Rs.

Amount Awarded by this Court Rs.

1

Loss of Dependency

19,82,784

19,82,784

2

Funeral Expenses

10,000

25,000

3

Loss of Consortium

-

1,25,000

4

Loss of Love & Affection

-

50,000

5

Transportation Expenses

5,000

5,000

6

Mental Agony

30,000

30,000

14. Coming to the interest aspect, the enhanced amount of Compensation to the tune of Rs. 1,90,000 (Rs. 22,17,784 minus Rs. 20,27,784) awarded by this Court shall carry the interest @ 7.5% p.a. The enhanced Compensation amount along with interest, is to be apportioned amongst the Claimants in the same ratio of apportionment as ordered by the Tribunal.

15. It was stated before us that as per the Order dated 25.7.2012 in M.P. No.1/2012, the Appellant-Insurance Company has already deposited the entire Compensation amount awarded by the Tribunal along with accrued interest. Hence, the Appellant-Insurance Company is directed to deposit the enhanced Compensation amount of Rs. 1,90,000 (Rupees One Lakh Ninety Thousand only) @ 7.5% interest per annum from the date of Petition till the date of deposit, within a period of six weeks from today to the Tribunal below to the credit of MCOP No.548/2010.

16. The Claimants 1 to 3/the Respondents 1 to 3 herein are permitted to withdraw the amount awarded by the Tribunal which has already been deposited by the Insurance Company, together with the accrued interest, if not already withdrawn and also the enhanced amount of Rs. 1,90,000 as ordered by this Court today, by filing appropriate Petition before the Court below on deposit of the enhanced amount.

17. In the result, the Civil Miscellaneous Appeal is disposed of in the above terms. No costs.