(2007) 12 MAD CK 0194

In the Madras High Court

Case No : C.M.A. No. 2638 of 2005 and Cross Objection No. 30 of 2007

S. Thyagarajan and Oriental Insurance Co. Ltd. APPELLANT

Vs

P. Ashok Kumar and A. Senthamil Selvi RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Citation : (2007) 12 MAD CK 0194

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : R. Sivakumar, for the Appellant; R. Sivakumar and V.R. Rajasekaran, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The Civil Miscellaneous Appeal is filed by the Insurance Company against the award and decree dated

12.4.2004 passed in MCOP No. 161 of 2002 on the file of the Motor Accidents Claims Tribunal (1st Additional District Judge), Salem. The

claimants have filed the Cross Objection.

2. The brief facts in a nutshell are as follows:

On 13.08.1999 at about 8.30 a.m., the deceased Raguraman along with his uncle, was waiting at Seshanchavadi Veterinary Hospital Bus Stop for

going to school at Valapady. The deceased was standing on the northern side mud portion of the Salem to Attur N.H. Road. At that time, a Ceilo

car bearing Registration No. TN-27-K-2026 came from behind at high speed in a rash and negligent manner and dashed against the deceased.

Due to the accident, the deceased sustained severe head injuries-Brain Stem lesion, fracture of left humours, fracture of both bones in the left lower

limbs and injuries all over the body. Immediately the deceased was admitted in

Sri Palaniandi Mudaliar Memorial Hospital at Salem and he was

taking treatment from 13.08.1999 to 16.08.1999 as in-patient. For better treatment, he was taken to K.G. Hospital, Coimbatore and admitted on

17.08.1999 as in-patient. Later he died on 16.03.2000 at 11.00 p.m. The claimants are the parents of the deceased. They claimed a

compensation of Rs. 20,00,000/- before the Tribunal. The car was insured with the second appellant/Insurance Company, who resisted the claim.

On pleadings, the Tribunal framed the following issues:

a) Whether the accident had occurred due to the rash and negligent driving of the car driver or not?

b) Whether the claimants are entitled for any compensation? If so, what is the amount and from whom?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of

the car driver and awarded a sum of Rs. 7,03,600/- as compensation with interest at 9% p.a. from the date of petition. Aggrieved by the same, the

Insurance Company has filed the present appeal and the respondents herein have filed the Cross Objection.

3. Learned Counsel appearing for the Insurance Company in the appeal, submitted that the Tribunal is wrong in holding that the accident had

occurred due to the rash and negligent driving of the car driver. It is also further stated that the Tribunal awarded excessive and exorbitant

compensation and therefore the order passed by the Tribunal is without basis and justification and the same should be set aside.

4. Learned Counsel appearing for the claimants/Cross Objectors submitted that the compensation awarded by the Tribunal is very meagre. It is

also submitted that the Tribunal ought to have awarded the compensation as claimed in the claim petition. It is therefore submitted that this is a fit

case for enhancement.

5. Heard the counsel. On the side of the claimants, witnesses P.W. 1 and P.W. 2 were examined and documents Ex. P1 to Ex. P24 were marked.

On the side of the Insurance Company, no witnesses were examined and no documents were marked. P.W. 1 is the father of the deceased. P.W.

2 is one Selvakumaran, who is an eye-witness to the accident. The following is the list of exhibits marked:

Ex. P1-First Information Report

Ex. P2-Charge Sheet

Ex. P3-Post Mortem Report

Ex. P4-Motor Vehicle Inspector''s Report

Ex. P5-Rough Sketch

Ex. P6-Judgment of the Criminal Court

Ex. P7-Transfer Certificate

Ex. P8-Medical Bills

Ex. P9-Medical Bills

Ex. P10-Medical Bills

Ex. P11-Receipt for purchase of Videocon Tape Recorder

Ex. P12-Laundry receipts

Ex. P13-Receipt amounting to Rs. 4,975/-

Ex. P14-Receipt for purchase of Photo Album

Ex. P15-Receipts for purchase of playing things

Ex. P16-Receipts for purchase of fruits

Ex.P17-Receipts for purchase of vegetables

Ex. P18-Receipts for purchase of Photo Albums

Ex. P19-Receipt for purchase of Bed Sheet

Ex. P20-Travel receipt

Ex. P21-Medical receipt

Ex. P22-Receipt for physiotherapy treatment

Ex. P23-Medical prescription

Ex. P24-Medical prescription

P.W. 2 is the eye-witness to the accident. He deposed that when he was proceeding in the Salem-Athur Main Road, near Seshanchavadi

Veterinary Hospital Bus Stop, he saw the deceased in the Bus Stop. At that time, the car bearing Registration No. TN-27-K-2026 came at high

speed in a rash and negligent manner and dashed against the deceased. F.I.R. was also lodged and the car driver was also charge-sheeted. Ex. P1

is the F.I.R, in which it is categorically stated that the accident had occurred only due to the rash and negligent driving of the car driver. Ex. P4 is

the Motor Vehicle Inspector''s Report, which also clearly states that the car does not suffer from any mechanical defect. After considering these

evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the car driver.

The finding given by the Tribunal is based on valid materials and evidence and hence it is confirmed.

6. The Tribunal has awarded a sum of Rs. 7,03,638/- with interest at 9% p.a. from the date of petition. The details of the compensation are as

under:

Rupees

Medical expenses 4,07,588/-

Loss of income 2,20,800/-

Transport expenses 2,250/-

Funeral expenses 3,000/-

Loss of love and affection 70,000/-

Total.... 7,03,638/-

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The claimants are the parents of the deceased. The age of the father of the deceased was 39 years and the mother of the deceased was 34 years

at the time of accident. The deceased Raguraman was studying in 7th Standard in St.Michael''s Matriculation School at Valapady. Due to the

accident, the deceased sustained severe head injuries, viz. Brain stem lesion, fracture of left humours, fracture of both bones in the left lower limb

and injuries all over the body. After the accident, the deceased was admitted in Sri Palaniandi Mudaliar Memorial Hospital at Salem and he was

taking treatment from 13.08.1999 to 16.08.1999 as in-patient. Later he was taken to K.J. Hospital, Coimbatore and admitted on 17.08.1999 as

in-patient. After the treatment the deceased was discharged from the hospital on 02.03.2000. Due to the head injuries, the deceased was

unconscious from the date of accident and there was no improvement. Later, he was discharged from the hospital and the deceased died on

16.03.2000 at about 11.00 p.m. After considering the treatment undergone by the deceased in the Palaniandi Mudaliar Memorial Hospital at

Salem from 13.08.1999 to 16.08.1999 as in-patient and also the fact that he was later shifted to K.J. Hospital, Coimbatore and admitted on

17.08.1999 as in-patient, and also considering the fact that he took treatment after his discharge from the hospital, till his death, the Tribunal has

awarded a sum of Rs. 4,07,588/- towards medical expenses. The said medical expenses are based on Ex. P8 to Ex. P19. Learned Counsel

appearing for the Insurance Company vehemently contended that some of the expenses totalling to Rs. 6,978.72 shown in the bills are not actual

medical expenses and hence the same should be deleted, which are detailed as under:

Ex. P11-Receipt for purchase of Videocon Tape

Recorder- Rs. 625/-

Ex. P12-Laundry receipts- Rs. 220/-

Ex. P13-Receipt amounting to Rs. 4,975/-

Ex. P14-Receipt for purchase of Photo Album- Rs. 109/-

Ex. P15-Receipts for purchase of playing things- Rs. 325/-

Ex. P16-Receipts for purchase of fruits- Rs. 30.72/-

Ex. P17-Receipts for purchase of vegetables- Rs. 98.75/-

Ex. P18-Receipts for purchase of Photo Albums- Rs. 455.25/-

Ex. P19-Receipt for purchase of Bed Sheet- Rs. 140/-

Total .... Rs. 6978.72

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Counsel appearing for the claimants also has no serious objection. If the above amount of Rs. 6978.72 is deducted from the award amount of Rs.

4,07,588/- towards medical expenses, the balance amount arrived is Rs. 4,00,609.28, which is based on Ex. P8, 9 and 10. It is an actual

expenditure and there is no dispute regarding the same. Hence the amount of Rs. 4,00,609.28 towards medical expenses is confirmed.

Accordingly, the amount awarded by the Tribunal towards medical expenses at Rs. 4,07,588/- stands modified to 4,00,609.28, rounded off to

Rs. 4,00,609/-. Taking into consideration of the age of the deceased, i.e., 13 years at the time of accident and also the future prospects of the

deceased, the Tribunal was of the view that the deceased would be earning Rs. 1,500/- per month and deducted Rs. 350/- (Rs.300/- towards his

family expenses and Rs. 50/- towards his personal expenses) and the balance amount of Rs. 1,150/- was taken as the contribution that would have

been earned by the deceased to the family per month and calculated the annual income at Rs. 13,800/- (Rs.1,150/- x 12). After taking into

consideration the age of the parents of the deceased, i.e., 39 and 34 years, the Tribunal adopted the muliplier of 16 and arrived at the loss of

income at Rs. 2,20,800/-. Counsel appearing for the Insurance Company vehemently contended that the method adopted by the Tribunal in

arriving at the loss of income is not in accordance with law and hence the amount awarded towards loss of income is excessive and exorbitant and

also relied on the judgment of the Supreme Court in the case of Kaushlya Devi v. Karan Arora and Ors. 2007 ACJ 1870. In that case, the

Supreme Court considered the similar issue where the age of the deceased was 14 years and he was a brilliant student of Class VIII, who died in

an accident. The parents of the deceased claimed compensation on the ground of family background of the deceased and his academic career. The

Supreme Court upheld the award of Rs. 1,00,000/- and held as follows:

10. This Court in Lata Wadhwa and Others Vs. State of Bihar and Others, , while computing compensation made distinction between deceased

children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

11. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of future

increase in their income or chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at

such an early age, the uncertainties in regard to their academic pursuits, achievements in career and, thereafter, advancement in life are so many

that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated

basis nor the financial loss suffered by the parents is capable of mathematical computation.

Therefore, it is submitted that in view of the above, the reasonable amount that should be awarded in the present case is not more than Rs.

1,00,000/-.

7. The Tribunal has correctly fixed the monthly income at Rs. 1,500/-, but instead of deducting 1/3rd of the amount towards personal expenses of

the deceased, the Tribunal deducted only Rs. 350/-. If 1/3rd is deducted towards personal expenses, the balance amount of Rs. 1,000/- should be

taken as loss to the family per month and the annual income works out to Rs. 12,000/-. After taking into consideration the age of the father and

mother of the deceased, who are 39 years and 34 years old at the time of accident, I feel that the Tribunal has correctly adopted the multiplier of

16. If 16 multiplier is adopted, the loss of income works out to Rs. 1,92,000/- (Rs. 12,000/- x 16). Therefore the loss is income is modified to Rs.

1,92,000/- as against the sum of Rs. 2,20,800/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 2,250/- towards transport

expenses and Rs. 3,000/- towards funeral expenses, which are very low and meagre and hence it would be appropriate and reasonable to award

a sum of Rs. 7,500/- each towards these heads. Accordingly, the amounts awarded towards transport expenses and funeral expenses are modified

to Rs. 7,500/- and Rs. 7,500/- respectively. The Tribunal has awarded a sum of Rs. 70,000/- towards loss of love and affection. Taking into

consideration the age of the parents of the deceased, I feel that it would be appropriate and reasonable to award Rs. 15,000/- more towards this

head. Accordingly, the amount awarded towards loss of love and affection is modified from Rs. 70,000/- to Rs. 85,000/-. The details of the

modified compensation are as under:

Rupees

Medical expenses 4,00,609/-

Loss of income 1,92,000/-

Transport expenses 7,500/-

Funeral expenses 7,500/-

Loss of love and affection 85,000/-

Total.... 6,92,609/-

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Hence, the claimants are entitled to the modified compensation of Rs. 6,92,609/- as against the compensation awarded by the Tribunal at Rs.

7,03,638/-. The interest rate awarded by the Tribunal at 9% p.a. from the date of petition is confirmed as the same was the prevailing rate at that

time.

8. The Insurance Company is directed to deposit the modified amount of Rs. 6,92,609/- with interest at 9% p.a. from the date of petition, after

adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the

claimants are permitted to withdraw the same.

9. The Civil Miscellaneous Appeal and the Cross Objection are disposed of, accordingly. Consequently, C.M.P. No. 1647 of 2007 is closed. No

costs.