(2010) 07 MAD CK 0008

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3054 of 2004

Sumathi and Others APPELLANT

Vs

N. Balakrishnan and The New India Assurance Co., Ltd., Motor Third Party Cell RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Citation : (2010) 4 LW 473

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : N.M. Muthurajan, for the Appellant; K. Padmanabhan, for R2, for the Respondent

Judgement

R. Banumathi, J.—For the death of deceased Lakshmanan in road traffic accident on 16.07.2001 in M.C.O.P. No. 5308/2001,

Tribunal/Chief Small Cause Court, Chennai awarded compensation of Rs. 9,79,020/-. Being dissatisfied with the quantum of compensation, wife,

minor son and parents of deceased have filed this Appeal seeking enhancement of compensation.

2. Brief facts are that on 16.07.2001 at about 7.15 A.M., the deceased was riding the motor cycle bearing registration No. TN-02 H 8356 along

Turnbulls road, Nandanam, Chennai from south to north direction. In the junction road, after getting signal, deceased took a right turn along

Chamiers road and proceeded east to west on the above said road. At that time, the driver of the lorry bearing registration No. TNN 2052 who

drove the same behind in a rash and negligent manner dashed on the rear side of the motor cycle. Due to the impact, Lakshmanan rider of the

motorcycle [deceased Lakshmanan] sustained grievous injuries and admitted in

Government General Hospital, Chennai. Inspite of treatment,

Lakshmanan succumbed to the injuries on 23.7.2001. Regarding the accident, criminal case in Crime No. 380/S1/2001 of Guindy Traffic Police

Station was registered against the lorry driver. Alleging that the accident was due to rash and negligent driving of the lorry driver, wife, minor (son

and parents of the deceased Lakshmanan have filed Claim Petition claiming compensation of Rs. 45,00,000/- and restricted the claim to Rs.

10,00,000/- for want of court fees.

3. Resisting the Claim Petition, 2nd Respondent-Insurance Company has filed counter stating that on the date of accident, the driver of the lorry

did not possess any valid driving license and that the 2nd Respondent-Insurance Company is not liable to indemnify. 2nd Respondent-Insurance

Company had also denied the age, occupation and income of the deceased and also the total quantum of compensation claimed and prayed for

dismissal of Claim Petition.

4. Before the Tribunal, 1st Claimant-Sumathi examined herself as P.W. 1. One Murugan, who stood as eye-witness to the accident was examined

as P.W. 2. Exs. P1 to P.I 3 were marked. On the side of Respondents, no witness was examined and no documents were marked. In his

evidence, P.W. 2 has stated that the rider of motorcycle/deceased-Lakshmanan proceeded from Turnbulls road and took a right turn to Chamiers

road from west to east and at that time the driver of the lorry bearing registration No. TNN 2052 drove the vehicle in a rash and negligent manner

in the same road and dashed against the motorcycle from behind and caused the accident. The rider of motorcycle [deceased Lakshmanan]

sustained bleeding injuries and P.W. 2 admitted him in Government General Hospital, Chennai. P.W. 2 is the complainant in Crime No.

380/S1/2001 who lodged the complaint before Guindy Traffic Police Station. As per Ex.P. 8, deceased had driving licence to drive the motor

cycle on the date of accident. 2nd Respondent-Insurance Company has not examined the driver of the lorry. As there was no contra evidence,

based upon the evidence of P.W. 2 and other materials on record, Tribunal held that the accident wis due to rash and negligent driving of lorry

driver and further held that the owner and driver and insufer/2nd Respondent are jointly and severally liable to pay compensation of Rs. 9,79,020/-

with interest at the rate of 9% p.a. from the date of Claim Petition.

5. In so far as negligence and quantum of compensation awarded, 2nd Respondent-Insurance Company has already filed C.M.A. No.

3696/1994. No notice was ordered to the Claimants and the said Appeal came to be dismissed at the admission stage itself. Earlier, when C.M.A.

No. 3054/2004 came up for hearing, pointing out the dismissal of C.M.A. No. 3696/2004 preferred by the 2nd Respondent-Insurance Company,

Division Bench of this Court by its order dated 30.03.2007 dismissed the Claimants'' Appeal [CMA. No. 3054/2004] for enhancement. The said

judgment was challenged by the Claimants before the Supreme Court in Civil Appeal No. 5324/2006. Pointing out that Appellants were not

represented in the Appeal preferred by the 2nd Respondent/Insurance Company [CMA. No. 3696/2004], the Hon''ble Supreme Court by its

order dated 25.08.2008 has set aside the judgment of the High Court in C.M.A. No. 3054/2004 and remitted the matter back to the High Court

for consideration of the matter afresh. In C.M.A. No. 3696/2004, Claimants-Appellants in CMA. No. 3054/2004 have not entered in

appearance. Since the Appeal came to be dismissed at the admission stage itself, in our considered view, dismissal of C.M.A. No. 3696/2004 is

not an impediment to consider the matter for enhancement of compensation.

6. As is seen from Ex. P. 6 series, deceased Lakshmanan obtained provisional certificate in B.Com. degree in September 1993 from University of

Madras. He has also studied M.Com. post graduate course in University of Madras by correspondence education. As per the evidence of P.W. 1

and as is seen from Ex. P. 6 series, deceased was a Diploma holder in computer utilities console, operation (data entry) Word processing. His

performance has been certified as ''Good'' by Nataraj Computer Centre. Deceased was also self employed as income tax consultant. From

Ex.P13, it is seen that deceased enrolled as a Sales tax practitioner as per the proceedings of the Deputy Commissioner(CT) dated 19.04.2001.

Ex. P. 10 is the Bank pass book of the deceased for the period from January 2000 to July 2001. By perusal of Ex. P. 10 Pass book, it is seen that

deceased credited a total sum of Rs. 23,280/- in the month of January 2001. He credited Rs. 8411/- in the month of February 2001. Like wise,

he credited Rs. 8495/- in the month of March 2001. He also credited Rs.

22,550/- in the month of April 2001 and he credited Rs. 15,216/- in the

month of May 2001. Deceased credited Rs. 3000/- in the month of June and till 12.07.2001. Deceased involved in the accident on 16.07.2001.

As pointed out by the Tribunal, various credits made in the bank account of the deceased shows that deceased was earning substantially good

income.

7. At the time of accident, deceased was aged 34 years. Even though, Tribunal observed that future prospects of the deceased should be taken

into consideration, Tribunal has taken the income only at Rs. 7000/- per month. Deducting 1/3rd for personal expenses, loss of dependency to the

family was calculated at Rs. 4670/- per month and by adopting multiplier ''17'', the total loss of dependency is calculated at Rs. 9,52,680/-.

8. It is fairly well settled that while awarding compensation, the Tribunal/Courts will have to keep in view the future prospects and the Court should

bear them in mind while assessing the future loss of income. In K.K. Janardhanam Vs. Thiruvalluvar Transport Corporation Limited, and in

Reshma Kumari and Ors. v. Madan Mohan and Anr. AIR 2009 SCW 6999, Courts have held that the future prospects have to be taken into

consideration. Since deceased Lakshmanan was a qualified M. Com. post graduate who was working as income tax consultant and enrolled as

Sales tax practitioner, we are of the view that the income taken by the Tribunal at Rs. 7000/- per month is very low. As the deceased was a post

graduate self employed as Income tax consultant and also registered as Sales tax practitioner, his income is taken at Rs. 10,000/- per month.

Deducting 1/3rd for personal expenses i.e. Rs. 3330/-, loss of dependency is calculated at Rs. 6670/- rounded to Rs. 6675/- per month and the

annual loss of dependency is calculated at Rs. 81,100/- [Rs. 6675/- x 12 = Rs. 80,100/-]. Adopting multiplier ''17'', the total loss of dependency

is calculated at Rs. 13,61,700/- [Rs. 80,100/- x 17].

9. In so far as conventional damages, Tribunal has awarded Rs. 5000/- for ""pain and suffering"". In case of death of deceased person, there cannot

be any compensation to the Dependents of deceased under the head ""pain and suffering"". 1st Claimant is a young widow who has lost the love and

affection and consortium of her husband at her young age and therefore, Rs. 10,000/- is awarded for ""loss of consortium"". Rs. 10,000/- each i.e., Rs. 30,000/- is awarded for ""loss of love and affection"" to Claimants 2 to 4. In so far as other conventional damages, Tribunal has awarded Rs.

4340/- for ""medical expenses"", Rs. 1000/- for damages to the motor cycle and Rs. 1000/- for ""transport to hospital"" and the same are maintained.

In addition, Rs. 2000/- is awarded for ""funeral expenses"".

10. In modification, the total compensation of Rs. 9,79,020/- awarded by the Tribunal is enhanced to 14,10,040/- rounded to Rs. 14,10,100/- as

under:

Loss of dependency (Rs. 80,100 x : Rs. 13,61,700.00

17)

Loss of consortium : Rs. 10,000.00

Loss of love and affection : Rs. 30,000.00

Medical expenses : Rs. 4,340.00

Damages to motorcycle : Rs. 1,000.00

Transport charges : Rs. 1,000.00

Funeral expenses : Rs. 2,000.00

Total : Rs. 14,10,040.00

Rounded to : Rs. 14,10,100.00

The Tribunal has awarded interest at the rate of 9% p.a. and the same is maintained. The enhanced compensation has to be equally apportioned

amongst the Claimants 1 and 2 -wife and son of the deceased. It was stated before us that the 3rd Claimant-Rajalakshmi, mother of deceased has

passed away. Since, 3rd Claimant-Rajalakshmi is said to have passed away, the compensation in respect of 3rd Claimant shall be equally

apportioned amongst the Claimants 1 and 2 - wife and minor son.

11. In the result, the compensation awarded by the Tribunal is enhanced to Rs. 14,10,100/- from Rs. 9,52,680/- payable with interest at the rate

of 9% p.a. from the date of Claim Petition and the Civil Miscellaneous Appeal is partly allowed.

It was stated before us that the 2nd Respondent-Insurance Company has deposited the entire compensation amount of Rs. 9,79,020/-awarded by

the Tribunal along with accrued interest. Claimants 1 and 4 and 3rd Claimant-Rajalakshmi are said to have withdrawn their respective share: and the share in respect of minor 2nd Claimant is ordered to be invested in a nationalised bank till he attains majority.

2nd Respondent-Insurance Company is directed to deposit the enhanced compensation i.e. Rs. 4,57,420/- along with accrued interest within a

period of eight weeks from the date of receipt of copy of this judgment. On such deposit, the Claimants 1 and 2 [wife and son of deceased] are

entitled to withdraw their respective share of enhanced compensation along with accrued interest. The share in respect of minor Claimant-

Rajagopal is ordered to be invested in a nationalised bank till he attains majority. In the circumstances of the case, there is no order as to costs in

this Appeals.