

(2013) 11 MAD CK 0201

In the Madras High Court

Case No : C.M.A. No. 282 of 2013 and M.P. No. 1 of 2013

The Branch Manager, National Insurance Co. Ltd.

APPELLANT

Vs

M. Arulmozhi and Others

RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0201

Hon'ble Judges : R. Sudhakar, J; Pushpa Sathyanarayana, J

Bench : Division Bench

Advocate : R. Sreevidhya, for the Appellant; M. Selvam, for the Respondent

Final Decision : Partly Allowed

Judgement

Pushpa Sathyanarayana, J.—Challenging the Award dated 02.7.2012 passed by the Motor Accidents Claims Tribunal (Principal District Judge), Krishnagiri, in M.C.O.P. No. 329 of 2009, National Insurance Company Limited has preferred this appeal. The brief facts giving rise to the filing of this Civil Miscellaneous Appeal are as follows:-

The claim arises out of a fatal accident. On 08.7.2008, at about 8.15 pm, while the deceased Murugesan, who was employed as an Assistant Administrative Officer in Agriculture Department, was proceeding in his TVS 50 Moped bearing No. TN-29 X 9051 in Krishnagiri Hosur Road, near Attakuruki bus stop, a private bus bearing Registration No. TN 24 B 4344, belonging to the Sixth Respondent and insured with the Appellant Insurance Corporation, came at a high speed and dashed against Murugesan due to which he sustained multiple grievous injuries all over the body and he died on the spot. A Criminal Case was registered against the Driver in Shoolagiri Police Station Crime No. 424 of 2008 u/s 279 and 304(A) IPC.

2. The deceased was of 57 years and was survived by his wife, three sons and mother. They have filed Claim Petition claiming compensation of a sum of Rs. 20,00,000/- stating that he was earning a sum of Rs. 17,529/- per month at the

time of accident.

3. The claim was resisted by the Insurance Company by filing counter denying the allegations made by the claimants. The income of the deceased and the manner of accident were also denied by the Insurance Company further stating that the claim is excessive.

4. Before the Tribunal, the first claimant - widow of the deceased examined herself as P.W. 1 besides examining one Mani, eye-witness as P.W. 2 and Karthikeyan as P.W. 3 and marked Exs. P. 1 to P. 8 in support of the claim, the details of which are as follows:-

Ex. P-1 - Xerox copy of FIR dated 09.7.2008

Ex. P-2 - Xerox copy of the post-mortem report dated 09.7.2008

Ex. P-3 - Xerox copy of the Insurance Certificate

Ex. P-4 - Xerox copy of Driving Licence of M. Kumar dated 30.12.1994

Ex. P-5 True copy of Legal Heirship Certificate dated 08.8.2008

Ex. P-6 Salary Certificate of deceased Murugesan, dated 12.9.2008

Ex. P-7 - Salary Certificate of deceased Murugesan, dated 19.3.2012

Ex. P-8 S.S.L.C. Certificate dated 06.3.1969

5. On the side of the appellant Insurance Company, one Kumar and Guru Raghavendran were examined as R.W. 1 and R.W. 2 and marked Ex. R. 1, xerox copy of the enquiry report prepared by P.W. 2.

6. The Tribunal, on consideration of the oral and documentary evidence adduced by the parties, held that the accident had occurred only due to the rash and negligent driving of the bus. The Tribunal calculated the compensation by taking the monthly salary of the deceased as Rs. 17,529/-. It deducted a sum of Rs. 255/- towards statutory deduction and one-third towards the personal and living expenses of the deceased, and arrived at the contribution to the family as Rs. 11,516/- per month. Based on Ex. P-8, SSLC Certificate of the deceased, the age of the deceased was fixed at 57 years at the time of accident. Accordingly, the Tribunal adopted multiplier "8" and arrived at the loss of dependency to the family as Rs. 11,05,536/- (Rs. 11,516/- x 12 x 8 = Rs. 11,05,536/-). In addition, the Tribunal also awarded compensation under conventional heads. Accordingly, the Tribunal granted the following compensation with interest at 7.5% as follows:

Loss of dependency

Rs. 11,05,536/-

Consortium to R1 widow

Rs. 10,000/-

Loss of love and affection to Respondents 2 to 4 sons

Rs. 20,000/-

Transportation and funeral expenses

Rs. 20,000/-

Total

Rs. 11,55,536/-

Feeling aggrieved, the Insurance Corporation has preferred this appeal.

7. In this appeal, the question of negligence and quantum of compensation are challenged before this Court. The points that arise for consideration in this Appeal are:-

(i) Whether the accident is occurred due to the rash and negligent driving of the driver of the bus?

(ii) Whether the quantum of compensation arrived at by the Tribunal is correct?

(iii) To what relief the claimants, viz., Respondents 1 to 5 are entitled to?

8. Learned counsel appearing for the Appellant Insurance Company vehemently contended that when the deceased was employed in a Government service where the retirement age is 58 years and when it is the admitted case that the deceased was 57 years on the date of accident, the Tribunal ought to have adopted the split multiplier principle and the multiplier 8 adopted by the Tribunal blindly without following the guidelines, is unsustainable.

Point No. 1:

9. As regards negligence aspect, though the appellant Insurance Company has taken a stand that the accident occurred due to negligent act of the deceased, it is pertinent to note that since the driver of the bus was seated in elevated position, it is advantageous for him to have a better view of the road than that of the deceased. Therefore, he could have avoided the accident especially when he traveled on the same direction and behind the deceased. Therefore, it can be stated that the bus had come at high speed in a rash and negligent manner and hit the deceased from behind. The finding recorded by the Tribunal on the basis of legal evidence on record, holding that the accident occurred on account of rash and negligent driving of the offending vehicle by its driver and the deceased died on the spot, is affirmed and no interference is needed. Point No. 1 is answered accordingly.

Point No. 2:-

10. Regarding the quantum of compensation, we base our conclusion from the records of the case. Apart from the First Respondent widow of the deceased, there are four claimants, three of them are the sons of the deceased and the

other claimant is the mother of the deceased. Considering the age of the deceased and the number of claimants, compensation has to be arrived at following the decision of the Hon ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

11. Having regard to number of members in the family (4 to 6), one-fourth should be deducted towards personal and living expenses of the deceased, instead of the standard one-third deduction, in view of the decision of the Hon'ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . The relevant passage found in paragraph 30 of the judgment reads as follows:-

Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

Principle of split multiplier:-

12. It is an admitted fact that the deceased was employed as Assistant Administrative Officer in Agricultural Department and was earning an income of Rs. 17,529/- per month, which is evidenced by Exs. P. 6 and P. 7 Salary Certificates. From a perusal of Ex. P. 6, it could be seen that a sum of Rs. 255/- is deducted compulsorily from the salary. Therefore, the deceased was getting a net monthly income of Rs. 17,274/-. The age of the deceased on the date of accident was 57 years and the multiplier to be adopted is 8, are not in dispute. From the materials available on record, it can be inferred that on the date of accident, the deceased was 57 years and 3 months old and had only 9 months of service before his retirement. Though normally 8 multiplier would be applied in computing the loss of dependency, in this case, the same cannot be done as the income of the deceased will not be the same from the date of retirement. Though the deceased had only 9 months of service, the appellant has got no serious objection to round it off to one year. Accordingly, the period before retirement is taken as one year. Therefore, the loss dependency before retirement of the deceased would be Rs. 17,274/- X 12 X $\frac{1}{8}$ = Rs. 1,55,466/-.

13. Now, the dependency after the retirement of the deceased is to be considered. Had the deceased Murugesan been alive, after the age of superannuation, he would get only half of the salary as pension. Therefore, it is an exceptional case where the split multiplier has to be adopted, ie., $1 + 7 = 8$. As there is no scope for evidence about the prospect of future increment of the deceased and since the earning would be reduced to 50% after retirement, the multiplier of 8 as adopted by the Tribunal cannot be sustained. Hence, this Court feels that split multiplier can be adopted and as such, after superannuation, 7 multiplier would apply. Therefore, the loss of dependency from pensionary

benefits would be Rs. 8,637/- X 12 X < X 7 = Rs. 5,44,131/-.

14. Therefore, the total loss of dependency before superannuation would be Rs. 1,55,466/- and total loss of dependency from the pensionary income would be Rs. 5,44,131/-.

15. Having applied the split multiplier and considering the amounts awarded under various heads which are also very meagre and less than what is normally being fixed by the Courts, this Court is inclined to enhance the consortium to be given to the widow, viz., First Respondent wife, from Rs. 10,000/- to Rs. 1,00,000/- in view of the decision rendered in Rajesh and Others Vs. Rajbir Singh and Others, and loss of love and affection for three sons of the deceased, viz., Respondents 2 to 4, is enhanced to Rs. 20,000/- each which will work out to Rs. 60,000/- (Rs. 20,000/- X 3). Though the Tribunal omitted to grant any amount to the mother of the deceased, considering the age of the Fifth Respondent mother of the deceased, we feel that a sum of Rs. 25,000/- shall be granted to her. Therefore, loss of love and affection for the Fifth Respondent - mother of the deceased is fixed at Rs. 25,000/-. Transportation and funeral expenses of Rs. 20,000/- as granted by the Tribunal is confirmed. Accordingly, the award of the Tribunal is modified as follows:-

Sl. No.

Particulars

Amount awarded by the Tribunal

Amount awarded by this Court

1

Loss of dependency before superannuation

Rs. 11,05,536/-

Rs. 1,55,466/-

2

Loss of dependency after superannuation

-

Rs. 5,44,131/-

3

Loss of consortium to the first widow of the deceased

Rs. 10,000/-

Rs. 1,00,000/-

4

Loss of love and affection to three sons of the deceased, the respondents 2 to 4

Rs. 20,000/-

Rs. 60,000/-

5

Loss of love and affection to the mother of the deceased, the fifth respondent

Rs. 25,000/-

6

Transportation and funeral expenses

Rs. 20,000/-

Rs. 20,000/-

Total

Rs. 11,55,536/-

Rs. 9,04,597/- rounded to Rs. 9,05,000/-

16. There is no dispute in respect of the interest granted by the Tribunal at 7.5% p.a. However, the default interest granted at 9% is set aside as there is no provision of law to grant the same. Point No. 2 is answered accordingly.

Point No. 3:-

In view of the foregoing discussion, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The Award of the Tribunal is reduced to Rs. 9,05,000/- from Rs. 11,55,536/-.

(ii) The interest granted by the tribunal at 7.5% per annum is confirmed. However, the default interest granted at 9% is set aside as there is no provision of law to grant the same.

(iii) The Award amount is apportioned as follows:-

First respondent widow of the deceased

Rs. 5,50,000/-

Respondents 2 to 4, three sons of the deceased (Rs. 75,000/- each)

Rs. 2,25,000/-

5th respondent, the mother of the deceased

Rs. 1,30,000/-

(iv) Eight weeks time is granted to deposit the entire award amount as ordered by this Court, less the amount already deposited as per order dated 22.3.2013.

(v) There will be no order as to cost in this appeal.

(vi) Consequently, connected Miscellaneous Petition is closed.