
(2011) 11 MAD CK 0274
In the Madras High Court
Case No : C.M.A. (MD) No. 998 of 2005

The Branch Manager, National Insurance Company Limited, APPELLANT
Gobichettipalayam, Erode District

Vs

Saroja and Others RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2011) 11 MAD CK 0274

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : S. Ramachandran, for the Appellant; T. Selvakumaran for R1 to R5 and No appearance for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

T. Mathivanan, J.—This Civil Miscellaneous Appeal is directed against the award, dated 3.2.2004 and made in MCOP No. 81 of 2003 on the file of the learned Motor Accident Claims Tribunal (Subordinate Court), Sankarankoil.

2. The appellant herein is the 2nd respondent in the claim petition. The claimants are the respondents 1 to 5. Whereas the first respondent in the claim petition is the 6th respondent herein.

3. The respondents/claimants 1 to 5 have filed a claim petition in MCOP No. 81 of 2003 on the file of the learned Motor Accident Claims Tribunal (Subordinate Court), Sankarankoil, claiming a sum of Rs. 20,00,000/- towards compensation for the death of the first respondent/1st claimant's husband and the remaining claimants father Subbiah, in a road traffic accident said to have been taken place on 16.03.2003 at 4.30. p.m. near the Rice Mill Branch on Tenkasi Road at Rajapalayam, involving the lorry bearing registration No. TAM 6246 belonging to the first respondent (5th respondent herein).

4. It is alleged that the lorry had dashed against the rear side of the Hero Honda

Motor Cycle, which was ridden by the deceased Subbiah along with the pillion rider one Natarajan. On account of this accident, the deceased had lost balance and fallen down and subsequently, he was run over by the lorry, which resulted in his instantaneous on the spot.

5. At the time of accident, the deceased was aged about 42 years and was working as "Commercial Inspector" in the Tamil Nadu Electricity Board, Karivalamvanthanalur and earning a sum of Rs. 8,371/- per month. Hence, the respondents 1 to 5/claimants 1 to 5 have made a claim to the tune of Rs. 20,00,000/- towards compensation.

6. The 6th respondent herein being the owner of the lorry remained ex-parte before the learned Tribunal. The appellant Insurance Company has contested the claim petition on various grounds.

7. The parties to the claim petition were made to face the trial. The first claimant, being the wife of the deceased Subbiah has examined herself as P.W.1. Apart from her, one Mr. Lakshmanan, who is said to be an eye witness was examined as PW2. During the course of their examination, Exs. P1 to P9 were marked. On the other hand, neither oral nor documentary evidence was adduced on behalf of the appellant Insurance Company.

8. On appraising the evidences both oral and documentary, the learned Tribunal has proceeded to pass an award of Rs. 11,00,000/- directing the 6th respondent, being the owner of the lorry and the appellant Insurance Company to deposit this amount along with interest at the rate of 9% per annum, jointly and severally within 30 days from the date of claim petition and the claimants were also directed to apportion the award amount.

9. Impugning the award of the learned Tribunal, the Insurance Company stands before this court with this appeal.

10. Heard Mr. S. Ramachandran, the learned counsel appearing for the appellant Insurance Company and Mr. T. Selvakumaran, the learned counsel appearing for the respondents 1 to 5/claimants 1 to 5. Despite the service of notice, the 6th respondent, the owner of the vehicle has not chosen to appear.

11. The manner of accident, age of the deceased and the monthly income of the deceased have not been disputed by the appellant Insurance Company.

12. The first claimant is the wife and the 2nd and 3rd claimants are the daughter and minor son of the deceased Subbiah. The 4th claimant is the father and 5th claimant is the brother of the deceased Subbiah.

13. Mr. S. Ramachandran, the learned counsel appearing for the appellant Insurance Company has restricted his argument only with regard to quantum.

14. He has submitted that the method of calculation adopted by the learned Tribunal to arrive at the quantum is absolutely erroneous and that the quantum of award to the extent Rs. 11,00,000/- granted by the learned Tribunal is not in

consonance with the actual loss of income of the family, but it is seemingly to be on the higher side and excessive as well and hence, the quantum has to be properly assessed and reduced.

15. On coming to the available evidence on record, Ex. P7 Salary Certificate, would go show that the deceased was working as "Commercial Inspector" in the Tamil Nadu Electricity Board and was earned a sum of Rs. 8,371.40/- at the time of his death. After deducting Rs. 4,577.40/- , his take home salary was Rs. 3,794/- . Taking into consideration of the prevailing price rates on the essential commodities, the gross salary of the deceased could be taken into consideration to arrive at the quantum. Accordingly, the learned Tribunal has also taken the gross salary of Rs. 8,371/- as the basis for calculating the quantum. After giving 1/3rd deduction towards his personal and living expenses, the 2/3rd remainder would be Rs. 5,581/- .

16. At the time of his death, the deceased was aged about 42 years and considering the age of his superannuation at 58 years, the learned Tribunal has considered that the deceased was having 16 years of service and keeping in view of the promotional opportunities, increment, his net pay and future prospects, it has assessed Rs. 6,000/- as the monthly contribution to the family. Accordingly, the multiplicand i.e., the annual dependency of the family would be Rs. 72,000/- . As envisaged under Second schedule to section 163-A of the Motor Vehicles Act, 1988, the appropriate multiplier for the age group of 42 is "15".

17. On application of this multiplier, the learned Tribunal has calculated the quantum of compensation in the following manner:-

Heads Amount [Rs.]

Loss of Income of the family 10,80,000-00

Funeral Expenses 2,000-00

Loss of Estate 2,500-00

Consortium 5,000-00

In aggregate 10,89,500-00

18. But the learned Tribunal has rounded the amount to Rs. 11,00,000/- . This modification of calculation at Rs. 11,00,000/- has been disputed by Mr. S. Ramachandran, the learned counsel appearing for the appellant Insurance Company.

19. Mr. S. Ramachandran, the learned counsel appearing for the appellant Insurance Company, while advancing his argument, has also made reference to Sarla Verma's case [2009 (2) TN MAC 1 (SC)] and the decisions pronounced by the Apex court.

20. It is obvious to note here that the deceased was working as "Commercial Inspector" in the Tamil Nadu Electricity Board and at the tender age of 42, he

had passed away on account of the accident. As decided by the learned Tribunal, he was having 16 years of service and his monthly income at the time of the death is Rs. 8,371/- . Even as per Sarla Verma's case [2009 (2) TN MAC 1 (SC)], for future prospects, 30% on the actual salary of the deceased could be added with the gross salary to calculate the future prospectus. If this has been done, after following the Sarla Verma's case [2009 (2) TN MAC 1 (SC)], then the compensation would be more than the amount awarded by learned Tribunal, instead, the court is of view that it may be quite better to confirm the award granted by the learned Tribunal.

21. Ultimately Mr. S. Ramachandran, the learned counsel appearing for the appellant Insurance Company has also conceded for this and accordingly, this court finds that the award of the learned Tribunal may be confirmed.

22. In the result, this Civil Miscellaneous Appeal is dismissed. The award, dated 3.2.2004 and made in MCOP No. 81 of 2003 on the file of the learned Motor Accident Claims Tribunal, Sankarankoil, is confirmed. No costs.