(2017) 03 MAD CK 0117

In the Madras High Court

Case No : C.M.A. No.1431 of 2015 and M.P. No.1 of 2015

The Divisional Manager, National Insurance Co. Ltd. APPELLANT

Vs

Prema RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) 2 ACC 277

Hon'ble Judges : Mr. S. Manikumar and Mr. M. Govindaraj, JJ.

Bench : Division Bench

Advocate : Mr. S. Arun Kumar, Advocate, for the Appellant; Mr. C. Prabhakaran, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Challenge in the Civil Miscellaneous Appeal, by M/s. National Insurance Co. Ltd., is to the quantum of compensation of Rs.30,56,200/- with interest at the 7.5% from the date of claim, till deposit, awarded to the legal representatives of the deceased, stated to have worked as a Road Worker (Salaipaniyalar) in Highways Department, aged about 40 years, at the time of accident, with a monthly salary of Rs.12,300/-. Except the above, there is no other challenge.

2. In the accident, which occurred on 27.12.2011, C. Ravichandran, died. Wife, aged about 25 years, mother, aged 60 years, minor daughters, aged 15 and 4 years and minor sons, aged about 13 and 11 years, filed M.C.O.P. No.421 of 2012, on the file of the Principal District Judge, Krishnagiri, claiming compensation of Rs.30,00,000/-.

3. Wife has adduced evidence. PW.3, Mr. Chandrasekaran, Office Superintendent, Office of the Highways Department has been examined. Ex.P8 - Salary Certificate and Ex.P9 - Service Register, have been marked. Based on the income of Rs.12,300/- mentioned in Ex.P8 - Salary Certificate, the Tribunal has fixed his

monthly income. On the basis of entries in Ex.P7 - General Provident Fund slip, wherein, the date of birth of the deceased has been mentioned as 20.05.1972 and Ex.P2 - Post-mortem Certificate, wherein, the age of the deceased has been mentioned as 40 years, the Tribunal has taken ''15'' multiplier, for the age group of 36-40 years.

4. Taking note of the decision of the Hon''ble Apex Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 (SC), the Claims Tribunal deducted ?th towards the personal and living expenses of the deceased, which works out to Rs.2,460/- (Rs.12,300/- x ?) and thereafter, after deducting the same, from the monthly income determined, computed Rs.9,840/- as the monthly contribution by the deceased to the family.

5. Though PW.3, Mr. Chandrasekaran, Office Superintendent, Office of the Highways Department has admitted that the deceased was dismissed by the Tamil Nadu Government and he was restored to service in the year 2006, and hence, a contention has been made that he would not have received salary from 2002 to 2006, the Claims Tribunal has added 50% towards future prospects, and computed the monthly contribution as Rs.15,840/- [Rs.9,840/- + Rs.6,000 (half of the salary to be included)]. After applying ''15'' multiplier, the Claims Tribunal has computed the loss of contribution to the family as Rs.28,51,200/- (15,840/- x 12 x 15). After quantifying the amount, under various heads, the Tribunal has awarded a total compensation of Rs.30,56,200/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit, as hereunder :

Loss of dependency

: Rs.28,51,200/-

Loss of love and affection

: Rs. 50,000/-

Loss of consortium

: Rs. 50,000/-

Transportation

: Rs. 5,000/-

Funeral Expenses

: Rs. 25,000/-

Total

: Rs.30,56,200/-

6. The main grievance of the appellant-Insurance Company, is that the Tribunal has failed to note that the deceased was engaged as Road Worker, in Highways Department and therefore, the Tribunal ought not to have added 50% towards

future prospects, which is contrary to the decision of the Hon''ble Supreme Court in Reshma Kumar and others v. Madan Mohan and another reported in 2013 (1) TNMAC 481. Without prejudice to the above, Mr. S. Arunkumar, learned counsel for the appellant-Insurance Company submitted that even taking it for granted that the deceased had future prospects, addition should have been only 30% and not 50%. It is also his submission that the Tribunal should have deducted ?th. According to him, the method of computing for loss of contribution to the family, is wrong. For the above said reasons, prayed for reduction.

7. Mr. C. Prabhakaran, learned counsel appearing for the respondents/claimants made submissions to sustain the award amount. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. To support avocation and monthly income, besides oral testimony, the Claimants/respondents have examined Mr. Chandrasekaran, Office Superintendent, Office of the Highways Department. He has deposed that the deceased as Road Worker, earned Rs.12,300/-. Ex.P8 - Salary Certificate and Ex.P9 - Service Register, have been marked. Considering the oral and documentary evidence, this Court is of the view that there is no material irregularity or illegality in fixing the monthly income. There is no quarrel over the determination of age of the deceased as 40, as per the entry in Ex.P2-Post-Mortem Certificate, which can also be justified, as per the decisions in Fakeerappa v. Karnataka Cement Pipe Factory reported in 2004 (4) LW 20 and The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515].

9. Question to be considered, is whether, the deceased would have earned more income, had he been alive and whether, the Claims Tribunal was right in adding 50% under the head, future prospects, for the purpose of computing loss of contribution to the family. At the time of accident, the deceased was a road worker. He is survived by wife, mother and four children. Though the policy of the Government may change from time to time, having regard to the employment of the deceased, as road worker, it could be reasonably be presumed that had he been alive, certainly, there would have been regular engagement and that he would have earned regular and reasonable income and consequently, contributed to the family.

10. Though Mr. S. Arun Kumar, learned counsel for the appellant submitted that the Tribunal ought not to have added 50% towards future prospects, this Court, is not inclined to accept the said contention, on the principles of just compensation. Addition of Rs.6,000/- under the head, future prospects, cannot be said to be wholly unjustified. However, as rightly pointed out, the Tribunal has committed a mistake, in deducting a lower sum, under the head, personal and living expenses of the deceased. As the dependents are six in numbers, the Tribunal should have deducted ?th, instead of ?th, which works out to Rs.9,225/-. Adopting the above said method, loss of contribution works out to Rs.24,90,750/- (Rs.9,225/- x 50% x 12 x 15).

11. Quantum of compensation of Rs.50,000/- awarded to the wife, stated to be aged about 25 years, is less. Thus, the same requires enhancement. Following the decision in Vimal Kanwar v. Kishore Dan reported in 2013 (7) SCC 476, award under the head, loss of consortium is enhanced to Rs.1,00,000/-. Four minor children and mother, have lost the love and affection of the deceased. A sum of Rs.50,000/- under the head, loss of love and affection, is less. Considering the age of the children and mother, the Tribunal should have added Rs.1 Lakh each, to the children and Rs.50,000/- to mother.

12. Quantum of Compensation awarded under the head, transportation and funeral expenses is just and reasonable. There is no award towards damages to clothes and articles. Children have lost the support, moral guidance, love and affection of the deceased. So also, the mother. If appropriate compensation is awarded under the head, loss of love and affection, re-working compensation payable would be Rs.30,71,750/-. In view of the above, we are not inclined to interfere with the quantum of compensation.

13. Hence, this Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, with accrued interest and costs, to the credit of M.C.O.P. No.81 of 2013, on the file of the Motor Accident Claims Tribunal, District Judge, Krishnagiri, within a period of six weeks from the date of receipt of a copy of this order. The share of the minors shall be deposited in any of the Nationalised Banks in fixed deposit, under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw the same, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

