
(2016) 03 MAD CK 0048

In the Madras High Court

Case No : C.M.A. (MD) No. 145 of 2016 and C.M.P. (MD) No. 2378 of 2016

The Manager, Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Malarkodi and Others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Income Tax Act, 1961 — Section 24, Section 80C, Section 80CCC, Section 80CCD
Motor Vehicles Act, 1988 — Section 163-A

Citation : (2016) 03 MAD CK 0048

Hon'ble Judges : S. Manikumar and C.T. Selvam, JJ.

Bench : Division Bench

Advocate : S. Srinivasa Raghavan, for the Appellant; K. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

C.T. Selvam, J.—1. Challenge in this appeal by Reliance General Insurance Company Ltd., is to the quantum of compensation of Rs.19,28,568/- with interest, at the rate of 7.5% p.a., awarded to the respondents 1 to 3/claimants, by the Motor Accident Claims Tribunal/District Court, Karur, in M.C.O.P. No. 105 of 2012.

2. In as much as the challenge is restricted, this Court is of the considered view that there is no need to advert to the finding of negligence, and liability fastened on the appellant, to pay compensation.

3. Short facts leading to the appeal are that on 15.03.2012, in the accident, which occurred, involving a motor cycle and lorry bearing registration No. TN 28 K 2377 and insured with the Reliance General Insurance Co. Ltd., the appellant herein, one Shanmugasundaram, aged about 48 years, working as a Sanitary Supervisor, in Karur Municipality died. Legal representatives, filed M.C.O.P. No. 105 of 2012, on the file of the Motor Accident Claims Tribunal/District Court, Karur, claiming compensation of Rs. 40,00,000/-.

4. Before the Claims Tribunal, wife of the deceased, has adduced evidence reiterating the averments made in the claim petition, as regards the manner of accident, employment of the deceased, income earned by him, at the time of accident, and the loss suffered. P.W.2 is stated to be the eye-witness to the accident. P.W.3, Health Inspector of Karur Municipality has been examined to support the contention of the claimants that at the time of accident, the deceased was working as a Sanitary Supervisor, in Karur Municipality and earned a monthly income of Rs.15,903. That apart, respondents 1 to 3/claimants, have marked documents Ex.P.1 to P.7. Though, Reliance General Insurance Co. Ltd., the appellant herein, has disputed the manner of accident, liability to pay the compensation, age, income of the deceased and compensation claimed under various heads, no oral or documentary evidence, was adduced on their behalf.

5. Evaluating the pleadings and evidence, the Claims Tribunal came to the conclusion that the driver of the lorry bearing registration No. TN 28 K 2377, and insured with Reliance General Insurance Co., Ltd., the appellant herein, was negligent in causing the accident, and accordingly, fastened liability, on the insurer. Accepting the evidence adduced, on behalf of the respondents 1 to 3/claimants, the Tribunal has awarded a compensation of Rs.19,28,568/-, with interest, at the rate of 7.5% p.a. from the date of claim, till date of realisation and apportioned the same, as hereunder:

6. Assailing the correctness of the award, Reliance General Insurance Co., Ltd., appellant has contended that the Tribunal had erred in fixing a sum of Rs.20,670/-, as the monthly income, inclusive of future prospectus. The Tribunal has erred in applying split multiplier formula for computing the loss of income, upto the period of superannuation, on the basis of the last drawn salary minus professional tax and income tax, and on the basis of monthly pension or half of the last drawn salary, after the period of superannuation, and that the above erroneous method adopted, by the Tribunal, has resulted in excessive compensation.

7. We have heard learned counsel for the appellants and learned counsel for the respondents 1 to 3 and 5th respondent, and perused the materials available on record.

8. Insofar as the employment is concerned, P.W.1, wife of the deceased has deposed that, at the time of accident, her husband was a sanitary supervisor in Karur Municipality. She has also stated that he earned Rs. 15,903/- per month. Supporting her contention, P.W.3, Health Inspector of Karur Municipality has also deposed that the deceased had worked as a Sanitary Supervisor and earned Rs.15,903/- per month. He has further added that had the deceased been alive, but for the accident, he would have retired on 28.02.2014 and that his salary would have been revised. Upon perusal of Ex.P7, salary certificate for the month of February, 2012, the Tribunal had noticed that the last drawn income mentioned in Ex.P.7 was Rs. 15,902/-. However, the Tribunal rounded of the same to Rs.15,900/-.

9. As regards the age of the deceased, upon perusal of the Ex.P.7, service and salary particulars and taking note of date of birth, mentioned as 05.02.1964, and the date of accident as 15.03.2012, the Tribunal has determined the age of the deceased as 48 years. The deceased was less than 50 years. Having regard to the variations in the multiplier applied in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas reported in , 1994(2) SCC 176, UP State Road Transport Corporation v. Trilok Chandra reported in , 1996 (4) SCC 362 and in New India Assurance Co., Ltd., v. Charlie reported in 2005(1) TN MAC (SC) and the Second Schedule to Section 163-A of the Motor Vehicles Act, the Hon"ble Supreme Court in Smt. Sarla Verma & ors. v. Delhi Transport Corporation & another (SC) reported in , 2009 (2) TN MAC 1 (SC) has standardised the multiplier, for different age group of persons. For the age of persons 46 to 50, the Hon"ble Supreme Court has fixed the multiplier, as 13. In the instant case, the Tribunal ought to have applied the said multiplier, for computing the loss of contribution to the family.

10. Having regard to the testimony of P.W.3, official witness that, had the deceased been alive, he would have drawn higher salary and taking note of the decision of the Hon"ble Apex Court in Smt. Sarla Verma & ors. v. Delhi Transport Corporation & another (SC) reported in , 2009 (2) TN MAC 1 (SC), the Tribunal has decided to award compensation, under the head "future prospects". In Sarla Verma, the Hon"ble Apex Court has stated that in respect of persons below the age of 50, compensation can be awarded under the head, future prospects, to an extent of 30% from the salary drawn. Thus, adding Rs.4,770/-, representing 30% towards future prospects, the claims Tribunal has fixed the monthly income of the deceased as Rs.20,670/-. The annual income of the deceased has been worked out as Rs.2,48,040/-/. After deducting the non taxable income, the Tribunal ought to have deducted income tax, on the remaining amount. Thereafter, the Tribunal ought to have applied 13 multiplier. After deducting 1/3rd towards the personal and living expenses of the deceased, the Tribunal should have computed the loss of contribution to the family. As rightly pointed out by the learned counsel for the appellant Reliance General Insurance Company the procedure adopted by the Tribunal in applying split multiplier for arriving at the loss of contribution to the family though erroneous. But if we adopt the above method, the amount would be more or less same.

11. The accident has occurred on 15.03.2012. During the financial year 2011-2012, deduction upto Rs.1,00,000/- was permitted under Section 80C, 80CCC and 80CCD of Income Tax Act towards savings, payment of tuition fees and repayment of principal of housing loan. Under Section 24 of the Act, deduction upto Rs.1,50,000/- is permissible for the interest paid to Housing Loan. Further deduction upto Rs.20,000/- was permissible for purchase of infrastructure bonds. Payment of professional tax was also exempted from income tax. For those occupying rental house, portion of H.R.A. amount could be deducted. After deducting those amounts, a standard deduction of Rs.1,80,000/- was permissible in the case of men assesseees and Rs.1,90,000/- was permissible

for women assesseees. After deducting that amount, from Rs.1,80,001 to Rs.5,00,000/-, 10% tax has to be imposed. Monthly income fixed by the Tribunal is Rs.20,670/-. Annual income works out to Rs.2,48,040/-. The exact savings is not available. However, giving the benefit of tax exemption to the deceased, the taxable income would be Rs.2,48,048/- - Rs.1,80,000/- i.e. Rs.68,048/-. If 10% tax is levied, the tax works out to Rs.6,804.80 rounded off to Rs.6,805/-. Judicial notice can also be taken that the ceiling limit, of non-taxable income is also increased, considering the escalation in cost, inflation and such other economic factors. If Rs.6,805/- tax has to be deducted, then the annual income of the deceased would be Rs.2,48,040/- - Rs.6,805/-, which works out to Rs.2,41,235/-. If "13" multiplier, applicable to the age of the deceased is applied, and if 1/3 is deducted towards the personal and living expenses of the deceased, the loss of contribution works out to Rs.20,09,073/-. But, the figure arrived at is by giving the benefit of tax exemption to the deceased. The Tribunal has awarded Rs.18,68,568/- under the head loss of contribution to the family.

12. Perusal of the award shows that at the time of accident, the first respondent/ wife was aged 45 years. Both the daughters were aged about 24 years and 22 years respectively. They were shown as unmarried. The Tribunal has awarded a negligible amount of Rs.20,000/- towards loss consortium and only a meagre amount of Rs.10,000/- each, towards loss of love and affection to the claimants. For funeral expenses, Rs.10,000/- awarded, is also less. The Tribunal, has not awarded a just and reasonable compensation under the above heads.

13. Going through the material on record, we are of the view that there is no manifest illegality in determining the age of the deceased, fixing the monthly income and thus awarding a overall compensation of Rs. 19,28,568/- to the legal representatives of the deceased, respondents 1 to 3/claimants.

14. In the result, this Civil Miscellaneous Appeal is dismissed. The appellant Reliance General Insurance Co. Ltd., is directed to deposit the entire award amount, less the amount, if any, already paid within six weeks from the date of receipt of a copy of this order. On such deposit respondents 1 to 3 / claimants are permitted to withdraw the shares apportioned to them with proportionate interest and costs, by making necessary applications. No costs. Consequently, connected Miscellaneous Petition is also dismissed.