(2009) 01 MAD CK 0199

In the Madras High Court

Case No : C.M.A. No. 170 of 2009 and M.P. No. 1 of 2008

The National Insurance Company Ltd. APPELLANT

Vs

C. Kalaiselvi and Others RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 163

Citation : (2009) 2 MLJ 148

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; V.K. Rajagopalan, for Respondents 1 to 3, for the Respondent

Judgement

R. Sudhakar, J.—The National Insurance Company has filed this appeal challenging the award dated 01.08.2003 made in O.P No. 372 of

2000 on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No. 4,) Poonamallee.

2. Respondents appeared through counsel. At the request of both sides, the appeal itself is taken up for final disposal.

3. It is a case of fatal. The accident in this case happened on 08.07.2000 at 11.40 hours. The deceased Chandrasekar aged about 43 years a

brick works owner and agriculturists was riding a motor cycle and was proceeding near Vadapalani on the 100 ft. road. He was hit by a lorry

bearing registration No. TN-28-X-2610 insured with the appellant. In that accident, he died. The wife aged about 35 years, two minor children

aged 16 and 14 years respectively and mother aged 70 years are the claimants. They claimed a sum of Rs. 15,00,000/- as compensation stating

that the income of the deceased is Rs. 7,500/- per month.

4. In support of the claim, the son who travelled along with the deceased was examined as P.W.1 and the mother was examined as P.W.2. One

Mohan was examined as P.W.3 and the Doctor was examined as P.W.4. In the case of injury claim Documents Exs.P1 to P18 were marked.

Ex.P1 is the Copy of the First Information Report. Ex.P2 is the Accident Register. Ex.P3 is the Discharge Summary, Ex.P4 is the Medical Bills.

Ex.P5 is the Discharge Summary. Ex.P6 is the Medical Bills. Exs.P7 to Ex.P11 are the Medical Expenses and Medical Bills series, Ex.P12 is the

copy of the charge sheet, Ex.P13, is the Judgment copy before the VI Metropolitan Magistrate, Ex.P14 is the Post Mortem Certificate, Ex.P15 is

the Legal heirship Certificate, Ex.P16 is the tax receipt paid with regard to the agricultural land of the deceased. No oral and documentary

evidence was let in on behalf of the appellant/ respondent before the Tribunal.

5. Finding of negligence on the part of the driver of the lorry who caused the fatal accident and the liability fixed by the insurance company is not in

dispute by the learned Counsel for the appellant and such finding of the Tribunal stands confirmed.

6. The Tribunal fixed the income of the deceased at Rs. 7,500/- taking note of the agricultural income and the income by way of manufacture of

bricks. After deducting 1/3rd towards the personal expenses of the deceased and by adopting multiplier of ''15'' the Tribunal granted a sum of Rs.

9,00,000/- towards pecuniary loss. The Tribunal also granted compensation towards loss of love and affection to the first respondent in a sum of

Rs. 5,000/-. To the second and third respondent Rs. 20,000/- (Rs. 10,000/- each) was granted for loss of love and affection. In all the Tribunal

granted a sum of Rs. 9,25,000/- with 9% interest.

7. In appeal, it is contended that the income of the deceased who died in an accident in the year 2000 as brick works owner and also an

agriculturalist is on the higher side. The multiplier is also on the higher side. Therefore, appellant pleaded for reduction in the quantum of

compensation and the rate of interest also.

8. Learned counsel appearing for the claimant stated that the documents relating to income by agriculture and the amounts paid to the Panchayat to

support the business of brick manufacturing is ample proof of higher income of the deceased. He further stated that meagre amount has been granted for loss of love and affection to two minor children and a paltry sum was granted for the loss of consortium to the wife. Further, no amount

has been granted for funeral expenses and for loss of estate which is normally given in these cases.

9. The accident in this case happened on 08.07.2000. The deceased was aged 43 years. He was doing brick manufacturing business and was also

engaged in agriculture. The said plea is supported by documents Exs.B16 and B17. In so far as agricultural income is concerned, following

decisions will have to be kept in mind while fixing the income of the deceased:

(a) A Division Bench of this Court in B. Anandhi Vs. R. Latha and Another, (P. Sathasivam, J. as he then was) observed that a coolie would earn

Rs. 100/- per day. In that case, the accident happened in the year 1995.

(b) The Apex Court in State of Haryana and Anr. v. Jasbir Kaur and Ors. reported in 2004 1 LW, was of the view that an agriculturist would earn

Rs. 3,000/- per month. In that case, the accident happened in the year 1999.

10. In the above cited cases, the income of the deceased was taken at Rs. 3,000/- per month for the year 1995 and 1999 respectively, whereas in

the present case, the accident happened in the year 2000. In this case, the deceased was also engaged in manufacture of bricks and that is

supporting by documentary evidence. Considering the same, the income can be fixed at Rs. 5,000/- per month. The higher income of Rs. 7,500/-

fixed by the Tribunal is not support by any clear evidence on record and there is no good reasoning for the same. Therefore, the income of the

deceased stands modified to Rs. 5,000/- per month as against Rs. 7,500/- fixed by the Tribunal. The deceased is aged 43 years. Even as per the

second schedule to Section 163 of the M.V. Act the multiplier would be ''15''. The deceased was in his prime age. His son and daughter are aged

16 and 14. The wife aged about 35 years. Therefore, the multiplier adopted by the Tribunal is justified. Therefore, pecuniary loss in this case will

be Rs. 5,000/- X 12 : Rs. 60,000/- - 1/3 : 40,000 X 15 : Rs. 6,00,000/-. The wife would be entitled to a reasonable compensation towards loss

of consortium on the death of her husband. Accordingly, a sum of Rs. 25,000/- is awarded to her. The two minor children would be entitled to Rs.

20,000/- each for loss of love and affection. For funeral expenses Rs. 5,000/- is awarded and for loss of Estate Rs. 5,000/-. The award therefore stands modified as follows:

Sl. No. Head Amount Amount

granted by granted by

the Tribunal this Court

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1 Pecuniary Loss Rs. 9,00,000/- Rs. 6,00,000/-

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2 Loss of love and affection to wife Rs. 5,000/- Rs. 25,000/-

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3 Loss of love and affection the Rs. 20,000/- Rs. 40,000/-

children

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4 Funeral Expenses --- Rs. 5,000/-

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5 Loss of Estate --- Rs. 5,000/-

Total Rs. 9,25,000/- Rs. 6,75,000/-

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11. The interest awarded by the Tribunal at 9% stands reduced to 7.5% in view of the decision of the Apex Court reported in Tamil Nadu State

Transport Corporation Ltd. Vs. S. Rajapriya and Others, .

12. In the result, the civil miscellaneous appeal is partly allowed as follows:

(i) The award of the Tribunal stands reduced to Rs. 6,75,000/- from Rs. 9,25,000/-.

(ii) The interest granted by the Tribunal at 12% stands reduced to 7.5% p.a.

(iii) Learned Counsel for the appellant seeks eight weeks time to deposit the balance award amount and the same is allowed. On such deposit, the

claimant is entitled to withdraw the amount as per the order of this Court.

(iv) There shall be no orders as to costs.

(v) Consequently, M.P. No. 1 of 2008 is closed.