(2013) 09 MAD CK 0255

In the Madras High Court

Case No : C.M.A. No. 3293 of 2011 and M.P. No. 1 of 2011 and Cross Objection No. 73 of 2012

The New India Assurance Co. Ltd. — APPELLANT

Vs

A. Karthika and Others
A. Karthika, Reshma rep. by her mother and NF A. Karthika, V. Yokeeswaran and Y. Jenitha Kumari Vs The New India Assurance Co. Ltd. and P.S. Thiyagarajan — RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0255

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : M. Krishnamoorthy in C.M.A. No. 3293 of 2011 and Mr. C. Munusamy for C and K Law firm in Cross Objection No. 73 of 2012, for the Appellant; C. Munusamy for C and K Law firm for R. 1 to R. 4 in C.M.A. No. 3293 of 2011 and Mr. M. Krishnamoorthy for R. 1 in Cross Objection No. 73 of 2012, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Subbiah, J.—Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes), Chennai, by an award dated 8.4.2011 in M.C.O.P. No. 806 of 2008, C.M.A. No. 3293 of 2011 has been filed by the insurance company. Seeking enhancement of the compensation, the claimants have filed Cross Objection No. 73 of 2012. For the sake of convenience, the parties are referred to as they are referred in C.M.A. No. 3293 of 2011.

2. Respondents 1 to 4 in this appeal are the wife, minor daughter, father and mother of the deceased Y. Arun Buddha respectively, who had died in the accident that had occurred on 21.2.2008 involving a van bearing registration No. TN-20-AY-7185 belonging to the fifth respondent and insured with the appellant insurance company.

3. It is the case of the claimants before the Tribunal that on 21.2.2008 at about 10.00 hours, when the deceased Y. Arun Buddha was riding a motor cycle bearing registration No. TN-09-AV-1846, along with Rajamannar Salai, K.K. Nagar from West to East direction, a Van bearing registration No. TN-20-AY-7185 insured with the appellant insurance company, came from the opposite direction in a rash and negligent manner and dashed against the motor cycle and thus, caused the incident, in which said Y. Arun Buddha sustained serious injuries. Immediately, he was taken to hospital and admitted as inpatient and he took treatment from 21.2.2008 and died on 13.3.2008 due to brain stem injury, diffuse cerebral concussion and pneumonia. Hence, respondents 1 to 4 herein, who are the legal heirs of the deceased, have filed the claim petition as against the owner of the Van and its insurer, claiming a sum of Rs. 40,00,000/- as compensation.

4. Resisting the claim petition, the insurance company has filed a counter affidavit denying the occupation and income of the deceased. Further, in the counter affidavit, it has been stated that the compensation claimed under various heads are imaginary and unsustainable. Thus, the counter affidavit sought for the dismissal of the claim petition.

5. In order to prove the claim, on the side of the claimants, the first claimant, viz., the wife of the deceased examined herself as P.W. 1, besides examining one S. Srinivasan as P.W. 2 and marked 7 documents as Exs. P. 1 to P. 7. On the side of the respondents, no evidence was adduced.

6. The Tribunal, after analysing the entire evidence, both oral and documentary, came to the conclusion that the accident is the result of rash and negligent driving of the driver of the Van. Thereafter, by assessing the compensation under different heads, passed an award for a total sum of Rs. 33,94,500/- as compensation. Now, questioning the quantum of compensation awarded by the Tribunal, the appeal in C.M.A. No. 3293 of 2011 has been filed by the insurance company and seeking enhancement of the compensation, the claimants have filed Cross Objection No. 73 of 2012.

7. Since this appeal and the Cross Objection have been filed only questioning the quantum of compensation awarded by the Tribunal and seeking enhancement of the compensation, we are not dealing with the other aspects of the award.

8. It is the contention of the learned counsel appearing for the appellant insurance company that though it is claimed by the claimants/respondents 1 to 4 herein that the deceased was working as a Senior Executive in M/s. Pioneer Engineering Company and was earning a sum of Rs. 20,912/- per month, they have not chosen to examine the employer of the said company in order to prove the income of the deceased. Except a pay slip for the month of February, 2008 said to have been issued by the said company, no other tangible evidence was produced by them to prove the income of the deceased. Learned counsel for the appellant insurance company has also drawn the attention of this Court to Ex. P.

7 and submitted that the said document does not contain even the signature of the Officer, who has issued the same and hence, the said document has no evidentiary value. But, the Tribunal by relying upon the said document, has fixed the monthly income of the deceased as Rs. 20,912/- and made a calculation on that basis, which ultimately resulted in awarding an exorbitant sum of Rs. 30,11,256/- as loss of dependency. Further, learned counsel appearing for the insurance company submitted that though P.W. 1 in her evidence had stated that the deceased was a B.E. Graduate, no document was produced even with regard to his educational qualification. In such a situation, a sum of Rs. 20,912/- fixed by the Tribunal as monthly income of the deceased is not correct. Therefore, the amount awarded by the Tribunal under the head of loss of dependency needs proper reduction.

9. Per contra, learned counsel appearing for the claimants/respondents 1 to 4 herein has submitted that though no document was produced except the pay slip, the oral evidence of P.W. 1, the wife of the deceased would show that the deceased was working as a Senior Executive in M/s. Pioneer Engineering Company and was earning a sum of Rs. 20,912/- per month. Therefore, the Tribunal by relying upon the evidence of P.W. 1 and Ex. P. 7, had fixed a sum of Rs. 20,912/- as monthly income and made calculation on that basis and there is no need to interfere with the same.

10. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

11. Since no tangible document was marked on the side of the claimants to prove the income of the deceased, this Court asked the learned counsel appearing for the claimants as to whether he could produce any document to prove the income of the deceased, atleast at this stage. Initially he expressed his inability to produce the same, but, after hearing arguments and after reserving judgment, learned counsel appearing for the claimants submitted that if time is granted, he would find out whether any document is available to prove the income of the deceased. But, we are of the opinion that since the learned counsel has already expressed his inability to produce such document, no useful purpose would be served by granting time to him. Hence, we decide to proceed with the matter based on the materials available on record.

12. On a perusal of the entire materials available on record, we find that as contended by the learned counsel appearing for the appellant insurance company, except a pay slip, no other document was produced before the Court to prove the income of the deceased. Similarly, no document was produced to establish the educational qualification of the deceased also. However, we find that, P.W. 1, in her cross examination, had stated that her husband was a B.E. Graduate. Therefore, we are of the opinion that there is no need for the wife of the deceased to make such a false statement with regard to the educational qualification of her husband. Considering the educational qualification of the deceased, we are of the opinion that if a sum of Rs. 10,000/- is fixed as monthly

income of the deceased in the absence of any substantial documentary evidence, it would be appropriate to arrive at a just and proper compensation. Therefore, if a sum of Rs. 10,000/- is taken as monthly income of the deceased, now after deducting a sum of Rs. 3,300/- towards his personal expenses, the balance amount works out to Rs. 6,700/- (Rs. 10,000/- (-) Rs. 3,300/-). At time of accident, the deceased was aged about 27 years and hence, the correct multiplier that has to be adopted in this case is 18. Therefore, if the multiplier of 18 is applied, the total loss of dependency works out to Rs. 14,40,720/- (Rs. 6,700/- x 12 x 18), which amount could be awarded as just and proper compensation towards loss of dependency. Hence, a sum of Rs. 30,11,256/- awarded by the Tribunal under the head of loss of dependency is hereby reduced to Rs. 14,40,720/-.

13. So far as the amount of Rs. 10,000/- awarded under the head of loss of consortium is concerned, considering the fact that the first respondent, the wife of the deceased has lost her husband at her younger age, the Tribunal ought to have awarded a substantial amount under the head of loss of consortium. Hence, a sum of Rs. 10,000/- awarded by the Tribunal under the head of loss of consortium is hereby enhanced to Rs. 1,00,000/-. Similarly, considering the fact that the daughter of the deceased has lost her father at her tender age, a sum of Rs. 10,000/- awarded by the Tribunal under the head of love and affection is hereby enhanced to Rs. 50,000/-.

14. Further, the Tribunal has awarded a sum of Rs. 3,50,699/- towards medical expenses, which is supported by the medical bills and hence, the same is hereby confirmed. Further, the Tribunal awarded a sum of Rs. 10,000/- towards loss of estate and the said amount is hereby set aside. A sum of Rs. 2,500/- awarded by the Tribunal towards funeral expenses is hereby enhanced to Rs. 5,000/-. Thus, the quantum of compensation awarded by the Tribunal is reduced to Rs. 19,50,000/- and the break up details are as follows:-

Loss of dependency

:

Rs.14,40,720/-

Medical expenses

:

Rs. 3,50,699/-

Loss of consortium

:

Rs. 1,00,000/-

Loss of love and affection

:

Rs. 50,000/-

Funeral expenses

:

Rs. 5,000/-

Total

Rs. 19,46,419/- rounded off

Rs. 19,50,000/-

15. Thus, the quantum of compensation awarded by the Tribunal i.e., Rs. 33,94,455/- is reduced to Rs. 19,50,000/- and the same is payable with interest at the rate of 7.5% per annum.

16. In the result, the C.M.A. No. 3293 of 2011 is partly allowed and the Cross Objection No. 73 of 2012 is dismissed. No costs. Connected miscellaneous petition is closed. It is submitted by the learned counsel appearing for the appellant insurance company that from amount awarded, already the first respondent viz., the wife of the deceased has withdrawn a sum of Rs. 10,00,000/- and respondents 3 and 4 viz., the father and mother of the deceased have withdrawn Rs. 2,00,000/- each. In view of the above modification, the balance amount of Rs. 5,50,000/- is allotted to the second respondent herein viz., the minor daughter of the deceased. Since already the share of minor has been deposited in Indian Bank, High Court Branch, Chennai, the first respondent is entitled to withdraw the accrued interest on the said amount once in three months till she attains majority. Since respondents 1, 3 and 4 have already withdrawn Rs. 10,00,000/-, Rs. 2,00,000/- and Rs. 2,00,000/- respectively, they are entitled only the interest alone for the said amounts. Therefore, they are permitted to withdraw interest for the above said amounts. The appellant insurance company is also permitted to withdraw the excess amount, if any, from the deposit made by them.