(2004) 10 MAD CK 0140

In the Madras High Court

Case No : Civil Miscellaneous Appeal (NPD) No. 3000 of 2004 and C.M.P. No. 16789 of 2004

The New India Assurance Company Ltd. APPELLANT

Vs

K. Revathy, M. Kumar and Amudha Constructions RESPONDENT

Date of Decision : 19-10-2004

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 1 ACC 411 : (2006) ACJ 1274 : (2004) 5 CTC 660 : (2004) 4 MLJ 636 : (2005) 1 RCR(Civil) 175

Hon'ble Judges : V. Kanagaraj, J;T.V. Masilamani, J

Bench : Division Bench

Advocate : R. Sivakumar, for the Appellant; Muthu Rajan and Kalai Arasan for R.1 and R.2, for the Respondent

Judgement

V. Kanagaraj, J.—The above Appeal is directed against the Award dated 22.7.2004 made in MACTOP. No. 1803 of 2002 by the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the respondents 1 and 2 have filed the claim petition before the Tribunal below claiming a compensation of Rs. 8 lakhs for the death of their son K. Thomas aged about 19 years, in a road accident caused due to the rash and negligent driving of the driver of the vehicle belonging to the third respondent for which the appellant is the insurer.

3. The Tribunal below having framed its own points for consideration, has conducted a thorough enquiry into the matter wherein on behalf of the claimants they would examine four witnesses for oral evidence as P.Ws.1 to 4 and would mark six documents for documentary evidence as Exs. A.1 to A.6 and on behalf of the respondents, the evidence adduced on their behalf, in all, is nil. Thereupon, in consideration of the facts and circumstances of the case, the Tribunal below would hold that the accident occurred only due to the rash and

negligent driving of the driver of the third respondent herein and fixing the monthly income of the deceased at Rs. 3,750/= and deducting 1/3rd of the amount from out of it towards his personal expenses and arriving at a sum of Rs. 2,500/= as the dependency of the claimants and applying a multiplier of 16, has awarded a sum of Rs. 4,80,000/= towards loss of dependency. The Tribunal below would also award a sum of Rs. 10,000/= towards pain and suffering, Rs. 10,000/= towards loss of expectation of life, Rs. 5,000/= towards loss of love and affection and Rs. 5,000/= towards funeral expenses thus awarding a total sum of Rs. 5,10,000/= as compensation to the claimants. It is only aggrieved against the said findings of the Tribunal below, the insurance company has come forward to prefer the above Civil Miscellaneous Appeal on certain grounds as brought forth in the grounds of appeal.

4. Though many grounds have been urged in the grounds of appeal, during arguments, the learned counsel for the appellant would confine himself to the argument that the Tribunal below has erred in applying the multiplier 16, much against the dictum of law enunciated by the Honourable Apex Court in such matters wherein the income of the deceased is uncertain and would pray to allow the above appeal.

5. On the contrary, the learned counsel for the respondents 1 and 2/claimants, he would submit that the Tribunal below has applied the correct multiplier and has arrived at the correct conclusion to award the sum under the loss of dependency and the Award of the Tribunal below does not require any interference by this appellate forum and would pray to dismiss the above appeal.

6. In consideration of all the facts and circumstances of the case, this Court is able to assess that the Tribunal below has applied the multiplier 16 while fixing the amount under loss of dependency, taking into consideration the age of the first claimant i.e. the mother of the deceased as 38 in the absence of any proof to substantiate her age and has awarded a sum of Rs. 4,80,000/= under the head of loss of dependency. Instead of 16, as advocated on the part of the Honourable Apex Court in very many of its judgments that in cases of death of a person whose income cannot be ascertained and when it is notionally fixed and the age of the parents are to be taken into consideration, it is not desirable for the Tribunal to go up to that extent to apply a 16 multiplier and therefore, this Court is of the view that the application of a multiplier of 16 is somewhat on the higher side and therefore it has to be a little reduced. On a overall consideration of the facts and circumstances of the case and the special features involved, this Court is of the view that it would be fitting and appropriate if 14 multiplier is applied and the same is decided accordingly. Therefore, the amount awarded by the Tribunal below under the head of loss of dependency at Rs. 4,80,000/=, thus, gets reduced to Rs. 4,20,000/= (Rs. 2,500 x 12 x 14 = Rs. 4,20,000). In all other respects, the Award of the Tribunal below is upheld.

In result,

(i) the above Civil Miscellaneous Appeal is allowed in part.

(ii)The amount awarded by the Tribunal below under the head of loss of dependency at Rs. 4,80,000/=, gets reduced to Rs. 4,20,000/= (Rupees Four Lakh Twenty Thousand Only).

(iii) In all other respects, the Award of the Tribunal below is upheld.

(iv) The claimants are entitled to withdraw the entire amount with interest and costs, according to the apportionment ordered by the Tribunal below.

However, in the circumstances of the case, there shall be no order as to costs.