(2007) 11 MAD CK 0057

In the Madras High Court

Case No : C.M.A. (MD) No. 345 of 2007 and M.P. (MD) No''s. 1, 2 and 4 of 2007

The Oriental Insurance Co. Ltd. APPELLANT

Vs

K. Lakshmi and Others RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Citation : (2007) 11 MAD CK 0057

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : A.K. Bhaskarapandian, for the Appellant; N. Shanmugaselvan, for the Respondent

Judgement

G. Rajasuria, J.—This appeal is focussed as against the judgment and decree dated 12.07.2006, passed in M.C.O.P. No. 220 of 2003, on

the file of the Motor Accidents Claims Tribunal (District Court), Karur.

2. Heard both sides.

3. The challenge in this Civil Miscellaneous Appeal is relating to the quantum of compensation awarded by the Tribunal, vide judgment dated

12.07.2006, to a tune of Rs. 4,00,800/-(Rupees Four Lakh and Eight Hundred only) on the following sub-heads:

(i) For Loss of Income - Rs. 3,88,800.00

(ii) For Loss of Love and affection - Rs. 10,000.00

(iii) For Funeral Expenses - Rs. 2,000.00

Total - Rs. 4,00,800.00

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4. The gist and kernel of the grounds as stood exposited from the grounds of appeal could be set out thus:

The deceased Murugan did not met with any fatal accident at all. There was no nexus between the alleged injuries sustained by the said Murugan

and the cause of his death, which occurred after six months to the alleged accident. The Compensation awarded was also on the higher side.

5. During trial, on the side of the claimants P.W. 1 and P.W. 2 were examined and Exs. P.1 to 14 were marked and on the side of the respondents

R.W. 1 was examined. No documentary evidence adduced on the side of the respondents.

6. Points for consideration are

(i) Whether the deceased Murugan died due to the injury sustained by him in the accident?

(ii) Whether the quantum arrived at by the Tribunal is just and proper?

7. Point No. 1: The learned counsel for the appellant/insurance company would submit that in the absence of medical record including Post-

mortem Certificate, the Tribunal erred in jumping to the conclusion that the deceased died due to the injuries sustained by him in the accident. By

way of torpedoing the arguments put forth on the side of the appellant the learned counsel for the claimants placing reliance on Ex. P.13, the

certified copy of the Order of the District Consumer Redressal Forum, Karur, passed on 12.05.2004, in C.O.P. No. 37 of 2003, would develop

his argument to the effect that the very same insurance company, which is appellant herein was respondent before the District Consumer Redressal

Forum, Karur, and raised the very same plea, which was correctly and properly rejected by the District Consumer Redressal Forum, Karur, and

awarded a compensation of Rs. 1,00,000/- under the Janata Personal Accident Police, which was taken by the deceased and in such a case there

is no rhyme or reason on the part of the appellant now to veer round and take antithetical plea. An excerpt from the finding the District Consumer

Redressal Forum, Karur, would run thus:

9. Further the learned counsel for the complainant relied upon Gujarat State Road Transport Corporation Vs. Mariambai A. Adamji (Since Decd.)

through his Heirs and LRs. Zubeda Abdulhabib and Another, wherein, the Gujaraj High Court has held that ""the injured sustained injuries as a result of accident; injured remained in the hospital for a day and discharged on request; doctor stated that it was not possible to ascertain whether

the injured had any injury to internal organs; widow of the deceased deposed that he remained unconscious till he died and she had no money to

arrange for his hospital treatment though some treatment of a private doctor was taken for one month after discharge of the deceased from the

hospital, no evidence of any other ailment or disease which could have terminated his life abrutly; Tribunal accepted oral evidence of the widow

and held that the deceased died due to serious internal injuries which he had sustained in the accident"".

10. In view of the above decision, it is clearly established that the deceased Murugan has died due to an accident and the furnishing of post-

mortem certificate is not necessary in such a case. But there is no other defence on the side of the opposite party. The deceased Murugan has

obtained an individual Janata Personal Accident Police for the sum of Rs. 1,00,000/- and the insured amount should have been paid by the

opposite party after receipt of the claim form with necessary documents. The opposite party even after receipt of the claim form with necessary

documents from the complainant has not come forward to settle the claim or even to answer the notice issued by the complainant. Despite proper

compliance of the requirements as laid down in the policy conditions, the non-settling of the claim of the complainant is gross deficiency in service

on the part of the opposite party.

Admittedly and indubitably the insurance company honoured the award passed by the District Consumer Redressal Forum, Karur, and the learned

counsel for the claimant would submit that the deceased''s mother was in receipt of the said Rs. 1,00,000/- also. As such the perusal of the records

would leave no doubt in the minds of the Court that the deceased died only due to the injuries sustained by him in the accident.

8. The insurance company being a public corporation is not justified in having a volte face before this Court and argue as though death was not due

to the accident. No doubt before District Consumer Redressal Forum, Karur, the insurance company contested the matter, but subsequently, on

seeing the order of the forum they got convinced and paid the amount due under the Janata Personal Accident Policy. In such a case it is no more open for the insurance company to contend before this Court as though the deceased did not die due to the injury sustained by him in the accident.

It is a trite, proposition of law that simply because the mother obtained compensation under Janata Accident Policy, it is not a bar to claim

compensation before the Motor Accident Claims Tribunal. That amount was received only based on the premium paid by the deceased and the

claim before Motor Accident Claims Tribunal is having nothing to do with the claim before the Tribunal. Hence, this point is answered accordingly

in favour of the claimants.

9. Point No. 2 The learned counsel for the claimant in all fairness would submit that during the pendency of the claim petition before the Tribunal,

the father of the deceased died, thereupon the unmarried sisters of the deceased have been impleaded. I am of the considered opinion that the

mother of the deceased being the main claimant in the case, only her status should be taken into consideration for assessing the compensation.

However, the Tribunal fell into error in simply adopting the multiplier 18 taking into account the age of the deceased as 29. It is no more a

debatable issue, in view of the catena of decisions of the Honourable Apex Court to the effect that if the unmarried son died and the parents are

the claimants, their age should be taken into account for choosing the multiplier and not the age of he deceased. In commensurate with such view, I

am of the considered opinion that multiplier 11 is the proper one as the mother at the relevant time of the death of her son, was aged 50 years old.

The Tribunal assessed the loss of dependency at Rs. 1,800/- per month, which in my opinion appears to be on the higher side. The unmarried

daughters ex-facie and prima-facie are not entitled to claim compensation. In as much as they were impleaded after the death of their father. In

view of the fact that they have lost the social support of their deceased brother they are entitled to some meagre amount of compensation. Hence,

in such a case Rs. 800/- (Rupees Eight Hundred only) could be taken as monthly dependency of the claimant and accordingly the formula can be

evolved. For loss of love and affection Rs. 10,000/- could be awarded. The compensation, awarded therefore is modified as under:

(i) For Loss of Income (800 x 12 x 11) - Rs. 1,05,600.00

(ii) For Loss of Love and affection - Rs. 10,000.00

(iii) For Funeral Expenses - Rs. 2,000.00

Total - Rs. 1,17,600.00

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10. In the result, this appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs. 4,00,800/-(Rupees Four Lakh

and Eight Hundred only) to Rs. 1,17,600/- (Rupees One Lakh Seventeen Thousand and Six Hundred only). Out of the said amount the first

respondent is entitled to Rs. 1,00,000/- (Rupees One Lakh only) and the remaining amount of Rs. 17,600/- (Rupees Seventeen Thousand and Six

Hundred only) shall be divided equally between the second and third respondents. In other aspects the award shall hold good. Consequently,

connected M.P.(MD) No. 1, 2 and 4 of 2007 are closed. No costs.