(2010) 11 MAD CK 0101

In the Madras High Court

Case No : C.M.A. (MD) No. 1000 of 2009

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Subbiah, Pandiammal and Muniraja RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Citation : (2010) 11 MAD CK 0101

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : K. Bhaskaran, for the Appellant; G.R. Swaminathan, for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Insurance Company against the award made in MCOP No. 212 of 2006 dated

19.01.2009 on the file of the Motor Accidents Claims Tribunal-cum-Sub Court, Srivilliputhur.

2. Background facts in a nutshell are as follows:

The deceased-Thangeswaran met with motor trafficaccident that took place on 09.05.2006 at about 2.45 p.m. The deceased was walking on the

side of the roadfrom North to South direction near Lakshmiyapuram. Atthat time, a Mahindra Jeep belonging to the thirdRespondent and insured

with the Appellant-InsuranceCompany, came in a rash and negligent manner and hitthe deceased. Due to the said impact, he sustainedinjuries and

died on the spot. The claimants are theparents of the deceased. They claimed a compensation ofRs.2,00,000/-before the Tribunal. The Appellant-

Insurance Company who resisted the claim. On pleadings,the Tribunal framed the following issues:

1. Who is responsible for the accident?

2. Whether the claimants are entitled tocompensation? If so from whom and towhat extent?

After considering the oral and documentary evidence,the Tribunal held that the accident had occurred due tothe rash and negligent driving of the

driver of theMahindra Jeep and awarded a sum of Rs. 2,40,000/-withinterest at 7.5% p.a. from the date of petition. Thedetails of the

compensation are as under:-

Rupees

Loss of income 2,25,000/-

Loss of love and

affection 10,000/-

Funeral expenses 5,000/-

Total... 2,40,000/-

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Aggrieved by that award, the Appellant / Insurance Company has filed the present appeal.

3. Learned Counsel for the Appellant/InsuranceCompany questioned only the quantum of compensationawarded by the Tribunal and submitted

that thecompensation awarded by the Tribunal is excessive,exorbitant and without any basis and justification. Hence the order passed by the

Tribunal is not inaccordance with law and the same should be set aside.

4. Learned Counsel appearing for the first andsecond Respondents / claimants has submitted that theTribunal had considered all the materials and

evidenceavailable on record and awarded the compensation whichis just, fair and reasonable. Hence the order of theTribunal is in accordance with

law and the same has tobe confirmed.

5. Heard the learned Counsel on either side andperused the materials available on record. On the sideof the claimants, P.W.1 and P.W.2 were

examined anddocuments Exs.P1 to P4 were marked. On the side of theInsurance Company, no witness was examined and nodocument was marked. P.W.1 is the father of thedeceased. P.W.2 is one Murugan. Ex.P1 is the certifiedcopy of First Information Report. Ex.P2 is thecertified

copy of Motor Vehicle Inspection Report. Ex.P3 is certified copy of Post Mortem Report. Ex.P4 isthe certified copy of judgment in C.C. No. 26

of 2006passed by the Judicial Magistrate Court No. 1,Srivilliputhur. After considering the above oral anddocumentary evidence, the Tribunal has

given a categorical finding that the accident had occurred dueto the rash and negligent driving of the driver of theMahindra Jeep. It is a question of

fact and also it isbased on valid materials and evidence. Hence the sameis confirmed.

6. The deceased was 8 years old at the time ofaccident. He was studying in II Standard. The father ofthe deceased was examined as P.W.1. In

the evidence ofP.W.1, it is stated that the deceased was good atstudies and also he was very active and used to helphis father in all works. The

Tribunal fixed thenotional income of Rs. 15,000/-, adopted the multiplierof 15 and determined the loss of income atRs.2,25,000/-. Further the

Tribunal has awarded a sumof Rs. 10,000/-towards loss of love and affection tothe parents of the deceased and Rs. 5,000/-towardsfuneral

expenses.

7. In the case of R.K. Malik and Another Vs. Kiran Pal and Others, , the Supreme Court has considered the aspect how the compensation should

be awarded to the death of a child in the accident, and held in Paragraphs-15, 18, 25, 26, 27, 28 and 32 as under:

15. The real problem that arises in thecases of death of children is that they arenot earning at the time of the accident. Inmost of the cases they

were still studying andnot working. However, under no stretch ofimagination it can be said that the parents,who are Appellants herein, have not

sufferedany pecuniary loss. In fact, loss ofdependency by its very nature is awarded forprospective or future loss. In this context,Lord Atkinson

aptly observed in Taff Vale Rly. Co. v. Jenkins, (1911-13) All England Reporter160 as follows:

In case of the death of aninfant, there may have been noactual pecuniary benefit derived byits parents during the child''s lifetime. But this will not

necessarily bar the parents'' claim and prospective loss will found a valid claim provided that theparents establish that they had areasonable expectation of pecuniarybenefit if the child had lived.

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18. Therefore keeping in view of SecondSchedule of the Act, this Court do not see anyreason to differ with the view taken by theTribunal as well

as the High Court in so faras award of pecuniary compensation to thedependents/ claimants is concerned. We mustpoint out here that the learned

Counsel forthe Appellants had argued that the notionalsum of Rs. 15,000/-should be enhanced andincreased as the legislature has not amendedthe

Second Schedule and the same continues tobe in existence since it was enacted on14.11.1994. We are not examining and goinginto this aspect as

the accident had takenplace in the present case nearly three yearsafter the enactment of the Second Schedule. The time difference between the

date of theenactment and the date of accident is notsubstantial.

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25. That being the position, the crucialproblem arises with regard to thequantification of such compensation. Theinjury inflicted by deprivation of

the life ofa child is extremely difficult to quantify. Inview of the uncertainties and contingencies ofhuman life, what would be an appropriatefigure, an

adequate solatium is difficult tospecify. The Courts have therefore used the expression ""standard compensation"" and""conventional amount/sum"" to

get over thedifficulty that arises in quantifying a figureas the same ensures consistency and uniformityin awarding compensations.

26. While quantifying and arriving at afigure for ""loss of expectation of life"", theCourt have to keep in mind that this figure isnot to be calculated for

the prospective lossor further pecuniary benefits that has beenawarded under another head i.e. pecuniaryloss. The compensation payable under

this headis for loss of life and not loss of futurepecuniary prospects. Under this head,compensation, is paid for termination of life,which results in

constant pain and suffering. This pain and suffering does not depend uponthe financial position of the victim or theclaimant but rather on the

capacity and theability of the deceased to provide happinessto the claimant. This compensation is paid for loss of prospective happiness which the

claimant/victim would have enjoyed had the child not been died at the tender age.

27. In the case of Lata Wadhwa (supra),wherein several persons including

childrenlost their lives in a fire accident, the Courtawarded substantial

amount as compensation. Nodoubt, the Court noticed that the children who lost their lives were studying in an expensiveschool, had bright

prospects and belonged toupper middle class, yet it cannot be said thathigher compensation awarded was fordeprivation of life and the pain and

sufferingundergone on loss of life due to financialstatus. The term ""conventional compensation""used in the said case has been used for nonpecuniary

compensation payable on account ofpain and suffering as a result of death. TheCourt in the said case referred to Rs. 50,000/-as conventional

figure. The reason was loss ofexpectancy of life and pain and suffering onthat account which was common and uniform toall regardless of the

status. Unless there isa specific case departing from theconventional formula, non-pecuniarycompensation should not be fixed on basis ofeconomic

wealth and background.

28. In Lata Wadhawa case (supra), whereinthe accident took place on 03.03.1989, themultiplier method was referred to and adoptedwith

approval. In cases of children between 5to 10 years of age, compensation of Rs. 1.50lakhs was awarded towards pecuniarycompensation and in

addition a sum of Rs. 50,000/-was awarded towards ''conventionalcompensation"". In the case of children between10 to 18 years compensation of

Rs. 4.10 lakhswas awarded including ""conventional loss of prospective happiness which the claimant/victim would have enjoyed had the child not

been died at the tender age. compensation"". While doing so the SupremeCourt held that contribution of each childtowards family should be taken

as Rs. 24,000/-per annum instead of Rs. 12,000/- per annum asrecommended by Justice Y. V. ChandrachudCommittee. This was in view of the

fact thatthe company in question had an un-written rulethat every employee can get one of hischildren employed in the said company.

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32. In view of discussion madehereinbefore, it is quite clear the claim withregard to future prospect should have been beaddressed by the Courts

below. Whileconsidering such claims, child''s performancein school, the reputation of the school etc.might be taken into consideration. In

thepresent case, records shows that the childrenwere good in studies and studying in areasonably good school. Naturally, theirfuture prospect

would be presumed to be goodand bright. Since they were children, there isno yardstick to measure the loss of futureprospects of these children.

But as alreadynoted, they were performing well in studies,natural consequence supposed to be a brightfuture. In the case of Lata Wadhwa (supra)

and M. S. Grewal (supra), the Supreme Courtrecognised such future prospect as basis andfactor to be considered. Therefore, denying

compensation towards future prospects seems tobe unjustified. Keeping this in background,facts and circumstances of the present case,and

following the decision in Lata Wadhwa(supra) and M. S. Grewal (supra), we deem itappropriate to grant compensation of Rs. 75,000/-(which is

roughly half of the amountgiven on account of pecuniary damages) ascompensation for the future prospects of thechildren, to be paid to each

claimant withinone month of the date of this decision. Wewould like to clarify that this amount i.e. Rs. 75,000/-is over and above what has

beenawarded by the High Court.

The Tribunal has correctly applied the principlesenunciated in the above judgment of the Supreme Courtand correctly awarded a sum of Rs.

2,25,000/-towardsloss of income, by adopting the notional income andalso the multiplier as per the Schedule. The Tribunalhas also correctly

awarded a sum of Rs. 10,000/-towardsloss of love and affection and Rs. 5,000/- towardsfuneral expenses. I do not find any error or illegalityin the

order of the Tribunal warranting interference. The order passed by the Tribunal is based on validmaterials and evidence. It is a question of fact and

itis not a perverse order. Therefore, the award passed by the Tribunal is in accordance with law and hence, the same is confirmed.

8. It is stated that the Appellant-InsuranceCompany has deposited 50% of the award amount withaccrued interest by order of this Court

dated28.10.2009. Under the circumstances, the Appellant-Insurance Company is directed to deposit the balanceamount of compensation with

interest at 7.5% p.a.fromthe date of petition, within a period of six weeks fromthe date of receipt of a copy of this order. On suchdeposit, the

claimants are permitted to withdraw thesame on making proper application.

9. In the result, the Civil Miscellaneous Appealis dismissed. Consequently, M.P.(MD) No. 2 of 2009 isclosed. No costs.

