(2010) 06 MAD CK 0033

In the Madras High Court

Case No : Civil Miscellaneous Appeal (MD) No. 234 of 2008

The Oriental Insurance Company Ltd. APPELLANT

Vs

Jayalakshmi and Others RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2010) 06 MAD CK 0033

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : P. Ramani, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

T. Mathivanan, J.—This memorandum of Civil Miscellaneous Appeal is directed against the award dated 04.09.2007 and made in MCOP

No. 75 of 2005 on the file of the Motor Accident Claims Tribunal, (Sub Court), Kulithalai.

2.For easy reference, the appellant may herein after be referred to as the second respondent and the respondents may hereinafter be referred to as

the claimants.

3.The facts and circumstances which giving rise to the memorandum of this Appeal may be summarised briefly as follows:

That on 09.10.2004, at about 6 p.m., when the deceased Chinnian @ Omandhu was proceeding in his cycle on the southern side of Kulithalai

Railway Gate from north to south of Manaparai M ain Road, a lorry, bearing registration No. 28-A-9259, driven by its driver in a rash and

negligent manner from the opposite direction had hit against him and as a result of which, he had sustained multiple injuries on all over his body.

Soon after the occurrence, when he was shifted to kulithalai government hospital, he had succumbed to injuries on the way to hospital.

4.The deceased was aged about 53 years at the time of occurrence and was doing business on plantain and plantain leaves and thereby earned a

sum of Rs. 6,000/- per mensum. The claimants being the sons and daughters of the deceased had filed the claim petition a gainst the owner and the

insurer of the offending vehicle.

5. The first respondent being the owner had not chosen to appear before the tribunal. On the other hand, the second respondent alone had

contested the claim petition on numerous grounds. In order to establish their ca se, the second claim petitioner was examined as P.W.1 and during

the course of his examination, Exs.P1 to P4 were marked. On the other hand, one Murugesan was examined as R.W.1 on the part of second

respondent and Ex.R1 was marked.

6. On appraising the evidences both oral and documentary, the Motor Accident Claims tribunal had ultimately awarded a sum of R s.3,20,000/-

directing the second respondent to pay this amount within a period of two months with interest at the rate of 6 % per annum from the date of

petition till the date of realisation. Challenging the award, the second respondent has approached this Court by way of the present appeal.

7. When the appeal came up for hearing, there was no representation for the claim petitioners 1 to 5 and it appears from the records that the sixth

respondent herein who is the first respondent in the claim petition has already been given up.

8. The learned Counsel for the second respondent would submit that the criminal case initiated against the driver of the lorry was ended in acquittal

and that the Tribunal has miserably failed to consider this aspect while passing the award. Secondly, the learned Counsel for the appellant has also

adverted to that the deceased while coming on his bicycle loaded with banana from the opposite direction had lost his balance and swerved his

cycle on his left side. While so, he came into contact with the right side of the lorry and invited the accident and therefore, the driver of the lorry

was not at all responsible for the occurrence. Thirdly, he would submit that the award of Rs. 3,20,000/- passed by the Tribunal was without any

basis as there was no proof to establish the monthly income of the deceased.

9. The Tribunal while passing the award has fixed the multiplier at 11 on the basis of the age of the deceased as 53 at the time of occurrence as

contemplated under the 2nd schedule to Section 163A of the Motor Vehicles Act. The Tribunal has also fixed his annual income at Rs. 40,000/-

and applied the multiplier of 11 and after deducting 1/3, the 2/3 reminder of Rs. 2,93,334/- was determined as the dependency of the family of the

deceased. Apart from this, the Tribunal had also awarded a sum of Rs. 2,000/- towards funeral expenses and another sum of Rs. 5,000/- towards

loss of love and affection for each claimants. In total, the Tribunal had awarded a sum of Rs. 3,20,000/- towards compensation.

10. Insofar as this case is concerned, soon after the occurrence an investigation was conducted on behalf of the the second respondent and on

completion of the investigation, the second respondent had filed a report under Ex.R.1. In Ex.R.1, it is stated that on enquiry, it came to know that

the deceased was earning a sum of Rs. 3,000/- per mensum. But on the other side, there was no proof on behalf of the claimants to establish the

monthly income of the deceased. However, they had produced Ex.P3, the receipt to show that the deceased was doing business on banana. On

taking into consideration of the argument advanced on behalf of the second respondent, it may be safe to fix the monthly income of the deceased at

the rate of Rs. 3,000/- per mensum. Accordingly, the annual income would be Rs. 36,000/-. Since, he was aged about 53 at the time of

occurrence as per the second schedule to Section 163A of the Motor Vehicles Act, the multiplier 11 can be taken into account. On applying this

system his life dependency would come to Rs. 3,96,000/-. After deducting 1/3rd towards his personal expenses, the 2/3rd remainder would be

2,64,000/-. On the basis of this calculation, the dependency of the family of the deceased can be determined at Rs. 2,64,000/-.

11. Apart from this, a sum of Rs. 2,000/- towards the funeral expenses and another a sum of Rs. 5,000/- for each claimants towards loss of their

love and affection can be maintained as granted by the Claims Tribunal. The claimants are entitled to get a sum of Rs. 2,91,000/-.

12. In the result, the appeal is partly allowed. The award of Rs. 3,20,000/- passed by the Motor Accident Claims Tribunal is reduced to Rs.

2,91,000/-. The second respondent (Appellant herein) is directed to deposit this amount before the Motor Accident Claims Tribunal with interest at the rate of 7.5% per annum from the date of petition within a period of two months from the date of receipt of a copy of this judgment. No

costs. Consequently connected Miscellaneous Petition is closed.

