
(2013) 10 MAD CK 0088
In the Madras High Court
Case No : C.M.A. No. 2973 of 2013

The United India Insurance Co. Ltd.

APPELLANT

Vs

Mumtaj, Sekar and M/s. Star Fleets (P) Ltd.

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0088

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant;

Judgement

P.R. Shivakumar, J.—The United India Insurance Company Ltd., which figured as the second respondent in M.C.O.P. No. 478 of 2010 before the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No. 4), Ponneri, is the appellant in the present Civil Miscellaneous Appeal preferred u/s 173 of the Motor Vehicles Act, 1988. Respondents 1 and 2 were the claimants and the third respondent herein figured as first respondent in the M.C.O.P. The respondents 1 and 2/claimants preferred a claim against the third respondent herein and the appellant herein as owner and insurer respectively of the lorry bearing Registration No. TN04 AA 3502 claiming a sum of Rs. 7,00,000/- as compensation. Even though they had computed the damages to which they were entitled at Rs. 10,50,000/- for the death of their son Moses in an accident that took place at Kathirvedu Junction, Puzhal, Chennai 66 at about 01.50 p.m. on 18.04.2010. According to the claimants, the deceased Moses was proceeding in a motorcycle bearing Registration No. TN20 AM 3642 as a pillion rider from Puzhal to Kathirvedu and when they reached Kathirvedu Junction, the above said lorry belonging to the third respondent herein, which stood insured with the appellant herein, came there driven by its driver in a rash and negligent manner and caused the accident by dashing against the motorcycle in which the deceased Moses was proceeding as a pillion rider as a result of which the said Moses sustained grievous injuries and on the way to the hospital, he died. Contending

further that the deceased was a welder aged about 18 years and was earning a sum of Rs. 300/- per day, the respondents 1 and 2 herein, who are the parents of the deceased, made the above said claim.

2. The third respondent, namely owner of the lorry, which is said to be the offending vehicle, did not contest the case and it remained ex parte. Since the owner of the lorry did not contest the M.C.O.P., the insurer, namely the appellant herein, got permission u/s 170 of the Motor Vehicles Act and contested the M.C.O.P. on all grounds of defence available to the insurer besides the grounds of defence available to the insurer u/s 149 of the Motor Vehicle Act. In the counter statement filed by the appellant before the Tribunal, the appellant insurance company chose to incorporate a blanket denial of each and every allegation made in the claim petition. Besides making such a denial, the appellant insurance company also has stated in the counter statement that the averments that the lorry bearing Registration No. TN04 AA 3502 owned by the third respondent was covered by a valid insurance policy issued by the appellant as on the date of accident and that the driver did have a valid licence to drive the vehicle should be proved by the claimants, namely respondents 1 and 2 herein. It has also been contended in the counter statement that the contention of the claimants (respondents 1 and 2) that the accident took place due to rash and negligent driving of the lorry belonging to the third respondent by its driver was also to be denied and such allegations should be strictly proved by the claimants (respondents 1 and 2 herein).

3. Based on the averments made by the claimants and by the appellant herein, the Tribunal conducted a trial in which two witnesses were examined as Pws. 1 and 2 and 10 documents were marked as Exs. P1 to P10 on the side of the claimants (respondents 1 and 2). No witness was examined and no document was marked on the side of the appellant herein which alone was the contesting respondent before the Tribunal.

4. At the conclusion of trial, the Tribunal considered the evidence brought before it and came to the conclusion that the accident took place due to the rash and negligent driving of the lorry bearing Registration No. TN04 AA 3502. It also arrived at the conclusion that the said lorry belonging to the third respondent herein stood covered by an insurance certificate issued by the appellant herein as on the date of accident and that hence, both the third respondent herein and the appellant herein were jointly and severally liable to pay compensation to the respondents 1 and 2 herein (claimants). The Tribunal omitted to take into consideration the age of the deceased to assess the compensation. On the other hand, it assessed the monthly income of the deceased at Rs. 4,000/-, deducted 1/3rd of the said amount towards personal and living expenses and took the balance amount of Rs. 2,667/- to be the loss of support/loss of benefit occasioned to his parents, namely the respondents 1 and 2 herein due to the death of Moses as a consequence of the injuries sustained by him in the above said accident. The Tribunal fixed the age of the first respondent (mother of the

deceased) at 39 years and on that basis, selected 15 to be the appropriate multiplier and arrived at the figure Rs. 4,80,060/- as the loss of support from the income of the deceased suffered by the respondents 1 and 2 (claimants). The said amount was loaded with a sum of Rs. 20,000/- towards love and affection, Rs. 10,000/- towards funeral expenses and Rs. 1000/- towards transport expenses and thus, the figure Rs. 5,11,060/- was arrived at by the Tribunal as the reasonable compensation to which the respondents 1 and 2 were entitled. Based on the said finding, the Tribunal passed an award directing the third respondent and the appellant herein being the owner and insurer respectively of the offending vehicle, namely the lorry bearing Registration No. TN 04 AA 3502, to jointly and severally pay the said amount together with an interest at the rate of 7.5% p.a. from the date of presentation of the M.C.O.P. till the date of deposit and also cost. The Tribunal also chose to apportion the compensation equally among the claimants and issued further directions regarding the investment of the said amount and realization of the same in favour of the claimants. The said award passed by the Tribunal on 24.01.2012 is challenged by the appellant insurance company in this appeal on various grounds set out in the memorandum of Civil Miscellaneous Appeal.

5. This appeal has come up for admission today. It is the submission made by the learned counsel for the appellant that the Tribunal committed an error in allowing 1/3rd of the income for the deceased alone as deduction towards his personal and living expenses and that as per the dictum made by the Apex Court in Sarla Verma case, which was later on confirmed in Reshma Kumari's case, in case of the death of a Bachelor, 50% of his income should be deducted towards personal and living expenses and the balance 50% alone should be taken as the loss of support occasioned to the parents. Learned counsel for the appellant would contend further that though the offending vehicle was covered by a policy issued by the appellant insurance company, there was no proof on the part of the claimants that there was no violation of the policy condition insofar as the claimants had not proved that the vehicle was covered by a valid permit.

6. In this regard, the further contention of the learned counsel for the appellant is that in the absence of proof of permit, the Tribunal ought to have directed the insurer to pay the amount and permitted the insurance company to recover the same from the owner as there was violation of a policy condition. In short, the contentions of the appellant are two fold. They are:

1) The vehicle was not proved to be covered by a valid permit and hence violation of a policy condition should be inferred, in which event the insurer should be permitted to recover the damages paid to the claimants from the insured after such payment;

2) In arriving at the quantum of compensation, the Tribunal has adopted an erroneous method which is not in consonance with the principles laid down by the Supreme Court and if the principles laid down by the Supreme Court are followed, the amount awarded by the Tribunal will be held to be excessive

requiring reduction.

7. Let us now consider the sustainability of the above said submissions one by one.

8. According to the learned counsel for the appellant, though the offending vehicle, namely the lorry bearing Registration No. TN 04 AA 3502 belonging to the third respondent stood insured with a valid certificate issued by the appellant, there was no proof that the lorry was covered by a valid permit and that hence, it should be held that the lorry was plied without a valid permit and a violation of a policy condition has occurred. In this regard, though the learned counsel for the appellant would make an attempt to contend that in the copy of the Motor Vehicles Inspector's report produced as Ex. P10 by the claimants before the Tribunal, there was no reference regarding the validity of the permit, this Court is having its own doubt as to whether such a contention can be raised for the first time in the appeal. No such contention was raised in the counter statement filed before the Tribunal; Nor were the witnesses examined on the side of the claimants cross-examined by the counsel for the insurer with a specific suggestion that the vehicle was not covered by a valid permit. It is also not the case of the appellant that either the driver or the owner of the vehicle was prosecuted for plying the vehicle without a valid permit. Under such circumstances, the present contention raised in this appeal that the vehicle was not covered by a valid permit is only a plea of defence sought to be taken for the first time in the appeal as an afterthought. Hence, this Court is of the considered view that the said contention cannot be countenanced and the same deserves to be rejected as untenable. Accordingly, the first contention raised on behalf of the appellant is rejected.

9. Of course, there is some substance in the second contention raised by the learned counsel for the appellant. It is the contention of the learned counsel for the appellant that in case of death of a Bachelor or a Spinster, the deduction to be made towards personal and living expenses of the deceased should be 50% of the income of the deceased as per the judgment of the Supreme Court in Sarla Verma case, which was again reiterated by a three Judge Bench of the Supreme Court in Reshma Kumari case. In Paragraph 31 of the Judgment of the Apex Court in Sarla Verma case. The following observations have been made:

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and

earning, or married, or be dependant on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

The said observations made by the three Judge Bench of the Supreme Court in the Sarla Verma case has been again approved by another three Judge Bench of the Supreme Court in Reshma Kumari case, wherein after extracting the above said paragraphs, it has been observed as follows:

The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a mans net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

After making such an observation, the Apex Court chose to issue the following direction also in the penultimate paragraph of the said Judgment:-

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma 17 subject to the observations made by us in para 38 above.

10. Though normally in case of death of bachelors, deduction for personal and living expenses shall be made at 50%, it is not without any exception and in appropriate cases, where there is proof that more number of persons were depending upon the income of the deceased, the deduction could even be at 1/3rd of his income. Whether the general principle of deducting 50% in case of bachelor or the exception of deducting 1/3rd on the ground that there are more dependents is to be applied in this case?-is the pertinent question to be answered in this case.

11. The petitioners alone are the claimants. There is no evidence that the father was not having any independent source of income and he was solely depending on the income of the deceased. It is also not a case of the mother being a widow and the family being one consisting of young unlearning siblings solely maintained by the deceased out of his income. Therefore, as rightly contended by the learned counsel for the appellant, the general principle of deducting 50%

towards personal and living expense ought to have been followed by the Tribunal and in this regard, the Tribunal committed a mistake, which has got to be rectified.

12. The mere fact that the Tribunal has committed a mistake in one aspect alone will not be enough to interfere with or set aside the award of the Tribunal and the appeal ultimately shall be dismissed if the amount awarded as compensation is found to be a just and reasonable amount. Therefore, this Court has to consider what is the reasonable amount on the given set of facts to which the respondents 1 and 2 would have been entitled as compensation. In this regard, it is pertinent to note that, instead of taking the age of the deceased as the basis for the selection of multiplier, the Tribunal has chosen to take the age of the mother of the deceased as the basis for the selection of multiplier and thus, the Tribunal has selected 15 to be the multiplier whereas the appropriate multiplier corresponding to the age of the deceased shall be 18. In this regard, we can strike a balance between the addition by effecting lesser deduction made by the selection of a smaller multiplier. It is not in dispute that the deceased was aged 18 years at the time of this death. For a person in the age group of 16 to 25, the appropriate multiplier as per the judgment of the Supreme Court in Reshma Kumari case shall be 18. There is no grievance regarding the assessment of income of the deceased, who was said to be a welder, at Rs. 4,000/- per month. The annual income of the deceased as assessed by the Tribunal shall be Rs. 48000/-. If 50% of the said amount is deducted towards his personal and living expenses, balance Rs. 24,000/- shall be the annual contribution to the family. The product of the said multiplicand and the selected multiplier, namely 18, shall be Rs. 4,32,000/-.

13. The Tribunal has awarded a sum of Rs. 10,000/- alone as funeral expenses. This amount requires enhancement and the same can be enhanced to Rs. 20,000/-. Though the petitioners have led evidence to the effect that the deceased was a welder and he was employed under VST Welding shop, Chennai 52 and that he was getting a pay of Rs. 300/- per day, the Tribunal chose to reject the same and hold that the deceased would have at least earned Rs. 4000/- per month. In this regard, it is pertinent to note that there is no denial of the contention of the claimants that the deceased was a welder employed with VST Welding shop. When his employment was not disputed, then we can assume that at least a sum of Rs. 180/- shall be his pay per day. Deducting five days as rest days, his income per month could be computed at Rs. 4,500/-. If Rs. 4500/- is taken as the income of the deceased per month and 50% of the same is deducted towards personal and living expenses, his contribution to the family shall be Rs. 2250/- per month. The annual contribution shall be Rs. 27000/- and when it is multiplied by the appropriate multiplier 18, the loss of support occasioned to his parents would be Rs. 4,86,000/-. The Tribunal has awarded a sum of Rs. 10,000/- towards funeral expenses. According to the opinion of this Court, the Tribunal could have awarded even more than that. Hence, it has to be increased to Rs. 20,000/-. A sum of Rs. 20,000/- has been awarded at the rate

of Rs. 10,000/- towards each one of the parents towards loss of love and affection. The same does not need any interference. A sum of Rs. 1000/- alone has been awarded towards transport expenses which could be increased to Rs. 5000/-. For damages to clothes, at least a sum of Rs. 1000/- could have been awarded. If such adjustments are made, then the reasonable amount that could have been awarded as compensation would come to Rs. 5,12,000/-. The Tribunal has awarded Rs. 5,11,060/- as compensation. There is only a meager difference, which is in favour of the claimants and not in favour of the insurer. In view of the forgoing discussions, though the Tribunal might have adopted a wrong approach in allowing deduction at 1/3rd instead of towards personal and living expenses, the said mistake was compensated by another mistake made in favour of the insurer and the owner of the vehicle by selecting 15 to be the multiplier in stead of selecting 18 based on the age of the deceased. The further adjustments indicated supra will make the amount awarded by the Tribunal as compensation as fair and reasonable amount, which cannot in any event be construed to be excessive or exorbitant requiring revision by this Court in exercise of its appellate power.

For all the reasons stated above, this Court comes to the conclusion that the award passed by the Tribunal deserves to be confirmed and that the appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. However, there shall be no order as to costs.