
(2017) 02 MAD CK 0064

In the Madras High Court

Case No : C.M.A.(MD)No. 331 of 2008 and M.P.(MD)No.1 of 2008

United India Insurance Co. Ltd.

APPELLANT

Vs

C. Seenithai

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, Section 173

Citation : (2017) 1 AnWR 208

Hon'ble Judges : Mr. N. Kirubakaran, J.

Bench : Single Bench

Advocate : Mr. G. Prabhu Rajadurai, Advocate, for the Appellant; Mr. T. Selvakumaran, Advocate, for the Respondent Nos. 1 to 7; Died, for the Respondent No. 8

Final Decision : Dismissed

Judgement

Mr. N. Kirubakaran, J.—This Civil Miscellaneous Appeal has been preferred by the appellant-Insurance Company against the award passed by the Tribunal with regard to the death of one Chinnasamy, aged about 50 years, working as a driver alleged to be earning a sum of Rs.7,430/- (Rupees Seven Thousand Four Hundred and Thirty only) per month, in the accident occurred on 18.05.2002, when he was travelling in a two wheeler which was knocked down by an Ambassador car belong to the eighth respondent and insured with the appellant-Insurance Company.

2. Heard Mr. G. Prabhu Rajadurai, learned Counsel for the appellant-Insurance Company and Mr. T. Selvakumaran, learned Counsel for the respondents 1 to 7.

3. Since the eighth respondent/owner of the Ambassador car remained ex parte before the Tribunal, notice to the eighth respondent/owner of the Ambassador car is dispensed with, as per the Full Bench judgment of Madhya Pradesh High Court in Mrs. Jamunabai v. Chhote Singh reported in (2004) 1 ACC 190 (FB). However, it is represented that the eighth respondent/owner of the Ambassador

car died.

4. The learned Counsel for the appellant-Insurance Company would submit that there was a bogus claim and the Ambassador car insured with the appellant-Insurance Company was not involved in the accident as no Registration Number of the car was given in the F.I.R. Further, he would submit that there is no eyewitness to the accident and even the alleged eyewitness only stated about the Ambassador car and not the Registration Number. Therefore, he seeks to set aside the award of the Tribunal.

5. However, Mr. T. Selvakumaran, learned Counsel for the respondents 1 to 7/claimants would support the finding of the Tribunal with regard to the negligence. However, he seeks enhancement of compensation as only notional income of Rs. 15,000/- (Rupees Fifteen Thousand only) as per the Second Scheduled to the Motor Vehicles Act, 1988, alone was taken by the Tribunal.

6. The accident occurred on 18.05.2002 and the Ambassador car is said to have knocked down the two wheeler in which the deceased was travelling. No doubt, in Ex.P.1 - F.I.R, the Registration Number of the Ambassador car was not given. At the time of the accident, one cannot expect the people around in that area to note down the Registration Number of the offending vehicle and the first priority would be to attend on the victim. By that time, the offending vehicle would have escaped. The very fact that in Ex.P.1 - F.I.R, the Registration Number of the Ambassador car was not given would show that it is a genuine and bona fide complaint. The factum of death of the deceased in the accident is not denied and the only contention of the appellant-Insurance Company is that the Ambassador car is not involved in the accident. Further, the driver of the Ambassador car himself pleaded guilty before the criminal Court and the judgment passed by the criminal Court finding the driver of the Ambassador car guilty has been marked as Ex.P.7, which contained the Registration Number of the Ambassador car, namely, TMX-4980. Therefore, it is clearly proved that the Ambassador car was involved in the accident.

7. With regard to the manner of the accident, as many as five witnesses have been examined as P.W.1 to P.W.5. The Tribunal did not believe the evidence of P.W.1 to P.W.3, however, found that the evidence of P.W.4 and P.W.5 are reliable. P.W.4 categorically stated that the Ambassador car was driven speedily and hit the two wheeler and ran away from the scene of occurrence. P.W.5 - an auto driver, though stated that he did not see the accident, he could identify the victim as Chinnasamy and therefore, the Tribunal was right in relying upon the evidence of P.W.4 - eyewitness and P.W.5 - witness.

8. Therefore, the Tribunal rightly came to the conclusion that the Ambassador car was driven in a rash and negligent manner and caused the accident and hence, as an insurer of the Ambassador car, the appellant-Insurance Company has to be fastened with the liability.

9. With regard to the quantum of compensation, the Tribunal did not believe

Exs.P.8 and P.9 - salary certificates of the deceased, which would show that the deceased was earning a sum of Rs. 7,430/- (Rupees Seven Thousand Four Hundred and Thirty only) as monthly income, as no seal or signature of the owner of the Ambassador car was found.

10. However, in the absence of positive proof, the Tribunal only took a sum of Rs.15,000/- (Rupees Fifteen Thousand only) as notional income per year. The Tribunal failed to note that the notional income of Rs.15,000/- (Rupees Fifteen Thousand only) was fixed before 1988, when the Motor Vehicles Act, 1988, was enacted. It was based on the data available, namely, inflation rate, purchase power, money value, etc. Whereas the accident occurred on 18.05.2002 and therefore, the Tribunal committed an error in relying upon the notional income as per the Second Schedule to the Motor Vehicles Act, 1988. In those circumstances, this Court takes the determination made by the Honourable Supreme Court in *New India Assurance Company Limited v. Smt. Kalpana and others* reported in 2007 (1) TN MAC 1 (SC), determined the monthly income of a driver, who died in the accident occurred on 07.06.1999, at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) in the absence of any material evidence to prove the income of the deceased. Whereas in the case on hand, the accident occurred on 18.05.2002. Therefore, this Court is inclined to follow the determination of the monthly income at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month as per the above judgment of the Honourable Supreme Court.

11. The deceased was aged about 50 years as per Ex.P.2 - post-mortem certificate. Therefore, 30% is required to be added towards future prospects and accordingly, the monthly income of the deceased would be Rs.5,850/- (Rupees Five Thousand Eight Hundred and Fifty only) [Rs.4,500/- + Rs.1,350/-].

12. Though the size of the family contains 7 members, this Court deducts 7th amount towards personal expenses and determines the monthly contribution of the deceased at Rs.4,387.50 (Rupees Four Thousand Three Hundred and Eighty Seven and Paise Fifty only) [Rs.5,850/- - Rs.1,462.50].

13. The deceased was aged 50 years and as per the judgment of the Honourable Supreme Court in *Sarla Verma v. Delhi Transport Corporation* reported in 2009 (2) TN MAC 1 (SC), the appropriate multiplier would be "13" and accordingly, the loss of income would be Rs.6,84,450/- (Rupees Six Lakhs Eighty Four Thousand Four Hundred and Fifty only) [Rs.4,387.50 X 12 X 13].

14. A sum of Rs.25,000/- (Rupees Twenty Five Thousand only) was awarded by the Tribunal towards loss of consortium to the first respondent/wife of the deceased and the same is very meagre and hence, the same is enhanced to a sum of Rs.50,000/- (Rupees Fifty Thousand only).

15. Similarly, a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) was awarded to the respondents 2 to 7 towards loss of love and affection and the same is too low and this Court awards a sum of Rs.10,000/- (Rupees Ten

Thousand only) each to the respondents 2 to 5 and totally, a sum of Rs.40,000/- (Rupees Forty Thousand only) is awarded to the respondents 2 to 5 under the head "loss of love and affection".

16. Further, this Court awards a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each to the minor respondents 6 and 7 and totally, a sum of Rs.50,000/- (Rupees Fifty Thousand only) is awarded to the minor respondents 6 and 7 under the head "loss of love and affection"

17. A sum of Rs.2,000/- (Rupees Two Thousand only) alone was awarded towards transportation charges and hence, the same is enhanced to a sum of Rs.5,000/- (Rupees Five Thousand only).

18. Similarly, a sum of Rs.5,000/- (Rupees Five Thousand only) alone was awarded towards funeral expenses and hence, the same is enhanced to a sum of Rs.10,000/- (Rupees Ten Thousand only).

19. No amount was awarded by the Tribunal towards loss of estate and hence, this Court awards a sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of estate.

20. The Tribunal awarded the interest at the rate of 7.5% per annum and directed to deposit the award amount within one month therefrom, in default to pay the interest at 9% per annum and the same is on the higher side and hence, the rate of interest awarded by the Tribunal is reduced to 7.5% per annum.

21. Accordingly, the respondents 1 to 7/claimants 1 to 7 are entitled to a sum of Rs.8,49,450/- (Rupees Eight Lakhs Forty Nine Thousand Four Hundred and Fifty only) rounded off to Rs.8,50,000/- (Rupees Eight Lakhs and Fifty Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

22. Even though this appeal has been preferred by the appellant-Insurance Company against the award of Rs.1,87,000/- (Rupees One Lakh and Eighty Seven Thousand only) awarded by the Tribunal, this Court, on re appreciating the evidence and applying the current proposition of law, suo motu enhances the compensation to Rs.8,50,0000/- (Rupees Eight Lakhs and Fifty Thousand only) even in the absence of appeal/cross appeal invoking Order 41, Rule 33 and Section 151 of the Code of Civil Procedure, for which, this Court has got power and jurisdiction as declared by the Honourable Supreme Court in Nagappa v. Gurudayal Singh and others reported in 2004 (2) TNMAC 398 (SC) : 2003 (2) SCC 274.

23. In the result,

(i) This Civil Miscellaneous Appeal is dismissed, however, enhancing the award amount from Rs.1,87,000/- (Rupees One Lakh and Eighty Seven Thousand only) to Rs.8,50,0000/- (Rupees Eight Lakhs and Fifty Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of

realisation and proportionate costs;

(ii) The first respondent/wife is entitled to a sum of Rs. 4,00,000/- (Rupees Four Lakhs only) along with accrued interest and costs;

(iii) The respondents 2 to 4 are entitled to a sum of Rs. 60,000/- (Rupees Sixty Thousand only) each, along with accrued interest and costs;

(iv) The fifth respondent is entitled to a sum of Rs.70,000/- (Rupees Seventy Thousand only) along with accrued interest and costs;

(v) The respondents 6 and 7 are entitled to a sum of Rs. 1,00,000/- (Rupees One Lakh only) each, along with accrued interest and costs;

(vi) The respondents 1 to 7/claimants 1 to 7 are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of this judgment;

(vii) The appellant-Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P. No.265 of 2003, by the Motor Accident Claims Tribunal-cum-I Additional Sub Judge, Tirunelveli, along with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment;

(viii) On such deposit, the Tribunal is directed to transfer the respective share amounts of the respondents 1 to 5/claimants 1 to 5 directly to their Personal Savings Bank Account Numbers, through RTGS/NEFT system, after getting their Account Details within a period of two weeks thereafter;

(ix) Insofar as the respective shares of the minor respondents 6 and 7/claimants 6 and 7 are concerned, the Tribunal shall deposit the same in an interest bearing Fixed Deposit in any one of the nationalised banks under the renewable scheme, till they attain majority and the first respondent/first claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants 6 and 7;

(x) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is dismissed.