(2017) 03 MAD CK 0114

In the Madras High Court

Case No : C.M.A. No.2574 of 2015 and Cross Obj. No.14 of 2016 and M.P. No.1 of 2015 in CMA No.2574 of 2015 CMA No.2574 of 2015

United India Insurance Co. Ltd. APPELLANT

Vs

Devika RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) 2 ACC 146

Hon'ble Judges : Mr. S. Manikumar and Mr. M. Govindaraj, JJ.

Bench : Division Bench

Advocate : Mr. Srinivasa Ramalingam, Advocate, for the Appellant; Mr. V. Velu, Advocate, for the Respondents/Cross Objectors

Final Decision : Disposed Off

Judgement

S. Manikumar, J.—Challenging the quantum of compensation awarded to the legal representatives of the deceased, Insurance Company, has filed the appeal. Not satisfied with the quantum of compensation, the respondents/ claimants have also filed the Cross-Objection.

2. Brief facts leading to the appeal are as follows :

On 12.11.2012, at 7.30 p.m., when the deceased Rajkumar, was walking along the East side of the ECR Road, near Palavakkam Ottachathiram Fruit Shop, a share auto bearing Regn. No. TN-22-BR-4509, driven by its driver in a rash and negligent manner, dashed him. He sustained multiple grievous injuries. He was rushed to Government General Hospital, where he succumbed to the same. In this regard, a case in Crime No.3675 of 2012, was registered against the driver of the share auto bearing Regn. No. TN-22-BR-4509 on the file of J8, Neelangarai Police Station.

3. Claiming that the deceased was a self employee, a Canteen Contractor, in Sathiyam Software Company and earned Rs.50,000/- per month, legal

representatives of the deceased, viz., wife, parents and minor daughter and sons, aged 15, 13 and 12 years, respectively, filed claim petition in MCOP No.2661 of 2013, on the file of MACT [II Court of Small Causes], Chennai, for a sum of Rs.30,00,000/-.

4. Disputing the manner of accident, appellant-Insurance Company, has filed counter affidavit, the before the tribunal. Without prejudice to the above, they also disputed the age of the deceased and the compensation claimed under various heads.

5. Before the Tribunal, wife of the deceased examined herself as PW1. PW2, Mr. R. Hariharan, is the eyewitness to the accident and PW3, Mr. Chandrahasan, is a co-worker. On the side of the claimants, documents viz., Ex.P1, copy of FIR in Cr. No. 3675/AM3/2012 registered at J8-Neelangarai Police Station, Ex.P2, Postmortem certificate, Ex.P3, Death Report, Ex.P4, Legal heir certificate, Ex.P5, Employment card of the deceased and Ex.P6, copy of Voter Identity Card of P.W.2., have been marked. No oral or documentary evidence has been adduced on behalf of the insurance company.

6. On evaluation of pleadings and evidence, the Tribunal found that the driver of the share auto bearing Regn. No. TN-22-BR-4509 was negligent in causing the accident and quantified the compensation as Rs.17,74,200/- with interest at the rate of 7.5% per annum from the date of claim till deposit and apportioned the same, as hereunder.

Pecuniary Loss

: Rs.14,74,200/-

Loss of consortium

: Rs. 1,00,000/-

Funeral Expenses

: Rs. 25,000/-

Loss of love and affection to 3 minor children @ R.50,000/- each

: Rs. 1,50,000/-

to parents @ Rs.25,000/- each

: Rs. 25,000/-

Total

: Rs.17,74,200/-

7. As quantum of compensation is the only challenge and therefore, we are not inclined to delve into the aspect of negligence and liability.

8. The only point urged by the learned counsel for the appellant-Insurance

Company is that the tribunal has erred in fixing a sum of Rs.9,000/- as monthly income to a self-employed person and also added 30% towards future prospects. Except the above, no other submission was made.

9. Whereas, learned counsel for the cross objectors/claimants submitted that though at the time of accident, deceased earned Rs.50,000/- per month, as a Canteen Supervisor in Sathyam Software Company and despite examining a co-worker as PW3, the tribunal fixed the monthly income of the deceased as Rs.9,000/- only. Further, at the time of accident, the deceased was aged 32 years and therefore, 50% of the income ought to have been added towards future prospects. But, the tribunal has added only 30%.

10. Learned counsel for the cross objectors/claimants further submitted that compensation awarded under the head, loss of love and affection to minor children and mother, is very less. Contending that the tribunal has failed to award compensation under the heads transportation, conventional damages and loss of estate, enhancement is also sought for.

11. Heard the learned counsel appearing for both parties and perused the materials available on record.

12. Perusal of the award shows that except the evidence of PW3, no other document has been marked to prove avocation and monthly income of the deceased. Therefore, tribunal has fixed the monthly income of the deceased as Rs.9,000/-, which cannot be found fault with. Further, though the respondents/ claimants stated that the deceased was aged 32 years, at the time of accident, in the absence of any proof, on the basis of Ex.P2, postmortem report, the tribunal has fixed the age of the deceased as 41 years, which also cannot be found fault with, in view of the decision of this Court in The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515], wherein, this Court has held that in the absence of proof relating to the age, such as birth extract or any supporting document, entry in the Postmortem Report, can always be considered for the purpose of computation of compensation.

13. In view of the above, addition of 30% income towards future prospects also cannot be said to be erroneous, as per the judgment of the Hon''ble Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC). Therefore, fixation of monthly income and addition of 30% income towards future prospects, for the purpose of computing the pecuniary loss is sustained. Similarly, compensation for loss of consortium and funeral expenses, is reasonable.

14. However, as rightly pointed out by the learned counsel for the cross objectors/claimants, award under the head loss of love and affection awarded to the minors viz., daughter aged 15 years and two sons aged 13 and 12 years respectively, at the rate of Rs.50,000/- each and a sum of Rs.25,000/- to the mother, is less and need to be enhanced. In view of the decision of the Hon''ble Apex Court in Rajesh and others v. Rajbir Singh and others, reported in 2013(2)

TN MAC 55 (SC), minors are awarded a sum of Rs.1,00,000/- each, towards loss of love and affection and mother is awarded a sum of Rs.50,000/- instead of Rs.25,000/- awarded by the tribunal.

15. Tribunal has not awarded any compensation towards loss of estate, transportation and conventional damages. Hence, sum of Rs.20,000/- for loss of estate and Rs.5,000/- for transportation & conventional damages, is awarded. Rate of interest awarded by the tribunal, remains unaltered.

16. In view of the reworking, the award of the tribunal is modified and the quantum of compensation is enhanced as follows :

Pecuniary Loss

: Rs.14,74,200/-

Loss of consortium

: Rs. 1,00,000/-

Funeral Expenses

: Rs. 25,000/-

Loss of love and affection to 3 minor children @ Rs.1,00,000/- each

: Rs. 3,00,000/-

to mother

: Rs. 50,000/-

Loss of estate

: Rs. 20,000/-

Transportation and conventional damages

: Rs. 5,000/-

Total

: Rs.19,74,200/-

Amount awarded by the tribunal

: Rs.17,74,200/-

Amount now enhanced

: Rs. 2,00,000/-

17. In the light of the reworking, the respondents/claimants are entitled to compensation of Rs.19,74,200/- as against Rs.17,74,200/-, awarded by the tribunal, with interest at the rate of 7.5% per annum from the date of claim till deposit. The enhanced amount of Rs.2,00,000/- is apportioned to the share of

the minors.

18. In the result, the Civil Miscellaneous Appeal No.2574 of 2015, by the Insurance Company is dismissed and Cross objection No.14 of 2016 is allowed, as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

19. Consequent to the dismissal of the appeal, we direct United India Insurance Company Limited, Chennai, the appellant herein to deposit the enhanced amount of Rs.19,74,200/-, with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs, less the statutory deposit, to the credit of MCOP No.2661 of 2013, on the file of MACT [II Court of Small Causes], Chennai, within a period of four weeks from the date of receipt of a copy of this order.

20. Respondent Nos. 2 to 4 were minors at the time of filing of the claim petition. On such deposit being made, except the minors, the respondents/claimants 1 and 5 are permitted to withdraw their share with interest, as apportioned by the tribunal, by making necessary applications. Share apportioned to the minor/ respondent Nos.2 to 4, including the enhanced amount of Rs.2,00,000/-, shall be in the bank deposit till they attain majority.

Interest accruing on the share of the minors shall be paid to the 1st respondent/ mother of the minors once in three months, till they attain majority. On attainment of majority, they can file necessary applications for withdrawal.