(2010) 01 MAD CK 0108

In the Madras High Court

Case No : Civil Miscellaneous Appeal (MD) No. 47 of 2010 and M.P. No. 1 of 2010

United India Insurance Co. Ltd. APPELLANT

Vs

Kamatchi and Others RESPONDENT

Date of Decision : 20-01-2010

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

Citation : (2010) 01 MAD CK 0108

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : B. Rajesh Saravanan, for the Appellant;

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—The United India Insurance Company is on appeal challenging the award dated 29.10.2008 passed in M.C.O.P. No.

2003 of 2004 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge, Fast Track Court No. 3), Madurai.

2. It is a case of fatal accident. The brief facts of the case are as follows:-

The accident in this case happened on 8.3.2004 at 9.30 a.m. The deceased Ramu, aged about 40 years, a salesman was proceeding to his

company situated at Avaniapuram, was hit by the lorry insured with the appellant. In that accident the said Ramu suffered grievous injuries and died

on the spot. The wife aged 30 years, three minor sons aged 7, 6 and 5 years respectively, mother aged 60 years and father aged 65 years claimed

compensation in a sum of Rs. 6,00,000/- stating that the deceased was earning a sum of Rs. 5,000/- per month.

3. In support of the claim, the wife of the deceased was examined as P.W.1 and one Mr. Arumugam, the eye witness to the accident as P.W.2

and one Mr. Ramar, a co-worker as P.W.3. Exs.P-1 to P-11 were marked, the details of which are as follows:

Ex.P-1 is the certified copy of FIR dated 8.3.2004,

Ex.P-2 is the certified copy of post-mortem certificate dated 8.3.2004,

Ex.P-3 is the certified copy of charge sheet,

Ex.P-4 is the photocopy of legal heir certificate dated 8.4.2004,

Ex.P-5 is the photocopy of R.C. Book dated 24.1.2001,

Ex.P-6 is the insurance policy dated 28.1.2004,

Ex.P-7 is the photocopy of Motor Vehicle Inspector''s Inspection Report dated 8.3.2004,

Ex.P-8 is the Identity Card of the deceased Ramu issued by ESI Corporation dated 1.4.1999,

Ex.P-9 is the Form No. 6 of ESI dated 18.10.2002,

Ex.P-10 is the certificate of employment and

Ex.P-11 is the salary certificate issued by M/s.Mandeep Marbles dated 10.4.2004.

No oral or documentary evidence was let in on behalf of the appellant insurance company, the second respondent before the Tribunal.

4. The finding of negligence on the part of the driver of the lorry insured with the appellant insurance company and the consequential liability fixed

on the appellant to compensate the claimants is not disputed by the learned Counsel for the appellant.

5. The only contention raised by the learned Counsel for the appellant is that the income of the deceased fixed by the Tribunal is on the higher side

as also the multiplier adopted for determining the pecuniary loss.

6. In the claim petition the income of the deceased said to be working as salesman in M/s.Mandeep Marbles was claimed at Rs. 5,000/- per

month. The evidence of P.W.3, a co-worker based on Ex.P-11 salary certificate issued by the owner is that the salary of the deceased is Rs.

3,000/- and incentive is at Rs. 2,800/- per month. This was not accepted by the Tribunal. However, placing reliance on Ex.P-9 ESI Form No. 6

and also taking into consideration the other perquisites that is available to the salesmen, the Tribunal fixed the income at Rs. 3,500/- per month.

Based on documents, the age of the deceased was fixed as 40 years and the Tribunal adopted multiplier of 15 in terms of Second Schedule to

Section 163A of the Motor Vehicles Act, and fixed the total pecuniary loss after deducting 1/3 towards personal expenses of the deceased in a

sum of Rs. 4,20,000/- (Rs. 3,500/- x 12 x 2/3 x 15 = Rs. 4,20,000/-). In addition, the Tribunal granted compensation under conventional heads.

In all, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:

Sl. No. Heads Amount granted

by the Tribunal

1 Pecuniary loss (Rs.3,500/- Rs. 4,20,000/-

x 12 x 2/3 x 15 = Rs.4,20,000/-).

2 Loss of consortium to the wife Rs. 30,000/-

3 Loss of love and affection to the Rs. 75,000/-

three minor children (Rs.25,000/- x 3 =

Rs.75,000/-)

4 Loss of love and affection to the Rs. 10,000/-

parents (Rs.5,000/- x 2 = Rs.10,000/-)

5 Funeral expenses Rs. 5,000/-

Total Rs. 5,40,000/-

7. In appeal, the contention raised by the learned Counsel for the appellant is that the income fixed by the Tribunal at Rs. 3,500/- is excessive in

view of Ex.P-9 ESI Form No. 6 wherein the income of the deceased is shown as Rs. 2,500/- per month. This contention has to be rejected in

view of the following decisions:

(a) B. Anandhi Vs. R. Latha and Another, (P. SATHASIVAM, J.) wherein the Division Bench of this Court observed that a coolie would earn

Rs. 100/- per day. In that case, the accident happened in the year 1995.

(b) State of Haryana and Anr. v. Jasbir Kaur and Ors. reported in 2004 1 LW, wherein the Apex Court was of the view that an agriculturist

would earn Rs. 3,000/- per month. In that case, the accident happened in the year 1999.

8. In any event, it has been observed by the Tribunal that in the ESI Form No. 6, the wage is shown without including other perquisites. Hence, the

income fixed by the Tribunal at Rs. 3,500/- per month is commensurate with the minimum and living wages during the period of accident.

9. The next contention raised by the learned Counsel for the appellant is that the multiplier 15 adopted in this case is higher. This contention is also

to be rejected in view of the decision of the Apex Court in Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. reported in

2009(2)TN MAC 1 (SC). The Apex Court in Para 21 held as follows:

21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma

Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced

by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years,

and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for

61 to 65 years and M-5 for 66 to 70 years.

10. Keeping in mind all these facts, this Court finds no good reason to interfere with the quantum of compensation which is just and reasonable as

also the interest at 7.5% per annum.

11. Finding no merit, this Civil Miscellaneous Appeal is dismissed at the admission stage. Counsel for the appellant seeks for eight weeks'' time to

deposit the award amount and is granted and on such deposit, the claimants 1, 5 and 6 are permitted to withdraw the same as apportioned by the

Tribunal. The share of the minors shall be deposited as ordered by the Tribunal. Consequently, connected miscellaneous petition is closed.