(2002) 03 MAD CK 0190

In the Madras High Court

Case No : C.M.A. No. 277 of 2002 and C.M.P. No. 2294 of 2002

United India Insurance Co. Ltd. — APPELLANT

Vs

Leela and Others — RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Citation : (2003) 3 ACC 694 : (2003) ACJ 1347

Hon'ble Judges : P. Thangavel, J;P. Shanmugam, J

Bench : Division Bench

Advocate : M.B. Gopalan, for the Appellant; M. Sriram, for the Respondent

Judgement

P. Shanmugam, J.—The respondent No. 2 before the Motor Accidents Claims Tribunal, Virudhunagar, at Srivilliputtur is the appellant herein. The legal representatives of the deceased Vijayakumar, who was a contractor-cum-quarry owner-cum-agriculturist, have filed a claim petition for compensation for the death of the said Vijayakumar.

2. The facts that are necessary for disposal of this civil miscellaneous appeal are as follows:

The late Vijayakumar was riding a motor cycle along with his brother on 18.3.1999 at 7.30 p.m. on the side of Sankaran Koil Road at Rajapalayam. At that time the respondent No. 5 drove the vehicle bearing registration No. TN 74-A 9447 rashly and negligently with high speed and without observing the rules of the road in the same direction and dashed against the bike from behind, which was driven by the deceased. The deceased was thrown off the bike and he sustained grievous injuries and was taken to hospital in an auto and he died on the way to hospital. Claiming that the accident occurred only due to rash and negligent driving of respondent No. 5, the legal representatives of the deceased claimed a total compensation of Rs. 25,00,000. The Tribunal, after considering the oral and documentary evidence, passed an award for a sum of Rs. 19,59,500. Aggrieved against the same, the insurance company has filed this

C.M.A.

3. We have heard the learned Counsel for the parties.

4. The fact that the accident occurred due to rash and negligent driving of the respondent No. 5 is not in dispute. The appeal is confined only to the quantum of compensation awarded. On the documents furnished by the L.Rs. of the deceased, it is seen that the deceased was a contractor having an assessable income, which was as follows:

1993-94 Rs. 34,840 1994-95 Rs. 29,560 1995-96 Rs. 1,01,720 1996-97 Rs. 73,680 1997-98 Rs. 1,10,980 1998-99 Rs. 1,63,810

However, the Claims Tribunal has taken Rs. 1,00,000 as his income per year and the loss to the estate, without deducting 1/3rd towards his personal expenses. Applying the multiplier of 13, the Tribunal has awarded a sum of Rs. 19,59,500.

5. We find two errors committed by the Tribunal. Firstly, the Tribunal did not deduct any amount towards personal expenses and secondly, it adopted the multiplier of 13 instead of 16, which is the proper multiplier for the age of deceased, which is 39. The Tribunal has also not properly awarded the conventional damages. Considering the fact that the deceased was a regular assessee of income tax and that the last income shown as per the return of the year 1998-99 is Rs. 1,63,810 and, inasmuch as this income is not disputed, we have to take this as the annual loss to the estate of the deceased. However, we have to deduct 1/3rd towards his personal expenses. Accordingly, the monthly income of the deceased would be Rs. 13,650 and after deducting 1/3rd, namely, Rs. 4,550 towards his personal expenses, the monthly dependency of his family would come to Rs. 9,100 and the annual dependency comes to Rs. 1,09,200. The proper multiplier that is to be applied in this case is 16 and, therefore, the loss to the estate will be Rs. 17,47,200. The Tribunal has awarded a very nominal amount towards loss of love and affection and consortium. Considering that the respondent No. 1 wife is aged only 32 years and the children are minors and the mother is old aged, we are of the view that each of them is entitled to Rs. 10,000 towards loss of love and affection. The Tribunal has not awarded any sum towards funeral expenses and transport expenses. We find that the deceased was taken to hospital after his sustaining grievous injuries and, therefore, he could have incurred expenses towards transportation to hospital and from there to house. Therefore, we award a sum of Rs. 2,500 towards transport expenses and a sum of Rs. 2,500 towards funeral expenses. In total, a sum of Rs. 45,000 towards conventional damages is awarded. The total compensation, thus, comes to Rs. 17,92,200, which is rounded off to Rs. 17,93,000. We are of the view that this amount will be just compensation and will meet the ends of justice. The amount shall also bear interest at the rate of 9 per cent per annum from the date of petition till realisation. The apportionment of the amount shall be as follows:

Mother, namely, the respondent No. 4 herein is entitled to a sum of Rs. 93,000; respondent No. 1, namely, the wife is entitled to a sum of Rs. 8,50,000 and the remaining sum of Rs. 8,50,000 to which the minors are entitled, shall be deposited in any nationalised bank till they attain majority and respondent No. 1 is entitled to withdraw interest accrued on the said sum every six months.

6. C.M.A. is disposed of on the above terms. No costs. Consequently, the connected C.M.P. is closed.