

(2009) 08 MAD CK 0078

In the Madras High Court

Case No : C.M.A. (MD) No. 657 of 2009 and M.P. (MD) No. 1 of 2009

United India Insurance Co. Ltd.

APPELLANT

Vs

Mariasamy and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2011) ACJ 1115

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : S. Muthalraj, for the Appellant; S. Sivathilagar, for R1 to R4, for the Respondent

Judgement

N. Kirubakaran, J.—This appeal has been preferred by the Insurance Company against the award of Rs. 4,25,000/- (Rupees Four Lakhs

and Twenty Five Thousand only) along with 7.5% interest, as against the claim of Rs. 10,00,000/- (Rupees Ten Lakhs only).

Facts:

2. The facts of the case are that the father of the respondents 1 to 4/claimants, died in an accident occurred on 25.10.2006, when the Ambassador

car belonging to the fifth respondent rashly and negligently driven and hit the deceased and four others. The deceased sustained lacerated injuries

and fracture in the skull, ribs and right leg and when he was taken to the Tirunelveli Medical College Hospital, on the way he died. The claimants

filed the claim petition seeking compensation which was contested by the appellant. The claim of the respondents 1 to 4 was that he was an

agricultural coolie, earning Rs. 6,000/- p.m.

3. The Tribunal after enquiry, found that because of the rash and negligent driving of the Ambassador car alone, the accident occurred and

awarded a sum of Rs. 4,25,000/- (Rupees Four Lakhs and Twenty Five Thousand only). Contention of the parties:

4. Mr. S. Muthalraj, learned Counsel for the appellant, does not question the finding of the Tribunal with regard to the negligence. Hence, the

negligence aspect is not considered. As far as the quantum is concerned, the learned Counsel for the appellant submitted that Rs. 3,000/- p.m

arrived at by the Tribunal and the same was without any evidence and he sought for interference in this regard. He also found fault with the Tribunal

for adopting the multiplier at 15 as there was no evidence to prove the age of the deceased except the post-mortem report.

5. On the other hand, Mr. S. Sivathilagar, learned Counsel for the respondents 1 to 4/claimants, submitted that the Tribunal, in fact, awarded lower

amount and he sought for enhancement of the monthly income as Rs. 5,000/- p.m. Findings:

6. Admittedly, the deceased was an agricultural coolie. The claim of the respondents 1 to 4/claimants was that he was earning about Rs. 6,000/-

p.m. However, there was no evidence adduced on their behalf to prove their claim. In any event, the Tribunal fixed the monthly income as Rs.

3,000/- p.m and after deducting 1/3rd amount towards personal expenses, a sum of Rs. 2,000/- p.m, was taken as his monthly contribution to the

family. In fact, the Honourable Supreme Court in The New India Assurance Company Limited Vs. Smt. Kalpana and Others, , held that in the

absence of any definite material about income, the monthly contribution of the deceased to the family after finding that there was no evidence

regarding monthly income of the deceased, was fixed at Rs. 3,000/-. That case related to the accident occurred on 07.06.1999. The Honourable

Supreme Court was pleased to fix the said amount on 17.01.2007. If that ratio is to be followed, the monthly contribution to the family should be

taken as Rs. 3,000/- p.m. In this case also, there is no definite material about the income of the deceased. Moreover, the accident occurred on

25.10.2006. Taking into consideration the above fact and following the said judgment, the monthly contribution of the deceased to the family, is

taken as Rs. 3,000/- p.m.

7. As far as the multiplier is concerned, there was no document except the post-mortem report, Ex.P.2, to conclude that the age of the deceased

was at 45. In the absence of any document to prove the same, the Tribunal had to depend upon the post-mortem report alone and accordingly, the

Tribunal decided the same. Therefore, there cannot be any grievance by the appellant in this regard. Applying multiplier 15 (Rs. 3,000/- p.m X 12

X 15 = Rs. 5,40,000/-), the loss of income to the family, is arrived at Rs. 5,40,000/- {Rupees Five Lakhs and Forty Thousand only}.

8. As stated above, taking into consideration the dictum laid down by the Honourable Supreme Court in *New India Assurance Co. Ltd. v.*

Kalpana (Smt) and Ors. reported in The New India Assurance Company Limited Vs. Smt. Kalpana and Others, , this Court arrives at the loss of

dependency at Rs. 5,40,000/- (Rupees Five Lakhs and Forty Thousand only).

9. The next question would arise as to whether this Court can enhance the compensation in the absence of any appeal/cross appeal by the claimants.

10. That is precisely answered by the Honourable Supreme Court in a number of cases, including *The APSRTC, rep. by its General Manager and*

Anr. v. M. Ramadevi and Ors. reported in (2008) 1 TANMAC 234 (SC); Municipal Board, Mount Abu v. Harilal reported in 1988 ACJ 281;

The State of Punjab and Others Vs. Bakshish Singh, and TNSTC rep. by its Managing Director, Kumbakonam, Division I v. Saroja and Ors.

reported in 2008 (1) TANMAC 352, wherein it has been consistently held that this Court can enhance the compensation even in the absence of

appeal by the claimants.

11. Moreover, this Court has got jurisdiction and powers under Order 41 Rule 33 of the Code of Civil Procedure, to enhance it. Further, it is an

appeal u/s 173 of the Motor Vehicles Act, where appreciation of pleadings and evidence is possible and accordingly, appreciating the pleadings

and evidence and applying Order 41 Rule 33 of the CPC and also taking into account the dictum laid down, this Court enhances the award

amount even in the absence of an appeal by the claimants. Apart from, Sections 163A and 166 of the Act, are beneficial provisions intended to

compensate and rehabilitate the victims of the road traffic accident. Considering the benevolent nature, this Court should make endeavour to give

effect to those provisions.

12. As far as the other headings are concerned, the same are confirmed, namely for loss of love and affection for respondents 1 and 2 - Rs.

20,000/-; for loss of love and affection for respondents 3 and 4 - Rs. 30,000/-; for funeral expenses - Rs. 3,000/-; for transportation - Rs. 2,000/-

and for loss of estate - Rs. 10,000/-.

13. Accordingly, the award passed by the Tribunal is enhanced from Rs. 4,25,000/- (Rupees Four Lakhs and Twenty Five Thousand only) to Rs.

6,05,000/- (Rupees Six Lakhs and Five Thousand only) along with interest at the rate of 7.5% p.a. The award of the Tribunal is modified in the

following manner:

(i) Loss of Income - Rs. 5,40,000/-

(ii) Loss of Love and Affection

for R.1 and R.2 - Rs. 20,000/-

(iii) Loss of Love and Affection

for R.3 and R.4 - Rs. 30,000/-

(iv) Funeral Expenses - Rs. 3,000/-

(v) Transportation - Rs. 2,000/-

(vi) Loss of Estate - Rs. 10,000/-

Total - Rs. 6,05,000/-

14. In the result, the above Civil Miscellaneous Appeal is disposed of in the above terms. However, there will be no order as to costs.