(2017) 09 MAD CK 0020

In the Madras High Court

Case No : 3346 and 2752 of 2014

United India Insurance Co. Ltd. APPELLANT

Vs

Menaka RESPONDENT

Date of Decision : 01-09-2017

Acts Referred:

Citation : (2017) 09 MAD CK 0020

Hon'ble Judges : R.Subbiah, P.Velmurugan

Bench : DIVISION BENCH

Advocate : R.Subbiah, P.Velmurugan

Judgement

1. Both the appeals herein have been filed against the award passed in M.C.O.P.No.1788 of 2011 dated 24.01.2014 by the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. C.M.A.No.3346 of 2014 has been filed by the Insurance Company challenging the quantum of compensation awarded and praying to reduce the same and C.M.A.No.2752 of 2014 has been filed by the claimants seeking to enhance the quantum of compensation awarded.

2. The respondents 1 and 2 in C.M.A.No.3346 of 2014/ the appellants in C.M.A.No.2752 of 2014 are the claimants and they are the parents of the deceased A.Babu. It is the case of the claimants before the Tribunal that on 03.03.2011 at 23.15 hours, while the deceased was proceeding from South to North in his Motor Cycle bearing Registration No.TN07-AU-0101 at L.G.Road Near Ansari Traders, Chennai, an Autorickshaw bearing Registration No.TN-07-AU-8463, which came at hectic speed in the opposite direction in a rash and negligent manner dashed against the Motor Cycle. In the accident, the deceased Babu sustained multiple injuries and immediately, he was taken to Government General Hospital and then to Sri Ramachandra Hospital, Chennai, where he was admitted as in patient from 03.03.2011 to 13.03.2011. Inspite of the treatment given to him, he died on 13.03.2011. Hence the claimants/ parents of the deceased filed claim petition in M.C.O.P.No.1788 of 2011 before the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai, against the owner

of the Autorickshaw who is the third respondent in C.M.A.No.3346 of 2014/ first respondent in C.M.A.No.2752 of 2014 and its insurer the United India Insurance Company Limited/ appellant in C.M.A.No.3346 of 2014/ second respondent in C.M.A.No.2752 of 2014.

3. The case of the claimants was resisted by the Insurance Company by filing a detailed counter stating that the accident had occurred only due to the negligent act of the two wheeler. Therefore, they are not liable to pay compensation.

4. In order to prove their case, the claimants examined four witnesses and marked 13 documents as Exhibits i.e., Ex.P1 to Ex.P13. The mother of the deceased examined herself as P.W.1 and the father of the deceased examined himself as P.W.2. On the side of the Insurance Company, no witnesses were examined, however, they marked copy of the rough sketch and copy of the accident register as exhibits i.e., Ex.R1 and Ex.R2.

5. After analyzing the evidence adduced by the witnesses and the exhibits marked, the Tribunal arrived at a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Autorickshaw and directed the Insurance Company to pay the compensation on behalf of the owner of the Autorickshaw. The Tribunal calculated the compensation on different heads and awarded a sum of Rs.36,47,000/- with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit as compensation. Aggrieved by the same, the Insurance Company as well as the claimants have come forward with these appeals challenging the quantum of compensation.

6. Since the learned counsel appearing for the Insurance Company submitted that they are only questioning the quantum of compensation and since the claimants have preferred appeal seeking enhancement of compensation, it is not necessary for this Court to go into the other aspects of the award.

7. The learned counsel appearing for the Insurance Company submits that though the claimants claim that the deceased was running the business under the name of ''Bhavana Printers'' and was earning a sum of Rs.50,000/- per month, no crucial documents such as Income Tax Statement was marked and the documents marked by the claimants in order to show the income of the deceased was the Registration Certificate and the Certificate issued by the Commercial Tax Department (Ex.P8 and Ex.P9) and they would not reveal the actual income of the deceased. While that being so, the Tribunal has taken an exaggerated sum of Rs.30,000/- as monthly income and has calculated and awarded an exorbitant amount of Rs.30,60,000/- as pecuniary loss.

8. It is the further submission of the learned counsel appearing for the Insurance Company that the Tribunal has also awarded an exorbitant amount of Rs.2,00,000/- for loss of estate. Thus, he prayed for reduction of the compensation amount awarded by the Tribunal.

9. The learned counsel appearing for the claimants supported the Tribunal''s

findings and sought for enhancement of the award amount.

10. We have carefully considered the arguments advanced on either side and have also gone through the entire materials placed on record.

11. Though it is the claim of the claimants that the deceased was running the business under the name of ''Bhavana Printers'' and was earning a sum of Rs.50,000/- per month, no crucial documents such as Income Tax Statement was marked and the only document marked by the claimants was the Registration Certificate and the Certificate issued by the Commercial Tax Department (Ex.P8 and Ex.P9) and they could not reveal the actual income of the deceased. Under such circumstances, the Tribunal ought not to have fixed a sum of Rs.30,000/- as monthly income. However, the exhibits marked on the side of the claimants would show that the deceased was running a business under the name of ''Bhavana Printers''. Hence, considering the present day cost of living and in the absence of any crucial documents to prove the income of the deceased, this Court fix the income of the deceased as Rs.12,000/- per month. Further, this Court awards a sum of Rs.6,000/- per month for future prospects. Hence, the total loss per month works out to Rs.18,000/- (Rs.12,000/- + Rs.6,000/-). If 50% of the amount is deducted towards his personal expenses, then it works out to Rs.9,000/-, which can be taken as monthly loss of contribution. The deceased was aged about 29 years. Therefore, the correct multiplier to be adopted is 17. Hence, the pecuniary loss works out to Rs.18,36,000/- (Rs.9,000/- X 12 X 17). Accordingly, the amount awarded for pecuniary loss is reduced from Rs.30,60,000/- to Rs.18,36,000/-.

12. Further, we find that the claim was made only by the parents. Hence, according to us, the question of awarding compensation for loss of estate does not arise. Accordingly, the amount awarded by the Tribunal under the head ''loss of estate'' is set aside. Further, the amounts awarded by the Tribunal under the other heads, in our view, require no interference and therefore, they are confirmed.

13. Thus, the total compensation to be awarded to the claimants is as follows:

For pecuniary loss - Rs.18,36,000/-

For love and affection - Rs. 2,00,000/-

For funeral expenses - Rs. 25,000/-

For medical expenses -

Rs. 1,62,000/-

Total - Rs.22,23,000/-

and the same is payable at the rate of 7.5% per annum.

14. In the result, the amount of compensation is reduced to Rs.22,23,000/- (Rupees Twenty Two Lakhs and Twenty Three Thousand Only) payable with

interest at the rate of 7.5% per annum. The award is confirmed in other respects.

15. It is now submitted by the learned counsel appearing for the Insurance Company that they have already deposited 50% of the award amount. Hence, the Insurance company is directed to deposit the compensation amount as awarded by this Court before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, less the amount already deposited. On such deposit being made, the claimants are permitted to withdraw the entire compensation amount with accrued interest and costs in equal share on filing proper and necessary application.

16. In the result, C.M.A.No.3346 of 2014 is partly allowed reducing the compensation from Rs.36,47,000/- to Rs.22,23,000/-. Consequently, C.M.A.No.2752 of 2014 is dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.