(2015) 01 MAD CK 0194

In the Madras High Court

Case No : C.M.A. No. 797 of 2009 and M.P. No. 1 of 2009

United India Insurance Co. Ltd. APPELLANT

Vs

Sajina and Others RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0194

Hon'ble Judges : G. Chockalingam, J.;V. Dhanapalan, J.

Bench : Division Bench

Advocate : M.B. Raghavan, for the Appellant; K. Ezhumalai for K.C. Krishnamoorthy, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V. Dhanapalan, J.—This appeal is filed by the Insurance Company challenging the award of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge and Presiding Officer, Special Court for E.C. Act Cases, Coimbatore, dated 29.04.2008 made in M.C.O.P.No. 2045 of 2005, wherein, as against the claim of Rs.40 lakhs, the Tribunal awarded Rs.22 lakhs with 7.5% interest per annum from the date of petition till the date of deposit.

2. Before the Tribunal, the claimants (respondents 1 to 3 herein) stated that on 01.04.2003, when the deceased Sithik Ali was travelling in his motor- cycle bearing Registration No. TN-33-L-2812 from Avinashi to his residence at Coimbatore, a van bearing Registration No. KL-9-G-6066, driven by the fourth respondent herein from Coimbatore towards East, in a rash and negligent manner, hit against the motor-cycle of the deceased and he sustained grievous injuries on his head and all over his body and died on the spot. The motor-cycle of the deceased was totally damaged. The accident occurred only due to the rash and negligent driving of the said van by its driver, the fourth respondent herein and the fifth respondent herein being its owner and the appellant herein being its insurer, are all jointly and severally liable to compensate the claimants. The first claimant (first respondent herein) is the wife of the deceased and the claimants 2

and 3 (respondents 2 and 3 herein) are his parents. The deceased was aged about 29 years at the time of accident and he was hale and healthy and was a qualified Environmental Engineer and Environmental Consultant and was working in reputed companies and getting enormous income and maintaining his family. He was the only bread-winner of his family. Due to his demise, the claimants as dependants, are suffering and therefore, they have filed the Claim Petition claiming compensation of Rs.40 lakhs.

3. The fifth respondent herein filed counter statement before the Tribunal stating that the deceased, who was the husband of the first claimant, namely Sithik Ali, drove his motor-cycle in a rash and negligent manner and caused the accident by not following traffic rules and regulations. The fourth respondent herein drove the said van in a proper and careful manner, by following the rules and regulations and he is not responsible for the accident. The said van had been duly insured with the appellant-Insurance Company and if at all any liability arises, the appellant-Insurance Company is liable to compensate the claimants.

4. Before the Tribunal, on the side of claimants, P.W.1, who is the father of the deceased, P.W.2 who was an eye-witness to the accident and P.W.3 who was spoke about the income of the deceased, were examined. The following documents were marked on the side of claimants:

On the side of the respondents before the Tribunal, R.W.1 Motor Vehicle Inspector was examined and they have marked Ex.R-1 Policy Certificate (Duplicate), Ex.R-2 Registration particulars and Ex.R-3 Fitness Certificate.

5. The Tribunal framed the following points for consideration:

(i) Whether the fourth respondent herein drove the fifth respondent''s vehicle in a rash and negligent manner and caused the accident? and

(ii) Whether the claimants are entitled for compensation and if so, to what amount they are entitled to?

6. On a consideration of the above oral and documentary evidence, the Tribunal held that the negligence is on the part of the fourth respondent herein who is the driver of the van owned by the fifth respondent herein and the said van having been insured with the appellant-Insurance Company, the appellant- Insurance Company is liable to pay the compensation and ultimately, the Tribunal awarded a total compensation of Rs.22 lakhs with 7.5% interest per annum from the date of claim petition till the date of deposit, under the following heads:

7. Challenging the above compensation, the Insurance Company has filed this appeal and they have not questioned the negligence aspect of the driver and they only question the quantum of compensation on the ground that the Tribunal has grossly erred in awarding huge compensation of Rs.22 lakhs, based on assumption and presumption and the same is not in accordance with law, by wrongly taking into account the monthly income of the deceased at Rs.20,000/- and the same is not proper in the facts and circumstances of the case. It is their

further contention that the multiplier ''18'' adopted by the Tribunal is also on the higher side.

8. We have heard the learned counsel appearing for the appellant- Insurance Company and the learned counsel appearing for the respondents 1 to 3-claimants and perused the materials available on record.

9. As there is no challenge to the negligence of the driver of the van, we are not discussing anything on the same, and the same is hereby confirmed.

10. With regard to the quantum of compensation awarded by the Tribunal, the learned counsel for the appellant-Insurance Company mainly focussed that the Tribunal has exorbitantly fixed the monthly income of the deceased at Rs.20,000/-, which is against the legally settled principles. On the other hand, learned counsel for the respondents 1 to 3/claimants contended that the Tribunal, on a consideration of the oral and documentary evidence, awarded just and fair compensation under various heads, taking into account every factor involved in the case and hence, there is no warranting circumstance to interfere with the award of the Tribunal.

11. To examine the question of quantum of compensation, it is to be noted that the father of the deceased was examined as P.W.1, who stated that his son was travelling in his motor-cycle from Avinashi to his residence at Coimbatore and at that time, the accident took place and he died on the spot. He further deposed that his son was aged about 29 years at the time of accident. The age of the deceased could also be gathered from Ex.P-3 Post-Mortem Certificate as 29 years. Ex.P-7 Passport copy of the deceased also showed that the deceased completed 29 years and had not completed 30 years. Thus, it could be inferred that the age of the deceased was 29 years at the time of accident.

12. Coming to the aspect of the avocation of the deceased and his earnings, it is stated that he was an Environmental Engineer and Environmental Consultant, earning Rs.40,000/- per month. His educational qualification was taken into account based on the evidence and P.W.1 has marked some documents to show the educational qualifications of the deceased, from which it revealed that he obtained Bachelor''s Degree in Environmental Management from Madras University, which is evident from Ex.P-9; subsequently he also obtained Diploma in Computer Management and Master''s Degree in Environmental Management from Shivaji University, Kolhapur, which are evident from Exs.P-8 and P-10 respectively. Though the Tribunal had doubt about the recognition of the Shivaji University, that is not a matter to be given much credence and ultimately, based on the other documentary proof marked in Ex.P-11, which is the Experience Certificate of the deceased in an organisation, it is evident that he was a Consultant and obtained some instruments/quotation for the same, which is evident from Ex.P-12, which is a letter from a Company to the deceased. It is also evident that the deceased worked in foreign country, for which the Experience Certificate is marked as Ex.P-13, and these documents are

computerised xerox documents. These aspects have been taken into consideration by the Tribunal for arriving at his income. It is also further seen that one industry at Tiruppur gave a sum of Rs.5,000/- per annum towards Consultancy during the year 2000 and the letter showing the same was marked as Ex.P-14. It is also to be noted that one Tannery at Erode gave a copy of Income Tax statement showing that a sum of Rs.30,000/- was given to the deceased for his Consultancy and the same was marked as Ex.P-15. Further, one Saravanan was examined as P.W.3 to speak about the income of the deceased and in this regard, a Certificate from An-AAM Tanners is marked as Ex.P-20. Further, P.W.1-father of the deceased, in his deposition has stated that there was an offer of 1080 Dollars per month for his son in foreign country, but only a xerox copy of the computerised letter is marked as Ex.P-16. The Medical Certificate of the deceased for moving to foreign country is marked as Ex.P-17, but his place of offer and the recruiting agency column are left blank therein. Further, one Company from Trichy had given Rs.30,000/- per year for Consultancy to the deceased, in proof of which, Ex.P-18 was marked before the Tribunal and one Company from Erode has also given a quotation, which was marked as Ex.P-19.

13. The Tribunal, looking into the above oral and documentary evidence, came to the conclusion that though the deceased was capable of earning some amount, but the documents produced by P.W.1 - father of the deceased, showing that the deceased earned a sum of Rs.40,000/- by holding a Bachelor''s Degree from Madras University, Diploma Certificate and Master''s Degrees from an unknown University, are not acceptable. However, the Tribunal concluded that the deceased being an Environmental Graduate, would have earned a sum of Rs.20,000/- per month. Considering the fact that he is having wife and no issues and that no evidence was let in to show that the parents (claimants 2 and 3. lived along with the deceased-son and also taking into account the fact that the deceased used to go to Tiruppur by two-wheeler from Coimbatore and also taking into consideration the fuel expenses, the Tribunal ultimately inferred that the deceased would have spent a sum of Rs.10,000/- towards his personal expenses and his family would have got only a sum of Rs.10,000/-, and hence, the claimants have lost the earnings from the deceased to the tune of Rs.10,000/- per month, i.e. Rs.1,20,000/- per year. Taking into account the fact that the deceased was aged 29 years at the time of accident and the first claimant being the wife, aged about 24 years, the Tribunal adopted the multiplier "18" and awarded a sum of Rs.21,60,000/- (Rs.10,000/- x 12 x 18) towards compensation for loss of earnings of the deceased.

14. As the appellant-Insurance Company has challenged only the quantum of compensation, particularly, with regard to the determination of income of the deceased by the Tribunal, we would now examine the oral and documentary evidence on this aspect, by considering the age of the deceased. As discussed above, the deceased was aged about 29 years at the time of accident. His educational qualification is that he was an Environmental Graduate and a

Consultant in that field. There was an Experience Certificate of the deceased from an organisation. There was also an offer for his appointment in abroad and a Medical Certificate for travelling abroad in that regard has also been produced. When that is the position, the conclusion of the Tribunal in arriving at a sum of Rs.20,000/- per month towards the earnings of the deceased, is not supported by cogent evidence. It is the endeavour of the appellant-Insurance Company that the income of the deceased could reasonably be arrived at by applying appropriate multiplier and accordingly, the loss of earnings could be computed. In the absence of any specific evidence with regard to the proof of income of the deceased, like Bank Passbook, it could be reasonably concluded that the deceased would have earned a sum of Rs.15,000/- per month, by taking into account his educational qualification, namely Graduate in Environmental Management and his avocation of Consultancy in that field. The Tribunal has deducted one-half of his income towards his personal expenses out of Rs.20,000/- per month determined by it, which ought not to have been deducted, but on the contrary, only 1/3 towards personal expenses should have been deducted. Therefore, deducting 1/3 towards personal expenses from his earnings at Rs.15,000/- per month as discussed above, the income of the deceased is hereby determined at Rs.10,000/- per month, i.e. Rs.1,20,000/- per year.

15. As far as the application of multiplier with regard to the age of the deceased at 29 years, is concerned, it is to be noted that the Supreme Court in the decision reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , has clearly spelt out the respective multipliers to be adopted for various age groups, and applying the same to the facts of this case, with regard to the age group of 25-30 years, as per the said decision of the Supreme Court, the appropriate multiplier that has to be adopted in this case is ''17'' in respect of the age of the deceased being 29 years at the time of accident and not multiplier ''18'' adopted by the Tribunal. Accordingly, by adopting the multiplier ''17'', the loss of earnings is arrived at Rs.20,40,000/- (Rs.10,000/- x 12 x 17).

16. With regard to the award of the Tribunal at Rs.20,000/- towards loss of consortium to the first claimant-wife of the deceased, the same appears to be meagre and considering the age of the deceased and his wife, it is hereby enhanced to Rs.1,00,000/-. With regard to the loss of dependency and loss of love and affection to the claimants 2 and 3 (parents of the deceased), the Tribunal awarded a sum of Rs.10,000/- totally, which is a paltry sum and the same is hereby increased to Rs.50,000/- totally. The Tribunal awarded a sum of Rs.5,000/- towards transportation expenses, which is hereby set aside, as the same is not proved by documentary evidence. The award of the Tribunal in a sum of Rs.5,000/- towards funeral expenses, is hereby enhanced to Rs.10,000/-. The interest awarded by the Tribunal at 7.5% is hereby confirmed. We accordingly modify the award of the Tribunal on the above heads to arrive at a just and equitable compensation to the claimants. In essence, the amounts awarded by

the Tribunal and the amounts now modified by us in this appeal, under various heads, are shown in the following tabular column:

17. In the result, though there is modification of the award amount under some heads, the total award of the Tribunal remains unchanged. Accordingly, the appeal is disposed of in the above terms. The appellant-Insurance Company shall pay the above compensation of Rs.22,00,000/- with 7.5% interest per annum from the date of claim petition till the date of deposit. Out of the abovesaid sum of Rs.22,00,000/-, the first claimant-wife (first respondent herein) is entitled to get a sum of Rs.16,00,000/- with proportionate interest and the second and third claimants, being the parents of the deceased, i.e. the respondents 2 and 3 herein, are entitled to get a sum of Rs.3,00,000/- each, with their proportionate interest. The amount(s), if any lying in Bank Deposit / Court Deposit shall be disbursed to the respondents 1 to 3 herein, who are the claimants, directly by the Tribunal, without insisting on any formal application. No costs. The Miscellaneous Petition is closed.