(2013) 11 MAD CK 0260

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 648 of 2013 and M.P. No. 1 of 2013

United India Insurance Company, Cuddalore — APPELLANT

Vs

Arumugam — RESPONDENT

Date of Decision : 05-11-2013

Acts Referred:

Citation : (2014) 1 TNMAC 240

Hon'ble Judges : Mr. R. Sudhakar and Mrs. Pushpa Sathyanarayana, JJ.

Bench : Division Bench

Advocate : Ms. V. Hemamalini for Mr. J. chandran, Advocates, for the Appellant; No appearance, for the Respondents

Final Decision : Disposed Off

Judgement

Pushpa Sathyanarayana, J.—The United India Insurance Company is the appellant in the above appeal challenging the award and decree dated 11.9.2012 passed in M.C.O.P.No.406 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Chidambaram at Cuddalore District in respect of quantum of compensation.

2. Heard Ms. V. Hemamalini, learned counsel representing Mr. J. Chandran, learned counsel appearing for the appellant. Though notice was served on the respondents 1 and 2 on 4.4.2013, none appears on behalf of the respondents 1 and 2 till date. The third respondent though appeared through counsel M/s. A. Joseph Sagayaraj, when the matter is called none appears on his behalf.

3. It is a case of fatal accident. The brief facts of the case are as follows:- The accident in this case happened on 14.11.2010 at 12.00 noon. The deceased Senthilkumar, aged about 26 years, was riding in his bicycle at Kumaratchi Kadaiveedhi. When he was nearing to Primary Health Centre, the third respondent herein drove the van bearing Registration No.TN 31 R 5677 owned by him in a rash and negligent manner and hit against the cycle. In the said impact the deceased sustained serious injuries. He was given first aid at Annamalai

Nagar, RMMCH Hospital and then Jipmer Hospital, Pondicherry, where the injured died. For the death of the deceased who is a bachelor, his parents have filed a claim for compensation in a sum of Rs.20,00,000/- stating that the deceased was earning a sum of Rs.12,000/- per month by doing "Kambi Fitter" work.

4. The said Original Petition was contested by the appellant and also the third respondent contending that the accident was not caused due to the rash and negligent driving of the van driver and that the deceased riding his bicycle in a rash and negligent manner resulting the accident and that the appellant and the third respondent are not liable to pay the compensation.

5. Before the Tribunal, Mr. Arumugham, the first claimant, the father of the deceased was examined as P.W.1. One Mr. Kolanchiappan, an eye witness was examined as P.W.2. Exs.P-1 to P-7 were marked. On the side of the respondents, no document was filed and no witness was examined.

6. Considering the oral and documentary evidence, the Tribunal granted the following amounts as compensation with 7.5% interest:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income/loss of dependency to the parents of the deceased	Rs.12,96,000/-
2	Loss of love and affection to the parents (Rs.1,00,000/- each)	Rs. 2,00,000/-
3	Transport expenses	Rs. 10,000/-
4	Funeral expenses	Rs. 10,000/-
	Total	Rs.15,16,000/-

7. The finding of negligence on the part of the driver/owner of the van bearing Registration No.TN-31-R-5677 insured with the appellant insurance company,

who is responsible for the accident and the death and consequential liability fixed on the appellant insurance company to compensate the claimants is not seriously disputed by the learned counsel appearing for the appellant. The only point canvassed by the learned counsel for the appellant is on the quantum of compensation.

8. The points that arose for consideration are:-

(1) Whether the quantum of compensation arrived at by the Tribunal is correct?

(2) To what relief the claimants, the respondents 1 and 2, are entitled to?

9. Point No.1: It is stated that the deceased was earning a sum of Rs.12,000/- per month by doing "kambi fitter" work. The Tribunal taking note of the fact that mentioned in Ex.P-1 FIR that the deceased was doing fitter work at the time of accident, fixed the income of the deceased at Rs.300/- per day (i.e.) Rs.9,000/- per month.

10. Based on the postmortem certificate Ex.P-3, the Tribunal fixed the age of the deceased at 26 years. Considering the age of the deceased, the Tribunal applying the principles laid down in Sarla Verma v. Delhi Transport Corporation reported in 2009(2) TNMAC 1 (SC), adopted the multiplier "18". Accordingly, the Tribunal fixed the loss of income of the deceased at Rs.19,44,000/- (Rs.9,000/- x 12 x 18 = Rs.19,44,000/-). After deducting ? towards personal expenses of the deceased, the Tribunal fixed the loss of dependency at Rs.12,96,000/- (Rs.19,44,000/- minus Rs.6,48,000/- = Rs.12,96,000/-). In addition, the Tribunal granted a sum of Rs.1,00,000/- each towards loss of love and affection to the father and mother of the deceased; Rs.10,000/- towards transport expenses and Rs.10,000/- towards funeral expenses.

11. The only objection raised by the learned counsel for the appellant is that the claimants being parents, the deduction of ? towards personal expenses of the deceased is not correct and it should be 1/2. Further, the loss of love and affection granted at Rs.1,00,000/- each to the parents is on the higher side.

12. Considering the age of the deceased and also the age of the claimants, this Court accepts the contention of the learned counsel for the appellant. Accordingly, the loss of income to the dependants is fixed at Rs.9,72,000/- (Rs.19,44,000/- x 50% = Rs.9,72,000/-). The parents lost their only son in the accident at the age of 26 years. Considering the age of the parents, the loss of love and affection granted to the parents is reduced to Rs.75,000/- each instead of Rs.1,00,000/- each. However, the funeral expenses is enhanced to Rs.25,000/- from Rs.10,000/- in view of the decision rendered in Rajesh and others v. Rajbir Singh and others reported in 2013 ACJ 1403.

13. Accordingly, the award of the Tribunal is modified as follows:-

Sl.No.

Head

Amount granted by the Tribunal

Amount granted by this Court

1

Loss of income/loss of dependency to the parents of the deceased

Rs.12,96,000/-

Rs. 9,72,000/-

2

Loss of love and affection to the parents

Rs. 2,00,000/- (Rs.1,00,000/- each)

Rs. 1,50,000/- (Rs.75,000/- each

3

Transport expenses

Rs. 10,000/-

Rs. 10,000/-

4

Funeral expenses

Rs. 10,000/-

Rs. 25,000/-

Total

Rs.15,16,000/-

Rs.11,57,000/-

14. There is no dispute in respect of the interest granted by the Tribunal at 7.5% per annum. Accordingly, the point No.1 is answered.

15. Point No.3:- In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The award of the Tribunal is reduced to Rs.11,57,000/- from Rs.15,16,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The award amount is apportioned equally between the claimants.

(iv) Eight weeks time is granted to deposit the balance award amount as ordered by this Court.

(v) On such deposit, the claimants are permitted to withdraw the award amount as ordered and apportioned by this Court as above.

(vi) There will be no order as to costs in this appeal.

(vii) Consequently, connected miscellaneous petition is closed.