



Citation : CDJ 2018 MHC 8332

Court : High Court of Judicature at Madras

Case No : C.M.A. No. 1317 of 2018 & CMP. No. 10626 of 2018

Judges : THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN & THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Parties : The Branch Manager, M/s. Reliance General Insurance Co. Ltd., Puducherry Versus Sivagamy & Others

Appearing Advocates : For the Appellant: S. Arun Kumar, Advocate. For the Respondents: -----

Date of Judgment : 26-06-2018

Head Note :

Constitution of India - Article 227 -

Judgment :

(Prayer: Civil Miscellaneous Appeal filed against the Award and Decree dated 04.12.2017 made in MCOP.No.199 of 2016 on the file of the Motor Accident Claim Tribunal, II Additional District Judge, Puducherry.)

N. Kirubakaran, J.

1. The appeal has been preferred by the insurance company aggrieved over the compensation of Rs.24,20,860/- awarded to the legal heirs of one P.Arul, a casual labour, working in Government of Puducherry, aged about 37 years, allegedly earning about Rs.28,000/- per month, in the accident which occurred on 17.12.2015, when he was riding his two wheeler-Hero Honda Splendor at Pondy-Villupuram main road and the two wheeler was dashed by another two wheeler belonging to one Venkatesan (since deceased), rep. by its legal heirs R5 & R6, insured with the appellant/insurance company driven at high speed, rashly and negligently.

2. Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant. He would submit that the accident was a head on collision and in this regard the rider of the offending two wheeler was examined as RW1 and similarly FIR was registered against RW1 viz., rider of the offending two wheeler and negligence has been fastened on him. Therefore, the learned counsel sought for at least contributory negligence on the part of the victim. It is further contended by Mr.S.Arun Kumar, learned counsel appearing for the appellant that the victim is not a permanent employee.

3. It is proved by PW3 official witness that the deceased was a full time casual labour in Public Works Department and his salary has been proved by Ex.P.12, Ex.P.14 and Ex.X1 and Ex.X2, at Rs.12,570/-. Therefore, the Tribunal justifiably added 50% towards future prospects as the age of the deceased was determined at 37years, based on Ex.P.5-Body disposal certificate. After adding 50%, the Tribunal rightly determined the monthly income at Rs.18,855/-. However, 10% has been deducted towards income tax. If the monthly income of Rs.18,855/- is taken to calculate the annual income, it would be Rs.2,26,260/-, which is well within the standard deduction. Therefore, 10% deduction towards income tax made by the Tribunal is set aside as the annual income is only Rs.2,26,260/-.

4. The size of the family is four and therefore, the Tribunal rightly deducted 1/4th towards personal expenses. If 1/4th is deducted towards personal expenses, the annual contribution would be at Rs.1,69,695/- (Rs.2,26,260/- - 1/4th of Rs.2,26,260/-).

5. As per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the Tribunal has rightly adopted the multiplier of “15” as the age of the deceased is “37”. Hence, the loss of income would be at Rs.25,45,425/- (Rs.1,69,695/- x 15)

6. Loss of consortium:

The tribunal has awarded a sum of Rs.40,000/- towards loss of consortium. The same is confirmed.

7. Loss of estate:

The tribunal has awarded a sum of Rs.15,000/- towards loss of estate. The same is confirmed.

8. Funeral expenses:

The tribunal has awarded a sum of Rs.15,000/- towards funeral expenses. The same is confirmed.

9. Loss of love and affection:

The tribunal has awarded a sum of Rs.60,000/- towards loss of love and affection. The same is confirmed.

Head	Amount (Rs.)
Total loss of income	2545425
Loss of consortium	40000
Loss of love and affection	60000
Funeral expenses	15000
Loss of estate	15000
	2675425

10. Hence, the total compensation payable in this case is Rs.26,75,425/- rounded off to Rs.26,75,000/-.

11. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. Though the Insurance company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.24,20,860/- is enhanced to Rs.26,75,000/-, invoking Order 41 Rule 33 of CPC and Section 151 of CPC and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

12. Out of the award amount, the 1st claimant is entitled to get Rs.10,00,000/-, claimants 2 and 3 minor children are entitled to get Rs.7,00,000/- each and the 4th claimant is entitled to get Rs.2,75,000/-.

13. Since even without notice to the claimants the enhancement has been made in favour of the claimants in the appeal filed by the insurance company at the time of admission itself, there is no occasion for the claimants to note the enhancement. Therefore, copy of order is directed to be sent to the claimants at free of costs. The claimants are directed to pay the requisite court-fee, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the claimants, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimants and thereafter, transfer the remaining award amount as per the ratio fixed by this Court to the accounts of the claimants.

14. The Insurance company is directed to deposit the award amount as per the modified award passed by this Court, with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the respective shares of claimants 1 and 4 along with proportionate interest and costs to their respective bank accounts through RTGS within a period of one week thereon. As far as minor claimants 2 and 3 are concerned, their share shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st claimant/mother is permitted to withdraw interest accruing on such deposit once in three months.

15. The Tribunals are hereby directed to take standard deduction for the particular year, which is applicable while calculating the income of the deceased.

16. Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.24,20,860/- to Rs.26,75,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.