

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1849 of 2009

The National Insurance Co. Ltd.,
Pushpanjali Nava Bazaar,
Bavla, Ahmedabad District,
Gujarat State.

... Appellant/3rd Respondent

Vs:

- 1.Parimal V.Gandhi ...1st & 2nd Respondent/1 & 2nd Respondent
- 2.Jayavanthi I. Gandhi ...3rd Respondent /1st Respondent
- 3.Adambhai Amirbhai Vota,
- 4.Vanrajsingh Hathisingh Zala
Rajeswari Salt Suppliers,
Opp. Police Station, Zinzuwada,
Surendra Nagar District,
Gujarat District. ... 4th Respondents/2nd Respondent
(Respondents3 & 4 were set exparte)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 6th day of November 2007, made in MCOP.No.1238 of 2000 on the file of the Motor Accident Claims Tribunal (Additional District-cum-Fast Track Court No.IV) Coimbatore at Tiruppur.

For Appellant : Mr.K.Padmanabhan

For Respondents : Mr.C.Munusamy

for M/s. C & K Law Firm
R3 & R4 [Ex parte]

JUDGMENT

The Insurance Company, which is arrayed as third respondent before the Tribunal has preferred this Civil Miscellaneous Appeal, challenging the quantum of award passed in MCOP.No.1238 of 2000 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.IV, Coimbatore at Tiruppur.

2. One Virendra Kumar died in a road accident that took place on 09.06.2000. This fact is not disputed. He is stated to be 53 years at the time of accident and was a partner in a

partnership firm. The claim petition was filed by his widow and his mother, who were then aged 47 years and 75 years respectively. It is stated by the learned counsel for the respondent that the second claimant in the claim petition is now dead and the first petitioner, widow of Virendra Kumar is his sole heir. The same is recorded. They approached the MACT with a claim for Rs.33,20,000/- on pecuniary and general heads of compensation against which the Tribunal has awarded Rs.5,76,000/- directing the owner of the offending vehicle and its insurer, the appellant now before this Court with interest @ 7.5% p.a.

3. The learned counsel for the appellant raised only two points :
Relying on the authority in New India Assurance Co. Ltd., Vs. Smt.Shanti Pathak and others [2007(2) TN MAC 84 (SC)], only a multiplier of 8 as against 9 applied by the Tribunal is permissible;

There is no real loss of dependency inasmuch as the deceased was a partner in three partnership firms and on his demise his wife was inducted as a partner in those firms.

4. The learned counsel for the respondent submitted that the appropriate multiplier applicable as per the dictum in Sarala Varma Vs DTC Ltd. [2009(2) TNMAC 1] is 11. However, the Tribunal has quantified the loss of dependency of the claimants by adopting 9 as the multiplier, after providing for certain justifications for the same in the award.

5. It is seen that Virendrakumar, the unfortunate victim of the road accident was a partner in three partnership firms and the Tribunal has gone into the deeper layers of the performance of these firms and has found that only one of the three firms namely M/s. J.P.Gandhi alone was making profit. During the relevant year whatever that had accrued as Virendrakumar's share of profit has been received by his widow, the first claimant and therefore denied her any compensation on the head of loss of income. Based on Ex.A6-Income Tax Return of the Assessment Year 2000-2001 (Saral) of Virendra Kumar's widow, the Tribunal ascertained Rs.93,000/- as the income of Virendrakumar at the time of his death. Since Virendra Kumar's widow was inducted as partner in the firms, it has applied 9 as multiplier instead of 11 and arrived at a total loss of dependency at Rs.5,58,000/-

6. The fact that first claimant was inducted in the reconstituted partnership firms due to the unexpected demise of her husband ipso facto can not dis-entitle the claimants from claiming compensation on the head 'loss of dependency'. Ultimately, what was lost is the loss to the estate of the

deceased and the claimants are entitled to receive the same. That a dependent widow becoming a partner of a firm in which her husband was an erstwhile partner is contractually decided and it relates to such dependent's competency to be a partner. It is founded solely on her freedom to contract and it cannot be treated as a compensation for the loss of her husband.

7. To conclude I find no merit in both the grounds advanced by the appellant's counsel. Consequently, this appeal is dismissed. No costs.

8. It is stated by the learned counsel for the appellant that the entire award amount has already been deposited into the credit of MCOP.No.1238 of 2000 and that the claimant has withdrawn some amount as per the direction of this Court dated 13.11.2009 in M.P.No.2 of 2009. The claimant is now permitted to withdraw the balance award amount along with accrued interest lying in the credit of MCOP.No.1238 of 2000 forthwith.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ds

To:

The Motor Accident Claims Tribunal
(Additional District-cum-Fast Track Court No.IV)
Coimbatore at Tiruppur.

+1 cc to Mr.C.Munusamy Advocate sr 68330,
+1 cc to Mr.K.Padmanabhan Advocate sr 66871

rsy(co)
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