

(2013) ACJ 2405

Madras High Court (Madurai Bench)

Case No: C.M.A. (MD) No. 366 of 2010 and Cross-Objection (MD) No. 27 of 2010

Branch Manager,
United India Insurance
Co. Ltd.

APPELLANT

Vs

Jeyadevi and Another

RESPONDENT

Date of Decision: Jan. 29, 2013

Citation: (2013) ACJ 2405

Hon'ble Judges: P. Devadass, J; K.N. Basha, J

Bench: Division Bench

Advocate: G. Prabhu Rajadurai, for the Appellant; A.K. Rengasamy and Mr. A. Hariharan, for the Respondent

Judgement

P. Devadass, J.

This appeal by the insurer is challenging the quantum of compensation awarded. The cross-objection by the widow of the deceased is for enhancement of compensation amount.

2. On 31.12.2004, Vinayaga Velmurugan, a practising advocate, died in a road accident. His wife claimed compensation. The Claims Tribunal found the driver of the insured vehicle guilty of negligence. The Tribunal took Rs. 20,000 p.m. and Rs. 5,000 p.m. as his professional income and agricultural income respectively. The Tribunal totally awarded Rs. 31,05,000 and allocated Rs. 2,00,000 to the respondent No. 3, mother of the deceased, and the balance to the widow, respondent No. 1.

3. Deceased was enrolled in 1991 (see Exh. P205). He belongs to Thangachiyampatti in Ottanchathithiram Taluk in Dindigul District. He was practising both in civil and criminal side in the various courts in Pazhani and Dindigul. Within 4 years of his practice, he set up independent practice. He was having a junior by name Balasubramani. He paid him Rs. 2,000 p.m. The deceased had his office in Kamaraj Complex in Pazhani Town. PW 3, Magudeswaran, was his clerk. At the time of his death, the deceased was having 14

years of Bar practice. PW 4, Balasubramani, the President, Bar Association. Pazhani, certified that the deceased advocate had good legal practice and had commanded large volume of professional work (see Exhs. P6 to P192, P200 to P202 and P208).

4. According to the learned counsel for the appellant the income taken by the Claims Tribunal is on the higher side. The deceased was a full-time professional and taking Rs. 5,000 per month as agricultural income will not arise. He was also not an income tax assessee.

5. On the other hand, learned counsel for the respondent No. 1 would contend that the deceased had very good practice and thus had much professional income. He was also having agricultural lands. Lot of property documents were also filed.

6. We have anxiously considered the rival submissions, perused the materials on record and the impugned award of the Tribunal.

7. Deceased had 14 years" of standing at the Bar and he was having a junior, separate office, clerk, typist, phone and vehicle. He had appeared in many cases before various courts in Pazhani and Dindigul. His non-payment of income tax may not be a ground that he would not have earned good professional income. One"s duty to pay the income tax is different from one"s capacity to earn. At the time of his death, the deceased was 38 years old. Rs. 20,000 as his monthly professional income is not on the higher side.

8. His father Kandasamy Gounder was having vast extent of land (see Exhs. P193 to P197). Unlike the lawyers practising in Metropolitan cities like Chennai, lawyers practising in the Mofussil, such as Pazhani, besides doing their legal practice also look after agricultural operations in their lands. Thus, the Tribunal taking Rs. 5,000 p.m. as his agricultural income is not abnormal.

9. The deceased was then 38 years old. The Tribunal took the multiplier "15", deducted 1/3rd from his income, took the balance as his monthly contribution and calculated the loss of dependency accordingly. Respondent No. 1 became a widow at a very young age. She is a postgraduate and she had lost her husband, who had a promising career at the Bar.

10. Considering all the above aspects, on the whole, the amount awarded by the Tribunal is neither less nor more, but just, fair and reasonable.

11. In the circumstances, we have no occasion here to interfere with the award of the Tribunal. In the result, the civil miscellaneous appeal and the cross-objection are dismissed. The award of the Tribunal is confirmed. Within 4 weeks from the date of receipt of a copy of this judgment, the appellant shall deposit the entire award amount, less the amount, if any, already deposited. On such deposit, the respondent Nos. 1 and 3 shall be paid their entire amount, less amount, if any, already withdrawn by them. No costs. Consequently, the connected miscellaneous petition is closed.