

The Branch Manager, Vs. 1.Jeyadevi.

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Court : Chennai

Decided On : Jan-29-2013

Judge : K.N.Basha

Appellant : The Branch Manager,

Respondent : 1.Jeyadevi.

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

29. 01/2013 CORAM THE HON'BLE MR.JUSTICE K.N.BASHA and THE HON'BLE MR.JUSTICE P.DEVADASS C.M.A.(MD) No.366 of 2010 & M.P.(MD) No.1 of 2010 & Cross Objection (MD) No.27 of 2010 The Branch Manager, United India Insurance Co. Ltd., Divisional Office - III, Sitalakshmi Complex, Thirunagar, Madurai. ... Appellant/1st respondent in the Cross Obj. Vs. 1.Jeyadevi ...1st respondent/ Cross Objector 2.M/s.Shri Kanniga Parameswari Mills (P) Ltd., Through its Proprietor SIDCO Industry, No.59, Kuthiyar Kundu Post Madurai

3. Ponnammal ... 2nd & 3rd Respondents/ 2nd & 3rd Respondents PRAYER in the C.M.A and the Cross Obj. Appeal and the Cross Objection against the fair and decretal order dated 07.11.2009 made in M.C.O.P. No.1126 of 2004 by the Motor Accidents Claims Tribunal (Additional District and Sessions Judge/Fast Track Court), Dindigul. !For Appellant/ 1st respondent in the Cross Obj. ... Mr.G.Prabhu Rajadurai ^For Respondent - 1/ Cross Objector ... Mr.A.K.Rengasamy For Respondent - 3 ... Mr.A.Hariharan (in the C.M.A. & Cross Obj.) :COMMON

JUDGMENT (Judgment of the Court was made by P.DEVADASS, J.

1. This appeal by the insurer is challenging the quantum of compensation awarded.
2. The Cross-Objection by the widow of the deceased is for enhancement of compensation amount.
3. On 31.12.2004, Vinayaga Velmurugan, a practising Advocate, died in a road accident. His wife claimed compensation. The 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 third respondent/mother of the deceased and the balance to the widow/first respondent.
4. The deceased was enrolled in 1991 (see Ex.P.205). 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 practise. 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. P.W.3 Magudeswaran was his Advocate Clerk. At the time of his death, the deceased was having 14 years of Bar practice. P.W.4 Balasubramani, President, Bar Association, Pazhani, certified that the deceased Advocate had good legal practice and had commanded large volume of professional work (see Exs.P.6 to P.192, 200 to 202 and 208).
5. According to the learned counsel for the appellant that the income taken by the Tribunal is on the higher side. The deceased was a full time professional. Taking Rs.5,000/- per month as agricultural income will not arise. He was also not an income tax assessee.
6. On the other hand, the learned counsel for the first respondent 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.

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

8. The 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 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.

9. His father Kandasamy Gounder was having vast extent of lands (see Exs.P.193 to 197). 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.

10. The deceased was then 38 years old. The Tribunal took the multiplier '15'. Deducted 1/3 from his income. Took the balance as his monthly contribution and calculated the loss of dependency accordingly. First respondent became a widow at a very young age. She is a postgraduate. She had lost her husband, who had a promising career in the Bar.

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

12. In the circumstances, we have no occasion here to interfere with the award of the Tribunal.

13. 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 amount, if any already deposited. On such deposit, the first and third respondents shall be paid their entire amount, less amount, if any already

withdrawn by them. No costs. Consequently, the connected Miscellaneous Petition is closed. smn2 To The Motor Accidents Claims Tribunal, (Additional District Judge/Fast Track Court) Dindigul.

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