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In the Madras High Court

Case No : C.M.A. No. 2906 of 2006

A. Vanasundari and Another APPELLANT

Vs

Metropolitan Transport Corporation Ltd. (Division I) RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : (2013) ACJ 1648 : (2012) 4 TAC 26

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : S. Gangaram Prasad, for the Appellant; V. Kasiviswanathan, for the Respondent

Judgement

P. Devadass, J.—The appellants, who are parents of the deceased, in a road accident, seek enhancement of compensation awarded to them by the Motor Accident Claims Tribunal (Fast Track Court No. V), Chennai. On 25th May, 2001, at about 6 p.m., at the 17M Bus-stop, on the N.S.C. Bose Road, in the road accident, one Ranjith Krishnan lost his life. It was due to the rash and negligent driving of the driver of the respondent''s bus. The parents of the deceased, who are appellants have claimed compensation. The Tribunal awarded them totally Rs. 1,45,000/-.

2. According to the learned Counsel for the appellants, in the light of the decision of the Hon''ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , considering the age of the mother, the multiplier should be "15", however, the Tribunal had taken the multiplier "10". In Santosh Devi Vs. National Insurance Company Ltd. and Others, the Hon''ble Supreme Court held that even as regards persons employed in unorganized sector or in a private sector as they are also entitled to salary increase due to pay revision, wage increase, there is loss of future prospects, for such a loss, in the facts and circumstances of this case, 50% of his salary is to be added to his monthly salary. Thus, just compensation was not awarded to them.

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3. On the other hand, the learned Counsel for the respondent would contend that there is no evidence to give compensation for loss of future prospects. The deceased died a bachelor. So, even as per Sarala Verma and others v. Delhi Transport Corporation and another (supra), deduction for his pleasure and other expenses should be 50% of his monthly salary. He was employed in a private shop. So, no compensation for future loss shall be given to him. But, the Tribunal had deducted only 1/3rd. What was granted to them by the Tribunal itself is on the higher side.

4. I have considered the rival submissions, perused the case-records and the decisions cited by the learned Counsel for the appellants.

5. Admittedly, the deceased died a bachelor. Then, he was 17 years old. The Tribunal adopted the multiplier "10". As per Sarala Verma and others v. Delhi Transport Corporation and another (supra), in a fatal case, for the death of a bachelor, age of his mother is to be taken for choosing the multiplier. In this case, the mother of the deceased, namely, first appellant was then 37 years old. As per Smt. Sarala Verma and others v. Delhi Transport Corporation and another (supra), the multiplier is "15".

6. PW1, Vanasundari, the mother of the deceased had stated that her son was employed as an Office Assistant in the shop belonging to PW2 Mohd. Sathik and he was paid Rs. 1,500/- per month. PW2 affirmed it in his evidence. It was not seriously challenged by the respondent. In this circumstances, his monthly salary at Rs. 1,500/- has been accepted by the Tribunal. We also concur with this.

7. As per Smt. Sarala Verma and others v. Delhi Transport Corporation and another (supra), in case, the deceased died a bachelor, the deduction towards his pleasure and other expenses should be 50% of his monthly salary. But, the Tribunal deducted 1/3rd from his salary. So, the rate of reduction has to be revised.

8. It has been strenuously contended by the learned Counsel for the appellants that the benefit of giving compensation for loss of future prospects cannot be restricted to persons employed in stable jobs such as Government Job or Bank jobs etc., even persons employed in unorganized sector, in private jobs are also getting salary increase/pay revision and promotions and increase in cost of living also cannot be ignored.

9. The learned Counsel for the respondent contended that as per Smt. Sarala Verma and others v. Delhi Transport Corporation and another (supra) giving of compensation for loss of future prospects arises when the deceased was having a stable job, such as Government service or in the service of State or Central Government Corporations. But, in the case before us, the deceased was employed in a private shop, so, giving of compensation for loss of future prospects does not arise in this case.

10. In Santosh Devi v. National Insurance Co. Ltd. and others (supra), the

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deceased aged 45 was running a milk dairy and was doing agriculture. So, he was self-employed. His dependents claimed compensation for loss of future prospects. Like the respondent before us, the Insurance Company opposed it, since he was not having a stable jobs, like Government Jobs, Bank Jobs, etc.

Repelling the opposition, the Hon''ble Supreme Court held as under :

14. We find it extremely difficult to fathom any rationale for the observation made in the judgment in Smt. Sarala Verma and others v. Delhi Transport Corporation and another (supra), that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. Rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of Rs. 1,00,000/-. Although, the wages/ income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of para 11 of Smt. Sarala Verma and others v. Delhi Transport Corporation and another (supra) judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who

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is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

11. The decision in Santosh Devi v. National Insurance Co. Ltd. and others (supra) is after the decision in Smt. Sarala Verma and others v. Delhi Transport Corporation and another (supra). Now, the latest decision on this aspect is Santosh Devi v. National Insurance Co. Ltd. and others (supra).

12. As rightly contended by the learned Counsel for the appellants from Santosh Devi v. National Insurance Co. Ltd. and others (supra) it is clear that the benefit of giving compensation for loss of future prospects cannot be restricted to persons having a stable job such as Government Servants or Bank Employees, etc. It can be also extended to persons employed in unorganized sector and persons employed in private sector.

13. Now, in this case, the deceased was employed as an Office Assistant. Admittedly, in the private shop of PW2. In the facts and circumstances, the law laid down by the Hon''ble Apex Court in Santosh Devi v. National Insurance Co. Ltd. and others (supra) squarely applies to the facts of this case.

14. The deceased died at his 17 years of age. He was receiving Rs. 1,500/- p.m. as salary. In the circumstances, 50% of the monthly salary is to be added to his monthly salary for loss of future prospects.

15. Now, calculating on the above lines, loss of dependency comes to Rs. 2,02,500/- (Rs. 1,500/- + 50% = Rs. 2,250/- - 50% = Rs. 1,125/- x 12 x 15 = Rs. 2,02,500/-). Towards loss of love and affection, the Tribunal awarded them Rs. 5,000/- each. They have lost their son at a very young age. In the facts and circumstances, we grant them Rs. 20,000/- each. Towards funeral expenses, the Tribunal had awarded them only Rs. 5,000/-. It is increased to Rs. 10,000/-. In other respects, we are not interfering with the award of the Tribunal.

16. The award of the Tribunal is modified as under :

In the result, the appeal is allowed in part. The award amount is modified. The appellants are awarded a total compensation of Rs. 2,62,500/- with interest @ 9% p.a. from the date of original petition till deposit. Excess Court fee due on the enhanced amount shall be paid by the appellants within one week from the date of receipt of a copy of this Judgment. The respondent is given four weeks time from the date of receipt of a copy of this Judgment to deposit the entire compensation amount less amount already deposited. On such deposit, the appellants are permitted to withdraw the entire amount, less the amount, if any already withdrawn. No costs.

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