(2014) 04 MAD CK 0008

In the Madras High Court

Case No : C.M.A.(MD) No.68 of 2014 and M.P.(MD)Nos.1 and 3 of 2014

Amsammal APPELLANT

Vs

N.Periyasamy RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Citation : (2014) 2 TNMAC 48

Hon'ble Judges : Mr. K.Kalyanasundaram, J.

Bench : Single Bench

Advocate : Mr.M.Kannan, Advocate, for the Applicant; Mr.D.Rajkumar, Advocate, for the Respondent Nos.3 and 4

Final Decision : Disposed Off

Judgement

Mr. K.Kalyanasundaram, J.—Being aggrieved by the award passed in M.C.O.P.No.1474 of 2011 by the learned IV Additional District Judge, Motor Accident Claims Tribunal, Madurai, in apportionment, this appeal has been filed.

2. The brief facts of the case are as follows:-

On 12.02.2011, the deceased Senthilkumar was riding his two wheeler bearing Registration No.TN-33-AP-2243 on Perunthurai Road from west to east direction. When he was nearing Senthil Autos, a bus bearing Registration No.TN- 33-R-3777 came on the same direction, hit against the two wheeler. Due to the impact, the rider of the two wheeler sustained injuries and died on the spot. Contending that the driver of the bus was responsible for the accident, the legal heirs of the said Senthilkumar laid a petition claiming compensation of Rs.22,00,000/-. The second respondent-Insurance Company filed counter affidavit resisting the claim petition.

3. Considering the oral and documentary evidence, the Tribunal held that the driver of the bus was responsible for the accident and awarded compensation of Rs.19,67,870/- along with interest at 7.5% p.a.

4. It is represented by the learned counsel for the appellant that the second respondent Insurance Company has not filed any appeal and hence, the award reached finality. Out of the total award amount of Rs.19,67,870/-, the Tribunal has awarded Rs.10,00,000/- to the wife of the deceased/third respondent herein and Rs.6,00,000/- to the daughter of the deceased/fourth respondent herein and Rs.3,67,870/- to the appellant.

5. The appellant has filed this appeal challenging the apportionment of Rs.10,00,000/- in favour of the third respondent and seeking enhancement of compensation to the fourth respondent.

6.Heard, Mr.M.Kannan, learned counsel appearing for the appellant and Mr.D.Rajkumar, learned counsel appearing for the respondents 3 and 4.

7. The learned counsel appearing for the appellant submitted that the third respondent, viz., S.Shanmugapriya has re-married after the death of her first husband, she is working in Government service and getting substantial salary and also receiving family pension on account of demise of her husband. But deliberately suppressing those facts, got more share in the compensation. The learned counsel further submitted that the fourth respondent, the daughter of the deceased is now aged about 9 years, the Tribunal without considering the age of the fourth respondent and her education, marriage expenses and day-to-day maintenance, awarded lessor compensation to her and the apportionment made by the Tribunal is not correct. In support of his contention, he has relied on the Judgment reported in www.Indiankanoon.org in Smt.Archana Sandip Purandare and Others v. Shri Dawoodsab Ladlesab Walikar and Others [First Appeal No.872 of 2013, dated 12.12.2013].

8. Per contra, the learned counsel for the respondents 2 and 3 submitted that the third respondent was a widow on the date of claim petition and her re- marriage will not disentitle her to get compensation for the death of her husband. In support of his contention, the learned counsel has relied on the Judgment reported in 2013 ACJ 1679 [United India Insurance Co. Ltd., v. Asha Rani and Others].

9. It is not in dispute that the said Senthilkumar, husband of the third respondent and the father of the fourth respondent died in a motor vehicle accident on 12.02.2011 and on the date of accident, the claimants were aged about 30 years, 7 years and 61 years respectively. It is an admitted fact that after the death of her husband, the third respondent has re-married and now, she is living with her second husband. It is also not in dispute that she is getting pension for the death of her husband and she is also employed in a Government service and getting substantial salary.

10. In United India Insurance Co. Ltd., v. Asha Rani and Others [2013 ACJ 1679], the Tribunal has dismissed the claim petition on the ground that the wife of the deceased got re-married. In view of the above facts, the Jammu and Kashmir High Court, has held as follows:-

"16. From the above discussion, the legal proposition that emerges is that a widow can, even after her remarriage, file and maintain a claim petition under the Motor Vehicles Act, 1988 and would be entitled to get compensation from the owner of the offending vehicle or the insurance company with which the offending vehicle was insured, on account of death of her husband in a vehicular accident."

11. However, in the present case, the appellant is not disputing the entitlement of the third respondent after re-marriage, but the main contention is that the fourth respondent should be allotted more compensation in the award amount. In view of the above said fact, the Judgment relied on by the learned counsel for the respondents 3 and 4, is not applicable to the facts of the case.

12. In the case on hand, the fourth respondent was 7 years old at the time of accident and she requires substantial amount for her education, marriage, day-to-day maintenance and other expenses. In Smt.Archana Sandip Purandare and Others v. Shri Dawoodsab Ladlesab Walikar and Others [First Appeal No.872 of 2013, dated 12.12.2013], the Bombay High Court considered a similar case of this and held as follows:-

"24. The learned Tribunal has passed orders as regards apportionment of the amount granted by it namely Rs.30 lakhs along with the interest. The compensation is ordered to be paid/invested to appellant no.1 namely widow of said Sandip, Appellant no.2 namely daughter of said Sandip and Appellant no.4 namely mother of said Sandip. We have considered the question of apportionment of the compensation between the appellants. The present appellant no.3(b) and 3(c) are the heirs of Shashikant father of said Sandip. No specific material is placed before the court to show that they were dependent upon said Sandip, as such we do not wish to award any amount to them by way of compensation.

25. We have noted that the appellant no.2 Kum. Swarali, daughter of said Sandip is presently of about 11 years. We hold that she would require substantial amount for her education, marriage and for day to day maintenance. It is possible that she would require substantial amount for her education such as education in medical/engineering faculty. It is on this ground we are inclined to award 60% of the total amount of compensation receivable as per this order to appellant no.2. The said amount will have to be initially invested in a nationalized bank and quarterly interest accrued on the same can be paid over to her. The record indicates that the said appellant no.2 is staying with appellant no.1 despite her marriage with said Sandip Raikar. Hence, the amount of interest payable to appellant no.2 can be paid over to appellant no.1 so that the said amount can be used by appellant no.1 for maintenance, education and other expenses of appellant no.2. We anticipate that as the appellant no.2 would pass out 12th standard examination, she may require some amount for higher education expenses. In such a situation, liberty is granted to the appellant no.2, if she is major, or to appellant no.1 if appellant no.2 is minor, to make an

application to the said tribunal for withdrawal of part amount by redeeming the portion of the amount invested in fixed deposit.

26. It is true that we have noted that appellant no.1 has re-married. However, undoubtedly, she is entitled for compensation on account of death of said Sandip. Nothing has been pointed out to us in law which would disable her to claim compensation only because she has remarried during the proceedings before the Tribunal. The law postulates grant of just compensation to the claimants. That she was married to deceased Sandip and had given birth to a girl child is undisputed. That she has lost the company of Sandip and will have to take care of the child even after remarriage ought to have therefore weighed with the Tribunal while awarding compensation. We propose to award 20% of the total amount of compensation receivable as per this order to appellant no.1. We are of the view that the said amount of compensation can be handed over to appellant no.1 in lumpsum, so that the appellant no.1 would be able to invest the said amount as per her choice and get maximum returns on it. This is so because the appellant no.1 is an adult and is competent to attend to her financial matters in the best possible manner.

27. So far as the grant of compensation in favour of appellant no.4, it is noted that the appellant no.4 is presently aged about 72 years. Hence, we propose to grant 20% of the total amount of compensation receivable as per this order to appellant no.4. We intend to direct that the amount payable to appellant no.4 be invested in a nationalized bank and the interest payable should be on quarterly basis. If in future the appellant no.4 requires some amount for her medical expenses, she would be at liberty to withdraw an appropriate amount from the total amount which she would receive by redeeming the fixed deposit/deposits."

13. In my considered view, the Judgment of the Bombay High Court cited supra squarely applies to the facts of this case. Accordingly, the award passed by the Tribunal is modified. Out of compensation of Rs.19,67,870/-, the third respondent/first claimant is entitled to 20% and the fourth respondent/second claimant is entitled to 60% and the appellant is awarded 20%. The rate of interest awarded by the Tribunal at 7.5% is maintained.

14. It is represented by the learned counsel for the appellant as well as the respondents 3 and 4 that the second respondent Insurance Company has deposited the entire award amount. Hence, the major claimants, viz., the appellant and the third respondent are permitted to withdraw their share with proportionate interest and costs. The entire share of the minor claimant, R.S.Hesma shall be deposited in any one of the Nationalized Banks till she attains majority. The mother/guardian of the fourth respondent is permitted to withdraw the accrued interest thereon once in three months directly from the bank.

15. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.