(2014) 03 MAD CK 0017

In the Madras High Court

Case No : C.M.A. No. 2627 of 2011

A.R. Balasubramaniam APPELLANT

Vs

R. Senthilkumar RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Citation : (2014) 2 TNMAC 430

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : N. Manoharam, Advocate, for the Applicant; T. Ravichandran, Advocate, for the Respondent

Final Decision : Allowed

Judgement

R. Mahadevan, J.—Parents of the deceased Ilango, who died in a road accident he met with on 11.9.2007, have come up with the present Appeal seeking enhancement of Compensation.

2. The case of the Claimants is that, on 11.9.2007, while their son Ilango was returning from college in his Motorcycle, another Motorcycle bearing registration No.TN-39-L-7855 belonging to the Second Respondent herein and insured with the Third Respondent, driven by the First Respondent herein in a rash and negligent manner, dashed against the motorcycle of the deceased and caused grievous injuries to him and thereby, he was admitted in Ramakrishna Hospital and despite the treatment given, he died of the injuries on 12.9.2007. According to the Claimants, their son was doing part time job and was earning Rs.5,000/- per month and they claimed Compensation to the tune of Rs.20,00,000/-

3. The Insurance Company contested the case denying the negligence on the part of the First Respondent and contended that the claim is an exaggerated one.

4. On the basis of the oral and documentary evidence viz., PWs.1 to 4 & 18 documents marked on the side of the Claimants, the Tribunal fixed the liability upon all the three Respondents and awarded a sum of Rs.2,88,000/- as

Compensation with interest at 7.5% per annum.

5. Learned Counsel for the Appellants would submit that the Notional Income fixed by the Tribunal is very meager for the death of a Third year student of M.Sc., who was also doing part time job in software and hence, craved indulgence of this Court to enhance the Compensation. He relied upon the decisions reported in Salini v. Meiyarasu,2012 (2) TN MAC 838 (DB); United India Insurance Co. Ltd. v. Velumyil,2013 (2) TN MAC 846; Radhakrishna v. Gokul,2013 (2) TN MAC 724 (SC); and Sanobanu Nazirbhai Mirza & others v. Ahmedabad Municipal Transport Service,2013 (2) TN MAC 565 (SC): 2013 (12) SCALE 329, in support of his contention.

6. Learned Counsel for the Insurance Company would submit that the Compensation awarded by the Tribunal is a reasoned one and it need not be enhanced.

7. The income aspect was gone into depth by the Tribunal analysing the oral and documentary evidence produced on the side of the Claimants and it was disbelieved by the Tribunal that the deceased was earning Rs.5,000/- per month from his part time avocation. Among other decisions relied upon by the learned Counsel for the Appellants, the decision reported in Radhakrishna v. Gokul,2013 (2) TN MAC 724 (SC), squarely applies to the facts and circumstances of the case on hand. In the said case, the deceased was a 19 year old Engineering College Student that the parents claimed a Compensation of Rs.50,60,000/- and the Tribunal fixed probable income at Rs.15,000/- per annum and deducting ? towards Personal Expenses and applying Multiplier of 17 arrived at a sum of Rs.1,70,000/- towards Loss of Income and adding Rs.2,000/- towards Funeral Expenses, awarded a Total Compensation of Rs.1,72,000/-. The High Court enhanced the same marginally by Rs.8,000/- and the Honourable Apex Court, applying the yardstick adopted in Arvind Kumar Mishra v. New India Assurance Company Limited,2010 (2) TN MAC 383 (SC), held that ends of justice will be served by awarding a lump sum of Rs.7,00,000/-.

8. In the present Appeal, the Appellants have restricted their claim to Rs.3,00,000/- over and above the Award of the Tribunal. The deceased was a final year student in M.Sc., and having experience in Computers. Therefore, it is no doubt that had he been alive, there would not have been any difficulty for him in getting some decent job either in private sector or in Government with a substantial income and fair chances of promotion and he would have supported his parents to a great extent. Taking into consideration the above aspect and in the light of the ratio laid down in the above decision, I am of the view that a lump sum of Rs.3,00,000/- can be awarded over and above the award of the Tribunal. The said amount also would carry interest at 7.5% per annum. The ratio of apportionment of the award made by the Tribunal holds good for the difference amount awarded by this Court.

9. The Insurance Company is directed to deposit the entire award amount with

interest and costs as awarded by the Tribunal deducting the amount already deposited by them within a period of six weeks from the date of receipt of copy of this Judgment and on such deposit, the Claimants are entitled to withdraw the same by filing appropriate Application.

10. In the result, the Civil Miscellaneous Appeal is allowed in part to the extent indicated above. No costs.

