
(2010) 01 MAD CK 0181
In the Madras High Court
Case No : C.M.A. No. 2695 of 2004

Kasturi

APPELLANT

Vs

Tamil Nadu State Trans. Corpn.

RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Citation : (2011) ACJ 2284

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : N. Anand Venkatesh, for the Appellant;

Final Decision : Allowed

Judgement

Kirubakaran, J.—The appeal has been preferred by the aggrieved claimant against the quantum of compensation granted by the Tribunal.

2. The case of the appellant is that on 20.10.1998 when she tried to get into the bus belonging to the respondent Corporation, the driver of the bus even before the conductor could whistle started the bus resulting in claimant's fall from the bus. In the said accident her left foot was crushed leading to amputation of leg above ankle. Further case of the claimant is that she was an agricultural coolie and she was grazing cattle and also doing milk business and was earning about Rs. 300 per day. Hence, Rs. 6,00,000 (rupees six lakh) was claimed. The said claim petition was contested by the respondent Corporation contending that the appellant tried to board the moving bus through front entrance and in the process she lost grip and fell down on her own accord and hence there was no negligence on the part of the driver and conductor of the Corporation.

3. After appreciation of pleadings and evidence on record, the Tribunal came to the conclusion that the accident occurred due to negligence on the part of the driver of the respondent Corporation and fixed the disability at 50 per cent and awarded a sum of Rs. 1,75,000 (rupees one lakh seventy-five thousand) towards compensation as against the claim of Rs. 6,00,000. Aggrieved by the award, the

claimant preferred the present appeal.

4. Mr. N. Anand Venkatesh, the learned counsel for the appellant, submitted that as far as the finding regarding negligence is concerned, it is based on evidence and the appellant is aggrieved only with regard to the quantum of compensation awarded by the Tribunal. He submitted that claimant worked as agricultural labourer and was also doing milk business by having cattle. For those avocations, there cannot be any documentary evidence and, therefore, the Tribunal should have fixed the monthly income of the claimant at Rs. 3,000. However, the Tribunal only went by notional income as per the Second Schedule to the Motor Vehicles Act, 1988, at Rs. 15,000. He relied upon the decision of this court in United India Insurance Co. Ltd. Vs. M. Paulpandi and Others, . In that case, the housewife died in the accident. Relying upon the judgment of the Hon'ble Supreme Court in Lata Wadhwa and Others Vs. State of Bihar and Others, , this court confirmed fixing the income of housewife at Rs. 3,000 per month. Hence, he pleaded for fixation of Rs. 3,000 as the monthly income.

5. The learned counsel found fault with finding given by the Tribunal in para 8 of the award that there was no proof with regard to the income of the claimant. The counsel relied upon judgment passed by single Judge of this court in Pandian Roadways Corporation Ltd. Vs. Sankarammal and Others, , in which it was held that it cannot be expected that the claimant should establish the income of the deceased only by way of documentary evidence and if any insistence is made for the production of the documentary evidence, it would lead to procuring the receipts from third parties. Therefore, the learned counsel submitted that for the works done by the claimant, there cannot be any documentary evidence. Finally, the learned counsel submitted as per the judgment of this court and also the Supreme Court that the monthly income should be fixed at Rs. 3,000 and sought for enhancement of compensation.

6. There is no appearance on behalf of the respondent. On verification, no one entered appearance on behalf of the respondent Corporation in spite of service of notice. Moreover, learned counsel for the appellant submitted right from the beginning that no one appeared on behalf of the respondent and that when the matter was listed before Lok Adalat, no one appeared. In view of that, this court passes this order based on the records available. The trial court records were also called for and the same are considered. It is not in dispute that the claimant's left leg got crushed in the accident and her leg was amputated above ankle. Even the Tribunal in para 6 of the award observed that it perused the photograph of the claimant which proved the amputation of left foot of the claimant. Moreover, the claimant herself was examined as Exh. P1 and the Tribunal had called her to verify the same physically. Apart from that the Accident Register, Exh. P2, proved that left foot of the claimant was crushed. Exh. P5 is the opinion given by the radiologist during discharge. Exh. P6 is the medical certificate issued by the Government District Headquarters Hospital wherein it is stated that the claimant's left foot was amputated above ankle and

the physical impairment was given as 85 per cent. The Tribunal relied upon the oral evidence of the claimant and the exhibits referred to above to come to the conclusion that during the accident only the claimant sustained injury. Even though Exh. P6 fixed the disability at 85 per cent, the Tribunal fixed the disability at 50 per cent as Exh. P6 was not marked through the author of the document. Hence, the approach of the Tribunal in fixing the disability at 50 per cent based on the photograph and also evidence and physical verification cannot be interfered with and the same is fixed as 50 per cent.

7. So far as the income is concerned, the claim of the appellant in the claim petition as also in the evidence was Rs. 300 per day. However, in the cross-examination the claimant herself accepted her daily income as Rs. 100. Based on the inconsistent evidence and also considering the fact that the ration card obtained by the claimant was red in colour which is often given to the persons of lower income group, took notional income at Rs. 15,000 per annum as per Second Schedule to the Motor Vehicles Act. The Second Schedule was introduced in the year 1994. The accident occurred on 20.10.1998 and 4 years have passed after the amendment. By that time, the earning capacity, purchasing power, inflation, cost of living, etc., went up. In view of that Rs. 15,000 fixed as annual income by the Tribunal cannot be sustained.

8. As rightly pointed out by the counsel for the appellant, the appellant is a housewife doing three avocations and she has to look after her two children. Considering the role of the mother, the Hon'ble Apex Court in *Lata Wadhwa and Others Vs. State of Bihar and Others*, held that even on a modest estimation, the services of the housewife should be estimated at Rs. 3,000 per month and Rs. 36,000 per annum. The said judgment was followed by this court in *United India Insurance Co. Ltd. Vs. M. Paulpandi and Others*. Hence, this court follows the judgment of the Apex Court and this court as referred to above and determines as Rs. 3,000 per month. Apart from that the court cannot expect documentary evidence for the avocations done by the claimant. She was grazing the cattle and doing milk business and also working as agricultural coolie. Most of our fellow citizens are doing this kind of avocations and nobody can expect documentary evidence in this regard. It is seen that there is no cross-examination with regard to the avocation of the claimant and no contra evidence was adduced on behalf of the respondent Corporation. In such a situation, this court follows the dictum laid down by the Hon'ble Supreme Court and fixes the monthly income at Rs. 3,000.

9. As far as the claimant's age is concerned, the Tribunal relied upon the statement given by the claimant before the medical officer as 36 and rightly fixed the age as 36. As per the Second Schedule to the Motor Vehicles Act, the multiplier applicable to age 36 is 16. Applying that, the loss of income would be $\text{Rs. } 3,000 \times 12 \times 16 \times 50/100 = \text{Rs. } 2,88,000$. A sum of Rs. 25,000 was awarded by the Tribunal towards pain and suffering, loss of income during treatment, extra nourishment and medical expenses. A sum of Rs. 30,000 was awarded

towards difficulty in leading life and looking after her children and the said amount of Rs. 30,000 is deleted, in view of the amount awarded as stated above.

10. Hence, the award of the Tribunal is enhanced from Rs. 1,75,000 to Rs. 3,13,000. The Tribunal awarded 9 per cent towards interest and the same is confirmed. The appellant is entitled to get the compensation awarded by this court, after paying balance court-fee.

11. The appeal is partly allowed as stated above and there will be no order as to costs.