(2010) 01 MAD CK 0180

In the Madras High Court

Case No : C.M.A. (NPD) No. 2575 of 2004

Managing Director, Tamil Nadu State Trans. Corpn. Ltd. APPELLANT

Vs

Lakshmanan and Others RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 151, 173

Citation : (2011) ACJ 1999

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : V. Ramesh, for the Appellant; M. Christopher, for the Respondent

Judgement

N. Kirubakaran, J.—The appeal is filed by the transport Corporation aggrieved by the award of Rs. 3,85,000 for the death of one R. Rajendran.

2. The facts of the case are as follows:

Deceased R. Rajendran on 24.12.1999 tried to get into town bus belonging to the appellant and the driver suddenly started and moved the bus and due to which the deceased fell down and the bus ran over him and he died on the spot. Hence, the claim petition was filed claiming a sum of Rs. 5,00,000 which was resisted by the appellant/transport Corporation. After appreciation of the pleadings and evidence on record, the Tribunal found that the transport Corporation driver drove the bus in a rash and negligent manner and awarded a sum of Rs. 3,85,000 as compensation. Aggrieved by that, the appellant transport Corporation is before this court.

3. Mr. V. Ramesh, learned counsel for the appellant, confined his argument only with regard to the quantum of compensation. However, in para 6 of the award, the Tribunal enumerated the details of the accident occurred and on appreciation of evidence of PWs 1 and 2, RW 1 and Exh. PI came to the conclusion that the accident occurred because of rash and negligent driving of the transport

Corporation driver. The finding is based on the evidence and, therefore, this court confirms the findings with regard to the negligence.

4. As far as the quantum is concerned, the learned counsel for the appellant submitted that the deceased was a bachelor and worked as an accountant in power-loom factory and absolutely there was no evidence to that effect before the court and that the court also rightly found in para 7 of the award that the claimant could have either summoned anyone attached to the factory or caused to be produced the documents relating to the employment of the deceased in the said factory and, therefore, the Tribunal was not inclined to believe the version of the claimant regarding the employment of the deceased. Learned counsel further submitted that having reached the above conclusion, Tribunal wrongly fixed the monthly income at Rs. 2,500. In the absence of proof with regard to income, the Tribunal should have followed the notional income as per Motor Vehicles Act.

5. The date on which accident occurred was 24.12.1999. Even though there is no evidence with regard to the employment, the Hon''ble Supreme Court in The New India Assurance Company Limited Vs. Smt. Kalpana and Others, , held that in the absence of any definite material or proof regarding income, the contribution of the victim to the family after deduction of personal expenses was fixed at Rs. 3,000 per month. In that case the accident occurred on 7.6.1999. Therefore, this court is inclined to follow the said judgment and fixes the monthly contribution of the deceased family after 1/3rd deduction as Rs. 3,000.

6. As far as the age of the deceased is concerned, the learned counsel for the appellant submitted that there is no proof before this court that deceased was aged about 27 years. Further, Exh. P2, the postmortem certificate, reveals that the age of the deceased was 27 years. Hence, the Tribunal rightly followed multiplier of 18 as per Second Schedule to the Motor Vehicles Act and, therefore, the multiplier adopted by the Tribunal cannot be found fault with. As this court fixed monthly contribution of the deceased to the family at Rs. 3,000, the loss of income is, Rs. 3,000 x 18 x 12 = Rs. 6,48,000.

7. As far as the other amounts given for transportation, funeral expenses and loss of love and affection are confirmed, the award of the Tribunal is enhanced from Rs. 3,85,000 to Rs. 6,78,000 in the following manner:

Loss of income

Rs.

6,48,000

Funeral expenses

Rs.

5,000

Transportation

Rs.

5,000

Loss of love and affection

Rs. 20,000

Total

Rs. 6,78,000

8. The learned counsel for the appellant opposed the enhancement of compensation in the appeal filed by appellant/transport Corporation. However, it is well settled principle that u/s 173 of Motor Vehicles Act, this court can re-appreciate the entire evidence and can come to its own conclusion. Secondly, under Order 41, rule 33 read with section 151 and Article 227 of the Constitution of India, this court can enhance the amount even in the absence of appeal/cross-appeal by claimant. What is material is whether the Tribunal rightly determined and awarded just and fair compensation. It is held by the Apex Court in Nagappa Vs. Gurudayal Singh and Others, ; Mahant Dhangir and Another Vs. Madan Mohan and Others, ; Tamil Nadu State Trans. Corpn. v. Saroja 2008 (1) TN MAC 352 and Andhra Pradesh State Road Trans. Corpn. v. M. Ramadevi 2008 ACJ 930 (SC), that this court can enhance the compensation even in the absence of appeal/cross-appeal by claimants.

9. As for the deduction of 1/3rd towards personal expenses, the learned counsel for the appellant would rely upon the judgment reported in Managing Director Bangalore Metropolitan Trans. Corpn. v. Sarojamma 2009 ACJ 1619 (SC) and submitted that on death of a bachelor, 50 per cent amount has to be deducted. In India, the normal rule is deduction of 1/3rd towards personal expenses. Further, in Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, , it has been held that the deduction of 1/3rd for personal expenses is the normal rule in Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, , where there was death of a bachelor, 73rd amount alone was deducted. Similarly the case in Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, . Even in Bilkish Vs. United India Insurance Co. Ltd. and Another, and Managing Director, Bangalore Metropolitan Trans. Corpn. v. Sarojamma 2009 ACJ 1619 (SC), 1/3rd amount alone was deducted for the death of a bachelor. The judgment relied upon by the learned counsel for the appellant is no doubt in respect of a bachelor. However, there is unanimity of the judgments referred to above with regard to 1/3rd deduction. Apart from that this court only followed the judgment of The New India Assurance Company Limited Vs. Smt. Kalpana and Others, and fixed the monthly contribution after deduction at Rs. 3,000 and, therefore, this court takes the monthly contribution as Rs. 3,000.

10. The Tribunal awarded 9 per cent interest. However, considering the date of accident, this court reduces the interest from 9 per cent to 7.5 per cent. Accordingly, the appeal preferred by the transport Corporation is dismissed with

enhancement of compensation from Rs. 3,85,000 to Rs. 6,84,000 in favour of respondents-claimants.

11. Learned counsel for the appellant submits that the entire award amount as per the lower court order was deposited before the court and 50 per cent of the amount was already withdrawn by the claimants. Hence, the Tribunal is directed to pay the balance 50 per cent of deposited amount within two weeks from the date of receipt of the copy of the order. The appellant is granted eight weeks time to deposit the balance award amount as per this court order. On such deposit the Tribunal is directed to pay the entire amount to be deposited to the claimant after payment of additional court-fee for the enhanced amount within two weeks from the date of payment of court-fee for the enhanced amount.

12. Accordingly, the appeal is disposed of.