(2013) 11 MAD CK 0210

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3230 of 2013 and M.P. No. 1 of 2013

Metropolitan Transport Corporation Ltd. APPELLANT

Vs

M. Malarvizhi and Others RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0210

Hon'ble Judges : R. Sudhakar, J;Pushpa Sathyanarayana, J

Bench : Division Bench

Advocate : A. Babu, for the Appellant; Suriyanarayanan for Mr. N. Sundaram, for the Respondent

Final Decision : Dismissed

Judgement

Pushpa Sathyanarayana, J.—Aggrieved by the Award dated 16.10.2012 in M.C.O.P. No. 2088 of 2011 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, awarding compensation of Rs. 29,91,133/- for the death of deceased A. Mohan @ Jaya Mohan in a road traffic accident occurred on 02.06.2011, this appeal has been filed by the Transport Corporation. Brief facts are that on 02.06.2011, at about 07.45 p.m., the deceased Jaya Mohan was walking in the Central Railway Station. While the deceased was approaching pre-paid taxi stand, the Appellant Transport Corporation bus bearing Registration No. TN-01 N 4040 was driven by its driver in a rash and negligent manner and dashed against the deceased and some other persons and further ran over the platform. Due to the impact, Jaya Mohan sustained multiple grievous injuries and died on 03.6.2011 at Government General Hospital, Chennai. Alleging that the accident occurred due to the rash and negligent driving of the driver of the appellant Transport Corporation bus, Claimants who are the wife, daughters and minor son of the deceased, filed Claim Petition claiming compensation of Rs. 30,00,000/-.

2. Resisting the Claim Petition, the Managing Director of the appellant Metropolitan Transport Corporation, has filed counter stating that though the

Driver of the bus started the bus after giving a horn, the deceased, without giving any response to the same, crossed the road in a hurried manner and though the driver applied sudden brake, the deceased pedestrian could not control the balance and grazed in the left side body of the bus and fell down and as such, the accident was solely due to the reckless act of the deceased. The Transport Corporation denied the income and monthly contribution to the family and stated that the compensation claimed is excessive.

3. Before the Tribunal, Mrs. Malarvizhi, wife of the deceased examined herself as P.W. 1 besides examining one Mr. B. Nethaji, eye-witness as P.W. 2 and one Mr. G. Wincent as P.W. 3. Exs. P. 1 to P. 15 were marked and the details of which are as follows:-

Ex. P-1 - Copy of complaint given by one G. Jeganathan to the Police

Ex. P-2 - Copy of FIR

Ex. P-3 - Copy of rough sketch

Ex. P-4 - Copy of final report

Ex. P-5 - Copy of death report

Ex. P-6 - Copy of death certificate

Ex. P-7 - Copy of Post-mortem Certificate

Ex. P-8 - Legal Heirship Certificate

Ex. P-9 - Pay slip of the deceased for the month of May 2011

Ex. P-10 - Copy of I.D. Card of the deceased

Ex. P-11 - Copy of joining report of the deceased

Ex. P-12 - Copy of service regularization order of the deceased

Ex. P-13 - Copy of ration card of the deceased

Ex. P-14 - Authorisation letter given to PW 3 by TANGEDCO

Ex. P-15 - Service particulars, last pay drawn particulars and copy of service records of the deceased

4. On the side of appellant Transport Corporation, driver of the bus which was involved in the accident, viz., Mr. K. Anandbabu, was examined as R.W. 1 but no document was marked.

5. Considering the evidence of P.W. 2 - Eye witness and Ex. P. 2 - FIR and Ex. P3 rough sketch, Tribunal held that the accident was due to rash and negligent driving of the bus driver and that the Transport Corporation is liable to pay compensation to the Claimants.

6. Insofar as quantum of compensation is concerned, on the basis of service

particulars and pay slip produced before the Tribunal, it has fixed the gross monthly income of the deceased at Rs. 21,485/-. Since the deceased was 46 at the time of accident, which lead to death, adding 30% towards future prospects, the Tribunal calculated the future gross salary of the deceased as Rs. 27,931/- (Rs. 21,485 + 30% of the gross salary) per month and Rs. 3,35,172/- (Rs. 27,931/- x 12) per annum. After deducting 10% towards Income Tax, i.e., Rs. 33,517/-, the annual salary of the deceased was calculated at Rs. 3,01,655. Further, the Tribunal, after deducting 1/4th towards his personal and living expenses (Rs. 75,414/-) fixed the loss of contribution/pecuniary benefits to the family at Rs. 2,26,241/- (Rs. 3,01,655 Rs. 75,414) per annum. Since the deceased was 46 years at the time of his death, considering of age, the Tribunal applying multiplier 13, calculated the loss of pecuniary benefits to the family at Rs. 29,41,133/- (Rs. 2,26,241/- x 13). In addition, the Tribunal has also granted compensation under conventional heads with interest at 7.5% per annum as follows:-

Sl. No.

Particulars

Amount granted by the Tribunal

1

Loss of income to the claimants

Rs. 29,41,133/-

2

Loss of consortium to the widow 1st Claimant

Rs. 10,000/-

3

Loss of love and affection to petitioners 2 to 7 (5 daughters and 1 minor son) (Rs. 5,000/- each)

Rs. 30,000/-

4

Funeral expenses

Rs. 10,000/-

Total

Rs. 29,91,133/-

7. Feeling aggrieved, the appellant Transport corporation is before this Court.

8. The finding of negligence on the part of the driver of the appellant Transport

Corporation bus, who is responsible for the accident and the death and consequential liability fixed on the appellant to compensate the claimants are not seriously disputed by the learned counsel appearing for the appellant. The only point canvassed by the learned counsel for the appellant is on the quantum of compensation.

9. The points that arise for consideration before this Court are:-

(i) Whether the quantum of compensation arrived at by the Tribunal is correct?

(ii) To what relief the claimants are entitled to?

10. Heard the rival contentions made by the learned counsel appearing for the appellant Transport Corporation as well as the Claimants and perused the documents.

Point No. (i):-

11. The deceased was the husband of the first claimant and father of claimants 2 to 7. Admittedly, the deceased was employed as a Wireman in TNGEDCO (formerly TNEB) drawing a gross salary of Rs. 21,485/- as evidenced by Ex. P. 15 service particulars and Ex. P. 9 Salary slip. The said amount is taken into consideration for the purpose of determining compensation.

12. The three basic aspects that have to be considered for arriving at just compensation in Motor Accident Claims are the age and the income of the deceased and the multiplier to be applied.

13. In this case, the age and income of the deceased are admitted and they are supported by documentary evidence. The only other factor is the multiplier to be applied. Placing reliance on Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier to be adopted for persons losing their life at the age between 46 and 50, is 13. On these aspects, the Tribunal had given a correct finding.

14. As regards future prospects, 30% has to be added to the gross salary, i.e., Rs. 21,485 + 6,446 (30%) = Rs. 27,931/-. So the annual income should be Rs. 27,931/- x 12 = Rs. 3,35,172/-. After deducting 10% towards Income Tax, the net annual income is Rs. 3,01,655/-. From the said amount, the Tribunal had deducted 1/4th towards personal and living expenses of the deceased.

15. The reasoning of the Tribunal that two of the claimants, who are the daughters of the deceased, are married is unacceptable. The Hon''ble Apex Court in Sarla Verma''s case (cited supra) has standardized the addition towards future prospects. In the case on hand, especially, when the deceased has a permanent income on a fixed salary, the Tribunal ought not to have deviated from the said table. Therefore, only 1/5th should be deducted from the annual income. Thus, the loss of dependency would be Rs. 3,01,655/- minus Rs. 60,331/- = Rs. 2,41,324/-. If multiplier 13 adopted the total loss of income would be Rs. 2,41,324/- x 13 = Rs. 31,37,212/-.

16. Further the compensation granted under the conventional heads is on the lower side in view of the decision reported in Rajesh and Others Vs. Rajbir Singh and Others, . Therefore, considering the facts and circumstances of the case, where the deceased has left behind 6 children besides his widow, the impugned Award is confirmed as there are no valid grounds to interfere with the same.

17. There is no dispute in respect of the interest granted by the Tribunal at 7.5% p.a. Accordingly, Point No. (i) is answered. Point No. (ii):- In view of the foregoing discussion, the Civil Miscellaneous Appeal is dismissed and the Award of the Tribunal is confirmed.

(i) This Court, by conditional order dated 08.11.2013 in M.P. No. 1 of 2013, directed the Appellant to deposit the entire amount awarded by the Tribunal with a further direction to the Tribunal to invest the amount in the Indian Bank, High Court, Madras. In view of the same and since the Appeal preferred by the Transport Corporation has been dismissed by this Court, the Claimants/ Respondents 1 to 6 are permitted to withdraw the Award amount as per the apportionment ordered by the Tribunal and confirmed by this Court.

(ii) The share of minor claimant is directed to be deposited in the Indian Bank, High Court Madras till he attains majority.

(iii) There will be no order as to cost in this appeal.

(iv) Consequently, connected Miscellaneous Petition is closed.

