(2012) 08 MAD CK 0117

In the Madras High Court

Case No : C.M.A. (MD) No. 1544 of 2007

Nagammal, Shanthi, Senthil Deepak and Vignesh Prabhu — APPELLANT

Vs

Kalyana Sundaram Servai and M/s. New India Assurance Company Ltd., "East Coast Chamba", 1st Floor, 92, G.N. Chetty Road, T. Nagar, Chennai-17 — RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2012) 08 MAD CK 0117

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; R. Murugaboopathy for R1 and Mr. J.S. Murali for R2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mrs. Justice S. Vimala

1. The claim made in respect of the death of the deceased to the extent of Rs. 10,00,000/- was decreed for a sum of Rs. 3,63,296/-. Dissatisfied with the award, the legal representatives of the deceased-Veeramani has filed the appeal. The deceased-Veeramani, aged 49 years, employed as Head Constable and earning a sum of Rs. 9,000/- per month, died in an accident that took place on 23.02.2005. The Tribunal has awarded the compensation as per the following details:-

Rupees

Loss of dependency

4,32,120/- (The monthly income fixed as Rs. 4,155.00 - 1/3rd deducted - Multiplier of 13 adopted)

Loss of love and affection

20,000/-

Funeral expenses

2,000/-

Total....

4,54,120/-

Out of the above amount of Rs. 4,54,120/-, the Tribunal has deducted 20% towards contributory negligence of the deceased and has arrived at the final award to a sum of Rs. 3,63,296/-, payable with interest at 7.5% p.a., from the date of petition.

2. The first contention of the Learned counsel for the appellants / claimants is that the deduction of 20% towards contributory negligence is without any basis and therefore the finding of the contributory negligence has to be set aside. A perusal of the records would go to show that the driver of the lorry has admitted the rash and negligence driving and has paid the fine amount. A copy of the judgment to that effect has been filed as Ex. P4. No evidence has been let in on the side of the respondents to show that the deceased had been guilty of contributory negligence. In the absence of contra evidence and in the presence of a positive evidence that the lorry driver alone had been negligent, the Tribunal is not justified in giving a finding that the deceased had been guilty of contributory negligence. Therefore, the deduction of 20% of the amount towards contributory negligence is set aside.

3. Learned counsel for the appellants contended that the salary as fixed by the Tribunal at Rs. 4,155/- denotes only the net income and not the gross income, and therefore, is incorrect and on account of the same, the proper amount has to be fixed towards monthly income. In Ex. P5, which is the Salary Certificate, the gross income payable is mentioned as Rs. 8,272/-. Therefore, the fixing of monthly income by the Tribunal is not correct. As per the decision of the Hon''ble Supreme Court, in the case of Sarla Verma and Others vs. Delhi Transport Corporation and Another reported in (2009) 4 MLJ 997, 30% of the salary should be added towards future prospects. The 30% of the salary would be Rs. 2,481/-. Therefore the monthly income for the deceased would be Rs. 10,753.60.

4. The contention of the claimants is that the deduction of 1/3rd amount towards personal expenses is not correct when the deceased had to maintain four dependents. This contention is rightly taken and the deduction ought to have been only 1/4th and not 1/3rd, considering the total number of dependents. If 1/4th of the amount is deducted, the net dependency would be Rs. 8,065/-.

5. Learned counsel for the Insurance Company vehemently contended that the Tribunal omitted to take into consideration the two material aspects, viz. the one is that, the Tribunal ought to have adopted split multiplier, i.e., one multiplier up to the period of retirement of the deceased and yet another multiplier for the

rest of the period. The second contention is that some amount has to be reduced towards contributory negligence of the deceased. The second contention is liable to be rejected as it is already held that in the absence of examination of any witness on the side of the respondents, it is not open to the Insurance Company to contend that the deceased had been guilty of contributory negligence. Insofar as the contention regarding split multiplier is concerned, it merits consideration.

6. In respect of the age group of 45 to 50 years, the multiplier to be adopted is 13. The deceased would be in the Government Service earning the monthly salary of Rs. 8,272/- with future prospective income only for a period of 8. years. For the remaining period, separate multiplier has to be adopted. The calculation is shown as under:-

Deceased was Head Constable

Aged 49 years

Multiplier to be adopted is 13.

Dependents - Mother, wife and two sons = 4 claimants.

Salary per month Ex. A5 - 8,272.00

30% to be added for future prospects

Salary per month Ex. A5

8,272.00

30% to be added for future

2,481.60

prospects

10,753.60

1/4th deduction

2,688.40 (-)

Monthly dependency

=8,065.20

Annual dependency (8,065.20 x 12)

96,782.40

loss of dependency till retirement

(96,782.40 x 8)

7,74,259.20

5 x 50% x 96,780.00

2,41,950.00

Loss of dependency after retirement period

10,16,209.20

Add - Conventional Figures

Funeral expenses

2,000.00

Loss of love and affection

6,000.00

Loss of consortium

5,000.00

Total

10,29,209.20

Restricted as per claim made in the appeal

10,00,000.00

Amount awarded by the Tribunal

Rs. 3,63,296.00

Amount claimed in the Appeal

Rs. 6,36,704.00

Total

Rs. 10,00,000.00

The compensation awarded by the Tribunal at Rs. 3,63,296/-, is enhanced as per the calculation indicated above. Accordingly, the appeal is allowed enhancing the compensation from Rs. 3,63,296/- to Rs. 10,00,000/-. The interest rate fixed by the Tribunal at 7.5% p.a., from the date of petition remains unaltered. No costs.