(2014) 02 MAD CK 0191

In the Madras High Court

Case No : C.M.A. No. 1640 of 2010

National Insurance Company Ltd. APPELLANT

Vs

K. Maheswari and Others RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 02 MAD CK 0191

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : D. Baskaran, for the Appellant; A.K. Kumarasamy for RR 1 to 4, for the Respondent

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—This appeal is filed against the award of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court) Erode in M.C.O.P. No. 47 of 2008 dated 18.02.2010 challenging the quantum of compensation awarded and negligence attributed to the driver of the vehicle owned by the 6th respondent. The claim petition was filed by the wife, minor daughter and the parents of Mr. S. Kuppusamy who died in the fatal accident that took place on 07/10/2008. The claimants claimed that the deceased was a Manager in a private concern earning Rs. 12,000/- per month. The Tribunal, after considering the oral as well as documentary evidence, awarded a sum of Rs. 12,05,500/- with costs and interest @7.5% p.a. as against the claim of Rs. 25,00,000/-. Aggrieved, the present appeal has been filed.

2. Learned counsel for the appellant, assailing the judgment of the Tribunal, contended that the deceased was responsible for the accident which was admitted in the cross-examination by the eye witness PW2, that the Tribunal committed a grave error in brushing aside the entire evidence of the driver and without considering the provisions of the Motor Vehicles Act and the judgments has fixed the negligence on the driver, that without any basis presumed the income of the deceased at Rs. 7,500/- per month and also committed an error by

adopting the multiplier of 16, contrary to the various judgments of the Apex Court and therefore, sought for setting aside of the judgment of the Tribunal. The learned counsel also placed reliance upon the judgments reported in Manoharan Vs. D. Kannan, National Insurance Company Ltd. and The New India Assurance Company Ltd., in support of his contention that when the deceased was solely responsible for the accident, no compensation can be awarded and judgments in United India Insurance Co. Ltd. Vs. Bindu and Others, to contended that the multiplier adopted is wrong.

3. Per contra, learned counsel appearing for respondents 1 to 4 argued that there is nothing perverse in the judgment of the Tribunal. The learned counsel further contended that the Tribunal had rightly discarded the evidence of the driver and the award has been passed by the Tribunal, after considering various decisions of the Apex Court including the Judgment in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and therefore, sought for dismissal of the appeal.

4. Heard the learned counsel for the Appellant and the learned counsel for respondents 1 to 4 and perused the records.

5. With regard to ground of negligence, the claimants have alleged that the accident occurred due to the rash and negligent driving of the driver of the bus and the left side front wheel of the bus ran over the head of the deceased. The same is also corroborating with Exs. A1 and A6. In the post mortem report marked as Ex. A5, it is clear that the death was caused due to crush injury to the head with brain matter coming out of cranium. The evidence of the eyewitness corroborates, in chief, with the above Exhibits and the claim. However, relying upon the evidence of the driver of the bus, examined as RW1, and the statement of PW2, the eyewitness, in the cross examination, that the deceased was hit by the rear foot board and was run over by the back wheel, the counsel has assailed the order of the Tribunal. The Tribunal considered the pleas and found the version of the driver to be unreliable as has chosen to support the case of the appellant. Further, it can be seen that instead of letting in evidence either for himself or for the owner, RW1 has chosen to let in evidence on behalf of the appellant-Insurance Company. In fact the appellant has not even filed the copy of the inspection report on their part. Further, the statement of the driver and the contention of the appellant is unacceptable for the simple reason that the foot board at the left rear side would come after the rear wheel. Further, even though in the cross-examination, PW2 has stated that he was hit by the boarding steps on the rear side, in the very same cross-examination, he has denied the suggestion that the deceased himself dashed against the rear boarding steps. Ex. A5 makes is clear that the deceased died because of crush injury to the head. Therefore, the statement of PW2, in the cross-examination, is not an admission and does not affect the case of the claimants. Rightly, the Tribunal, giving preference to the documentary evidence over the oral evidence, has attributed the negligence to the driver of the school bus. The judgment of the Apex Court

reported in 2006 ACC 1 (SC) and the judgment of this Court reported in Manoharan Vs. D. Kannan, National Insurance Company Ltd. and The New India Assurance Company Ltd., are not relevant to the present case as the facts are different and in the above cases, the subject matter was the right of the claimants to proceed for compensation under one forum when two options are available.

6. With regard to the quantum of compensation, the Tribunal has fixed the salary of the deceased at Rs. 7500/-, and after deducting 1/4th towards expenses, adopted the multiplier of 17 based on the judgment of the Apex Court in Sarala Verma''s case and considering the age of the deceased. The multiplier to be adopted is not 16 as contented by the appellants. There can be no quarrel with regard to the observations of the Apex Court in the judgments reported in 1994(4) SCC 362 and United India Insurance Co. Ltd. Vs. Bindu and Others, that the multiplier prescribed in the Second Schedule is full of mistakes and cannot be accepted. In fact considering that a person between 21 and 25 would earn more, the Apex court has stated that the maximum multiplier is to be applied for claims in respect of the deceased persons in that age group. The deceased in the present case, at the time of accident, was 29. In Sarala Verma''s case (2009(2) TNMAC (1), the Apex Court has issued certain guidelines to be adopted while fixing compensation. The multiplier fixed for the age group between 26 to 30 is 17. Therefore, the Tribunal has rightly fixed the multiplier at 17.

7. With regard to the monthly income, the Tribunal has fixed the income at Rs. 7,500/-. It appears that the Tribunal has fixed the days income at Rs. 250/-. From the records, it is found that the Salary Certificate issued by both the sister concerns were marked as Exs. A7 and A8, the Income Tax returns along with statement of Income, trading and profit & loss accounts for the Financial year 2007-08 for both the firms were marked as Exs. A17 and 18 and the Ledger Extracts were marked as Ex. A19 and A20. The account books were not produced to corroborate that the salary, as claimed, was paid. Therefore, considering the nature of job and the age and that the deceased has been able to maintain the claimants, it can be presumed that he must have earned not less than Rs. 7,500/- per month and hence this court finds no valid reasons to interfere with the fixation of the salary. The provisions relating to compensation under Motor Vehicles Act is undoubtedly a social welfare legislation determined to provide just solatium to the dependants of the deceased.

8. The Hon''ble Apex Court in the Judgment reported in Santosh Devi Vs. National Insurance Company Ltd. and Others, has varied slightly from the findings in Sarala Verma''s case with regard to future prospects and held as follows:-

14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma''s case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of

death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma''s judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

15. It is also not possible to approve the view taken by the Tribunal which has been reiterated by the High Court albeit without assigning reasons that the deceased would have spent 1/3rd of his total earning, i.e., Rs. 500/-, towards personal expenses. It seems that the Presiding Officer of the Tribunal and the learned Single Judge of the High Court were totally oblivious of the hard realities of the life. It will be impossible for a person whose monthly income is Rs. 1,500/-

to spend 1/3rd on himself leaving 2/3rd for the family consisting of five persons. Ordinarily, such a person would, at best, spend 1/10th of his income on himself or use that amount as personal expenses and leave the rest for his family.

16. The Tribunal''s observation that the two sons of the appellant cannot be treated dependant on their father because they were not minor is neither here nor there. In the cross-examination of the appellant, no question was put to her about the source of sustenance of her two sons. Therefore, there was no reason for the Tribunal to assume that the sons who had become major can no longer be regarded dependant on the deceased.

17. In the result, the appeal is allowed, the impugned judgment as also the award of the Tribunal are set aside and it is declared that the claimants shall be entitled to compensation of Rs. 2,94,840 [Rs. 1,500 + 30% of Rs. 1,500 = Rs. 1,950 less 1/10th towards personal expenses = Rs. 1,755 x 12 x 14 =Rs. 2,94,840]. The claimants shall also be entitled to Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- in lieu of loss of consortium. Thus, the total amount payable to the claimants will be Rs. 3,19,840/-. The enhanced amount of compensation i.e. Rs. 1,42,340/- (Rs. 3,19,840- Rs. 1,77,500) shall carry interest of 7 per cent from the date of application till realisation.

18. Respondent No. 1 Insurance Company is directed to pay to the appellant the total amount of compensation within a period of three months by getting prepared a demand draft in her name which shall be delivered to her at the address given in the claim petition filed before the Tribunal. While doing so, respondent No. 1 shall be free to deduct the amount already paid to the appellant.

9. Therefore, the dependents of a deceased person, irrespective of the fact whether the deceased was self-employed or was paid fixed wages, are also entitled to future prospects. Therefore the claimants are entitled to 30% of the last drawn salary as addition towards future prospects. Therefore the total income that is to be taken for the purpose of awarding compensation is Rs. 9,750/- p.m. and the compensation towards loss of earning is revised as under:

This court does not find anything perverse in the compensation awarded under other heads and therefore they would remain the same. Therefore the total compensation awarded to the claimants is revised to Rs. 15,49,750/-. The claimants shall pay the differential court fee if they had not withdrawn the excess court fee from the Tribunal below within 30 days from the date of receipt of the copy of this order failing which the amount awarded by the Tribunal shall remain sustained. It is also made clear that the difference amount awarded viz., Rs. 3,44,250/= also would carry interest at 7.5% per annum. Out of the difference amount awarded, claimants 1 and 2 are entitled to a sum of Rs. 90,000/= each and claimants 3 and 4 are entitled to a sum of Rs. 82,125/= each towards their share. The direction of the Tribunal to deposit the minor''s share holds good and the share of the minor from the additional amount now awarded also shall be deposited in the same manner.

With the above directions the civil miscellaneous appeal is disposed of without costs.