(2012) 08 MAD CK 0148

In the Madras High Court

Case No : C.M.A. No. 1044 of 2012

S. Velayutham and Another — APPELLANT

Vs

R. Saravanan and Another — RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Citation : (2013) ACJ 1020

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : C. Munusamy for C. and K. Law Firm, for the Appellant; C. Ramesh Babu, for the Respondent

Judgement

C.T. Selvam, J.—This civil miscellaneous appeal arises against the judgment and decree dated 30.6.2011 made in M.A.C.T.O.P. No. 2125 of 2006 on the file of II Fast Track Court (Motor Accidents Claims Tribunal) Additional District Judge, Chennai. The claimants are the appellants. The son of the claimants who was aged 18 years and holding employment as a ''tea master'' at a hotel met his death as a result of an accident that took place at about 1130 hours on 19.3.2006 while proceeding on a bicycle when a Tempo Traveller bearing registration No. TN 22-AB 5631 dashed against him from behind. Deceased was taken to hospital but despite treatment, he died three days thereafter. The claimants preferred MCOP before Motor Accidents Claims Tribunal, Chennai claiming a compensation of Rs. 6,00,000.

2. Before the Tribunal, the appellants-claimants examined two witnesses, PWs 1 and 2, and the following exhibits were marked:

(1) Exh. A1 First information report

(2) Exh. A2 Sketch

(3) Exh. A3 Charge-sheet

(4) Exh. A4 Post-mortem certificate

(5) Exh. A5 Death certificate

(6) Exh. A6 Legal heir certificate

On behalf of the respondents, none was examined nor were any exhibits marked.

3. On appreciation of the evidence before it, the Tribunal holding rash and negligent driving of Tempo Traveller as the cause of accident, fixed the monthly earnings of the deceased as Rs. 3,750, deducted ? towards his personal expenses as he was a bachelor, applied multiplier 11 and directed payment of compensation as follows:

4. Respondent No. 2, insurance company, as the insurer of the vehicle involved in the accident and also the owner of the vehicle were directed to effect payment of the compensation jointly and severally. The claimants have preferred this appeal informing that the compensation awarded by the Tribunal is on the lower side.

5. I have heard the learned counsel for the appellants and the respondents.

6. Learned counsel for the appellants-claimants submitted that the Tribunal erred in fixing the monthly earnings of the deceased at Rs. 3,750. As a tea master, the deceased would be employed throughout the month and when the Tribunal ought to have accepted the evidence of the father of the claimant, PW 1, that his son used to earn Rs. 200 per day and, therefore, ought to have fixed the monthly earnings at Rs. 6,000.

7. The next submission made by learned counsel for the appellants-claimants was that deduction towards personal expenses of the deceased ought to have been 1/3rd of his earnings and not half of his earnings, as effected by the Tribunal. Further submission of the learned counsel for the petitioner was that in keeping with the judgment reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,), the multiplier method would have to be adopted based upon the age of the mother which was 42 years. If so done, the appropriate multiplier would be 14 and not 11, as determined by the Tribunal. It was also submitted that no compensation stands awarded under the heads of transport expenses and pain and suffering. The final submission was that no provision has been made for future prospects of the deceased.

8. Learned counsel for the respondents submitted that after taking the daily earnings of the deceased to be Rs. 150 and the average working days as 25 per month, a reasonable calculation of monthly earnings of Rs. 3,750 has been arrived at. He also submitted that the appropriate multiplier has been adopted taking into account the average age of the parents of the deceased. He would seek to sustain the finding of the Tribunal.

9. We have considered the rival submissions.

10. We are of the view that given the evidence of the father of the deceased that the deceased was employed as a tea master, it would have been appropriate to fix the monthly income at Rs. 4,500. In keeping with the decision in Santosh

Devi Vs. National Insurance Company Ltd. and Others, a provision of 30 per cent of the earnings may be made towards future prospects of the deceased. As no amount has been awarded under the head transport expenses, a sum of Rs. 2,000 may be permitted thereunder. Accordingly, compensation awarded in the case is enhanced as follows:

11. In the result, the civil miscellaneous appeal is allowed enhancing the compensation awarded to the claimants from Rs. 2,72,500 to Rs. 4,13,100 along with interest at the rate of 9 per cent per annum from the date of petition till the date of deposit. No costs. It is submitted by learned counsel for the respondents that the amount awarded by the Tribunal has been deposited and withdrawn by the appellants-claimants. The enhanced amount of compensation awarded by this court and interest thereon from the date of the claim petition is directed to be deposited by the respondents within a period of eight (8) weeks from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are permitted to withdraw the same equally, on due application.

