

(1994) 11 MAD CK 0126
In the Madras High Court

Tata Engineering and Locomotive Company Limited and
Another

APPELLANT

Vs

Vasanthi alias Anantha Lakshmi and Others

RESPONDENT

Date of Decision : 28-11-1994

Acts Referred:

Citation : (1995) 1 MLJ 388

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—There is no merit in this appeal. On the question of negligence, there is overwhelming evidence adduced by the claimants which has not been contradicted by any evidence on the side of the appellants. Hence the finding of the tribunal on the question of negligence is accepted.

2. The deceased was aged about 30. He was employed in the Postal Department. The salary certificate is produced according to which he was getting a sum of Rs. 1,357 p.m. He would have certainly continued in service upto 58 but for his untimely death. He had left his wife aged about 28, who is the first claimant and minor son the second claimant. Besides, the parents of the deceased have been impleaded as respondents 3 and 4 in the claim petition.

3. The Tribunal had taken the view that the deceased would have taken 1/3 of his salary for his personal expenses and given the balance to the family. On that footing, the Tribunal has arrived at a figure of Rs. 11,500 p.a. as contribution to the family. If the multiplier of 28 is adopted, the amount will be Rs. 3,22,000 but the tribunal has chosen to give only Rs. 3,00,000 in all and apportion the same among the Legal Representatives.

4. The tribunal has also taken note of the fact that the income of the deceased would have increased in course of years as he was a Government servant. No credit has been given to the gradual increase in the income which the deceased would have got in the later years.

5. Learned Counsel for the appellants contends that the first claimant has been given employment on compassionate grounds and her salary should be deducted from the compensation awarded to the claimants. There is no merit in this contention. No doubt, employment may be given on compassionate grounds but it depends upon the qualification of the person concerned. Further, it is not an amount paid ex gratia or as compensation for the death of the deceased. Work is extracted from the first claimant, for that the amount is paid to her. She earns her salary by working therefor. Hence, that amount cannot form part of the compensation to be given to the claimants. Secondly, the appellants have not admitted their liability to pay compensation and it is not as if they gave employment to the first claimant as a matter of compensation for the death of her husband. Hence, there is no substance in the argument that the salary of the first claimant in her employment shall be deducted from the compensation. This view has been taken by the Gujarat High Court in *Arunaben and Others Vs. Mehmoodbhai Imamali Kaji and Others*, . That has been followed by the Himachal Pradesh High Court in the case of *State of Himachal Pradesh Vs. Chaina Ram and Another*, Similar view has been taken by Rajasthan High Court in the case of *Smt. Sudershan Puri and Others Vs. R.S.R.T.C. and Another*, and the, Delhi High Court in *Smt. Nirmala Sharma, Etc. Vs. Raja Ram*, Hence we reject this contention.

6. It is next argued by learned Counsel for the appellants that the multiplier of 28 should not have been adopted and it is on the high side. According to him, the multiplier should have been fixed on the basis of annuity tables and the reasonable multiplier in this case will be only 16. Learned Counsel contends that the view taken by the Andhra Pradesh High Court in *The Chairman, A.P.S.R.T.C., Hyderabad Vs. Shafiya Khatoon and Others*, should be adopted in this case, by us. We do not agree. For applying any annuity table or any other principle to work out compensation, it is absolutely necessary for the parties to adduce sufficient evidence and in this case, the appellants have not chosen to examine any witness or filed any document so as to enable the court to calculate the compensation, nor any question was put in the cross-examination of the claimants which will enable the court to work out the method of compensation. In the absence of such particulars, it is not possible to accept the contention of learned Counsel that the annuity table should be utilised in this case for arriving at the figure of compensation. There is no pleading by the appellants in this regard. This is not a pure question of law. The question of compensation has to be decided on the facts and circumstances of the case. In this case we find that the deceased has left a young widow and a minor son besides aged parents. In those circumstances the compensation awarded at Rs. 3,00,000 to the claimants and the parents of the deceased is quite reasonable and just. The civil miscellaneous appeal is therefore dismissed.