(2016) 02 MAD CK 0078

In the Madras High Court

Case No : C.M.A. No. 2819 of 2015 and M.P. No. 1 of 2015

The Managing Director, Tamil Nadu State Transport — APPELLANT

Vs

Amudha and Others — RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, Section 304 (A)

Citation : (2016) 02 MAD CK 0078

Hon'ble Judges : R. Sudhakar and S. Vaidyanathan, JJ.

Bench : Division Bench

Advocate : D. Venkatachalam, for the Appellant; T. Gobinath, for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—1. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

2. The appellant/Transport Corporation has filed the appeal challenging the award dated 11.08.2015, passed by the Motor Accident Claims Tribunal (Principal District Judge), Perambalur, made in MCOP No. 133 of 2013.

3. It is a case of fatal accident. On 26.11.12, at about 11.30 p.m., when the deceased Rajesh Kannan, aged 32 years, was riding his two wheeler bearing Regn. No. TN-46-J-5279 and proceeding on the Chidambaram - Sirkazhi Main Road, near Panimalar Gas Agency, the bus, belonging to the appellant Transport Corporation, bearing Regn. No. TN-49- N-1879, driven in a rash and negligent manner, dashed against the two wheeler of the deceased, and on account of the said accident, the deceased was thrown away and sustained grievous injuries and died on the spot. A case was registered against the driver of the bus by the Annamalai Nagar Police Station in Crime No. 391/2012 u/s 279 and 304 (A) of IPC.

4. The deceased, on the date of accident, was working as Junior Technical Assistant in Mechanical Engineering Department in Annamalai University,

Annamalai Nagar and was drawing a salary of Rs. 26,637/- per month. The respondents, viz., the wife, minor son, father and mother of the deceased have filed the claim petition claiming a sum of Rs. 75,00,000/- as compensation.

5. In support of the claim, the first claimant, viz., the wife of the deceased was examined as P.W.1 and Amirtharaj, Assistant Registrar at Annamalai University was examined as P.W.2, while one Parimalan and Kanagasithan, who were eye witnesses to the occurrence, were examined as P.Ws. 3 and 4 and Exs.P-1 to P-21 were marked, the details of which are as follows:-

6. On the side of the appellant/Transport Corporation, Rathinasabapathi, the driver of the bus was examined as R.W.1 and Exs.R-1 to R-3 were marked, the details of which are as follows:-

7. The Tribunal based on the oral evidence of the P.Ws. 1 and 2, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.Ws.3 & 4, eye witnesses to the occurrence, which has been adduced to prove that the bus was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

8. In all the Tribunal awarded a compensation of Rs. 45,57,384/- of which each petitioner was entitled to get Rs. 11,39,346/-. Aggrieved by the said award, the appellant/Transport Corporation is before this Court by filing this appeal.

9. It is the primary contention of the learned counsel for the appellant that while the monthly salary of the deceased was fixed as Rs. 26,637/- no amount had been deducted towards income tax and, therefore, there is an error in the amount fixed under the head salary and, therefore, the award passed by the Tribunal is liable to be interfered with.

10. However, learned counsel for the respondents/claimants pointed out that though the respondents/claimants have not filed any appeal claiming enhancement, though the initial claim was made for an amount of Rs. 75,00,000/-, nevertheless, there is some infirmity in the order passed by the Tribunal, which aspect should be held in favour of the respondents/claimants and the appeal is liable to be dismissed. It was pointed out by the learned counsel for the respondents/claimants that there are four dependents, and, therefore, the Tribunal ought to have deducted only one-fourth of the salary towards personal expenses of the deceased. However, the Tribunal has misdirected itself and has deducted one-third towards the personal expenses of the deceased, which is contrary to dictum laid down by the Supreme Court in Sarla Verma - Vs - Delhi Transport Corporation & Anr. (, 2009 (6) SCC 121).

11. It is also pointed out by the learned counsel for the respondents/claimants that though the age of the deceased was 32 years, the Tribunal, while fixing his income, has not taken into account the future prospects in the correct perspective, i.e., when the age of the deceased is less than 40 years, there should be a 50% addition towards future prospect, as has been laid down by the Supreme Court in Santosh Devi - Vs - National Insurance Co. Ltd. (, 2012 (6) SCC 421), which has been subsequently followed by the Supreme Court in Rajesh - Vs - Rajbir Singh & Ors. (, 2013 (9) SCC 54), wherein the Supreme Court held as under :-

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In Sarla Verma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

12. On considering the above contentions advanced by either parties and also perused the decisions relied on by the learned counsel for the respondents/ claimants. Admittedly, the respondents/claimants have not filed any appeal claiming enhancement. Though it is trite law that the final salary should be arrived at after deducting income tax, in the present case, this Court is of the considered view that the percentage of addition towards future prospects, which has been given at 30%, instead of 50%, would very much off-set the difference in the amount that would follow due to non deduction of income tax from salary and, the net result would be negligible in terms of award of compensation to either parties. Further, deduction of towards personal expenses of the deceased should have been one-fourth and not one-third, as there are four dependents. However, in the absence of any appeal filed by the respondents/claimants, this Court is not inclined to dwell further into the matter. In the above factual background, this Court is of the considered opinion that there is no necessity to interfere with the order passed by the Tribunal.

13. Accordingly, for the reasons mentioned above, this Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. It is stated that the

appellant has deposited only a sum of Rs. 25,000/- by way of demand draft, to the credit of MCOP No. 133/2013, at the time of filing this appeal. The appellant/ Transport Corporation is directed to deposit the entire award amount, less the amount already deposited, along with interest, as directed by the Tribunal, to the credit of MCOP No. 133/2013, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants/ respondents are permitted to withdraw the amounts, as per the award. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.