(2010) 04 MAD CK 0323

In the Madras High Court

Case No : C.M.A. (MD) No. 244 of 2005 and M.P. (MD) No. 1 of 2010 and CMP (MD) No. 1564 of 2005

The New India Assurance Co. Ltd. APPELLANT

Vs

Ayyanar, Jegathambal and Ganesan RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0323

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R. Sundar Srinivasan, for the Appellant; N. Balakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The first and second respondents have unfortunately, lost their only son in a road accident that took place on 12.10.2001. At the time of accident, the deceased was studying in 9th standard and he was aged 13 years. The parents claimed Rs. 5 lakhs as compensation. The Tribunal awarded Rs. 3,72,000/- as compensation based on the decision of the Honourable Supreme Court in Lata Wadhwa and Others Vs. State of Bihar and Others, . The appellant Insurance company questions on the quantum of compensation alone.

2. The learned Counsel for the appellant submits that the judgment relied on by the Tribunal could not be applied to the facts of the present case. It is submitted that the children died in the case was children of the employees of TISCO. They belong to an affluent family. The TISCO had a principle that every employee could get one of their children got employed in the company. In that context, the compensation was awarded in the said case. According to him, Rs. 15,000/- is to be taken as annual earnings as provided under the Second Schedule of the Motor Vehicles Act arriving at the pecuniary loss. According to him, the proper multiplier is ''15''. After providing one third deduction towards personal expenses, he submits that the appellants are entitled to Rs. 1,50,000/- towards

pecuniary loss. He also suggests that Rs. 75,000/- could be awarded towards non-pecuniary loss. As far as the future prospects is concerned, the learned Counsel submits that there is no evidence regarding the capabilities of the children who lost its life. Therefore, he is opposing for granting any amount towards future prospects.

3. On the other hand, the learned Counsel for the appellants submits that the accident took place in October 2001 and that therefore, the monthly earnings would be at least fixed at Rs. 2000/-p.m.,notionally. He relies on the decision of the Honourable Supreme Court in R.K. Mallik and Anr. v. Kiran Pal and Ors. reported in 2009 (1) TNMAC 593 (SC), in support of his submission. Taking into account the fact that the accident took place much after 1994, it is submitted that Rs. 3000/- has to be taken as the monthly earnings for computing compensation. The learned Counsel further submits that at least a sum of Rs. 1 lakh could be awarded towards loss of non-pecuniary loss, since, the deceased was the only son. Though no evidence was let in towards educational career of the child, the learned Counsel submits that at least a sum of Rs. 60,000/- should be awarded towards future prospects.

4. I have considered the submissions made by the learned Counsel appearing on either side and perused the records.

5. The Tribunal awarded Rs. 3,72,000/- as compensation under various heads as follows:

-- S. No. Description of heads Amount in Rs. -- 1. for loss of life Rs. 3,60,000/- 2. for loss of love and affection Rs. 10,000/- 3. for funeral expenses Rs. 2,000/- 4. total Rs. 3,72,000/- --

6. The Tribunal took Rs. 24,000/- towards annual earnings for calculating the compensation and applied multiplier ''15''. There is no quarrel over application of ''15'' as multiplier. Therefore, it has to be seen whether the Tribunal was correct in fixing Rs. 24,000/- as annual income. I am of the view that there is no infirmity in fixing Rs. 24,000/- as annual earning. As rightly submitted by the learned Counsel for the appellants, the Honourable Apex Court in the following judgments has held that at least a sum of 3,000/- could be taken as monthly earnings, if the monthly earnings would not be established by sufficient materials and those judgements are as follows:

1. Ishwar Chandra and Ors. v. The Oriental Insurance Company Limited and Ors. reported in 2007 (1) TN MAC 343(SC).

2. Ram Babu Tiwari v. United Indian Insurance Company Limited and Ors. reported in 2008 (3) TLNJ 312 (Civil).

3. National Insurance Company Limited v. Kusum Rai and Ors. reported in 2006 (1) TN MAC 9 (SC).

Those judgments were rendered taking into account the fact that Rs. 15,000/- as annual income was fixed in the second schedule of the Motor Vehicles Act in the year 1994. Hence, Rs. 3,000/- was taken as monthly earnings by the Honourable Apex Court, taking into account the inflationary trend. In fact in R.K. Mallik and Anr. v. Kiral Pal and Ors. reported in 2009 (1) TNMAC 593 (SC), the Honourable Apex Court took only Rs. 15,000/- as the annual income and refused to take enhanced annual income as the accident took place in the year 1997, while, the second schedule of the Motor Vehicles Act came into existence in 1994. The Honourable Apex Court held that the time gap was short and that therefore, the Court was not inclined to take higher rate and para 18 of the aforesaid judgement is extracted hereunder:

18. Therefore, keeping in view of the Second Schedule of the Act, his Court do not see any reason to differ with the view taken by the Tribunal as well as the High Court in so far as award of Pecuniary Compensation to the dependants/ claimants is concerned. We must point out that the learned Counsel for the appellants had argued that the notional sum of Rs. 15,000/- should be enhanced and increased as the legislature has not amended the Second Schedule and the same continues to be in existence since it was enacted on 14.11.1994. We are not examining and going into this aspect as the accident had taken place in the present case nearly three years after the enactment of the Second Schedule. The time difference between the date of the enactment and the date of accident is not substantial.

7. In this case, accident took place on October 2001. Therefore, there is nothing wrong in taking Rs. 3000/-p.m. as monthly earnings and Rs. 36,000/- as annual earnings in the light of the aforesaid decisions cited by the learned Counsel for the claimants. After providing one third amount towards personal expenses, the annual loss of income to the family comes to Rs. 24,000/-. If the annual loss of income is taken as Rs. 24,000/- before providing one third deduction, the compensation works out to Rs. 24,000/-x15x2/3 : Rs. 2,40,000/-.

8. The parents lost their only son and that was not disputed. In fact, the Tribunal has recorded relevant findings in para 14 of the award and the relevant portion of the para 14 of the judgement reads as follows:

14. ...No other family member is show in the family Card. The deceased Samuel is the only son of the petitioners...

9. The award of non-pecuniary loss depends on various circumstances. The loss of only son is a relevant circumstance for grant of non-pecuniary loss. The learned Counsel for the appellant suggests Rs. 75,000/- towards non-pecuniary loss. I am inclined to award Rs. 1 lakh for non-pecuniary loss, since, the parents lost their only son.

10. As rightly contended by the learned Counsel for the appellant, no evidence was let in by the appellant to establish about the educational career of their child. In R.K. Mallik and Anr. v. Kiral Pal and Ors. reported in 2009 (1) TNMAC

593(SC), the Honourable Apex Court confirmed Rs. 75,000/- awarded by the High Court towards future prospects, wherein, there was evidence that the deceased child had better skills. Since there is lack of materials, I intend to award Rs. 50,000/- towards future prospects. In these circumstances the compensation awarded by the Tribunal could not be termed as excessive and unjust and therefore, I find no infirmity in the award of the Tribunal and the same stands confirmed. In view of the foregoing discussions, the appeal fails and the same deserves to be dismissed.

11. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petitions are dismissed. No costs.

