

The Divisional Manager Vs. Shabath

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Court : Chennai

Decided On : Jul-01-2014

Judge : The Hon'Ble Mr. Justice S. Manikumar

Appellant : The Divisional Manager

Respondent : Shabath

Judgement :

IN THE HIGH COURT OF JUDICATURE OF MADRAS DATED:

01. 07.2014 CORAM: THE HONBLE MR. JUSTICE S. MANIKUMAR C.M.A.No.1783 of 2014 and M.P.No.1 of 2014 The Divisional Manager, Oriental Insurance Company Limited, Divisional office, Arunagiri Complex, Ground Floor, 25C, Bypass Road, Hosur 635 109. ... Appellant Vs. 1.Shabath 2.Akhtarabi 3.Razhiyabi 4.Minor Arbin 5.Minor Arbaz 6.Minor Arfath 7.K.Gopal Respondents [Minor R4 to R5, rep by their next friend and mother Raziyabi, R3]. The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the award & Decree dated 20.12.2013 made in M.C.O.P.No.79 of 2013 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Hosur. For Appellant : Mr.S.Manohar For Caveator : Mr.Sudesh Kumar

JUDGMENT

Quantum of compensation of Rs.18,62,000/- with interest, at the rate of 7.5% awarded to parents, widow and minor children aged about 9, 7, and 4 years

respectively, is challenged on the ground inter alia that in the absence of any proof of avocation that at the time of accident, the deceased was a mechanic, the claims tribunal erred in fixing the monthly income of the deceased as Rs.10,000/-. Quantum of compensation of Rs.2,50,000/- awarded under the head loss of love and affection is also challenged. Award of Rs.1,00,000/- awarded under the head consortium is also challenged.

2. Mr.Sudesh Kumar, learned counsel for the caveator is on record. With the consent of parties, the appeal itself is heard and disposed of.

3. As per the claim petition, the deceased was a four wheeler mechanic at Hosur, an industrial area. Though, parents and wife claimed that the deceased earned Rs.15,000/- per month, there was no proof. However, having regard to the contents in Ex.P1, FIR, averments made in the claim petition, and the testimony, the claims tribunal has fixed the monthly income of the deceased as Rs.10,000/-. Applying '16' multiplier and deducting th towards the personal and living expenses of the deceased, computed the loss of contribution to the family as Rs.14,40,000/- (Rs.90,000/- x 16).

4. In addition to the above, following the decision in 2013 (5) LW709 the claims tribunal awarded Rs.1,00,000/- under the head loss of consortium. Fixing the quantum of compensation as Rs.50,000/- each, the claims tribunal has awarded Rs.2,50,000/- under the head loss of love and affection. Based on Ex.P7, medical bills, the claims tribunal has awarded Rs.27,000/- for medical expenses incurred, Rs.10,000/- under the head transportation, Rs.10,000/- for attendant charges and Rs.25,000/- under the head Funeral expenses. The quantum of compensation is mainly assailed on the ground that loss of dependency is on the higher side.

5. Mr.S.Manohar, learned counsel for the appellant, submitted there is no proof that the deceased was a mechanic and therefore, the award under the head dependency is excessive. The award under the head loss of love and affection is also disputed.

6. Per contra, Mr.Sudhesh Kumar, learned counsel for the respondent/claimant submitted that Hosur is an industrial area. The accident occurred opposite to a

showroom, when the deceased was walking. Inviting the attention of this Court in Ex.P1, FIR, given by the mother of the deceased, wherein, she has categorically stated that the deceased was running a four wheeler mechanic shop, and also the averments made in the claim petition, he submitted that considering the number of dependents, in the family, the deceased would have easily earned Rs.10,000/-. Among the claimants, three are minors aged about 9, 7 and 4 respectively, and hence he submitted that the quantum of compensation of Rs.2,50,000/- under the head loss of love and affection is not on the higher side.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. Perused Ex.P1, FIR. As rightly contended by the learned counsel for the respondents/claimants, there is a clear statement about the employment in a workshop. But, nobody has been examined to prove the actual income earned by the deceased. The accident has occurred on 13.11.2012. Whether the deceased was a full time mechanic or engaged in assisting repair works, is not clear in Ex.P1, FIR. At the the same time, the averments made in the claims petition and the supporting testimony, substantiating that the deceased was a mechanic, cannot be discarded. At the time of accident, he was aged 40 years. FIR is not an encyclopedia of all details to be furnished in the claim petition. Mother, who has given the FIR has stated the avocation. At the age of 40 years, with three minor children to maintain the family, the deceased would have earned considerable income. The contention of the respondents/claimants that Hosur is an industrial area, and the possibility of employment also, cannot be ruled out. Respondents/claimants, have marked Ex.P11, Ration card. According to Mr.S.Manohar, learned counsel for the Insurance Company, he had perused the ration card and the income stated, in the ration card, is less. In the case on hand, the tribunal has fixed Rs.10,000/- as monthly income.

9. The claims tribunal has not taken into consideration the future prospectus of the deceased as per the decisions of the Apex Court in Sarla Verma and Others Vs. Delhi Transport Corporation, reported in 2009 (2) TN MAC1(SC), Santhosh Devi Vs. National Insurance Company Ltd and Others reported in 2012 (6) SCC421and

Rajesh and others Vs. Rajbir Singh, reported in 2013 ACJ1403 In view of the above decisions, even taking for granted that the deceased had earned Rs.7,000/- per month, and if 50% of the income (Rs.3,500/-) is added towards future prospects, as the deceased was aged 40 years, at the time of accident, then the total income per month, works out to Rs.10,500/-. Therefore, monthly income fixed at Rs.10,000/- cannot be said to be erroneous. 1/4th deduction and application of '16' multiplier, for computing loss of contribution to the family, are not disputed. Hence, award of Rs.14,40,000/- towards loss of contribution to the family is sustained.

10. At the time of accident, the widow was aged 27 years. In Rajesh and others Vs. Rajbir Singh, reported in 2013 ACJ1403 the Supreme Court held as follows: The ratio of a decision of this court on a legal issue is a precedent. But an observation made by this court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi (Supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma".s case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. In legal parlance, consortium". is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse".s affection, comfort, solace, companionship, society, assistance, protection care and sexual relations during

the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium. Therefore the sum of Rs.1,00,000/- awarded under the head loss of consortium does not require any reduction.

11. Sum of Rs.2,50,000/- awarded under the head loss of love and affection to the parents and three minor children, which in the opinion of this Court, is slightly on the higher side. Therefore, a sum of Rs.30,000/- is awarded to each one of them and Rs.25,000/- each, is awarded to the parents, towards loss of love and affection. The compensation awarded under other heads, funeral expenses, medical expenses, attendant charges and transportation, is sustained. The claims tribunal has not awarded any sum towards loss of estate and loss of damages to clothes, hence, sum of Rs.10,000/- and Rs.1,000/- are awarded under the head loss of estate and loss of damages to clothes.

12. Thus, the compensation which according to this Court, due and payable to the respondents/claimants, is Rs.17,63,000/-, with interest, at the rate of 7.5% per annum from the date of claim, till the date of realisation and the same is detailed hereunder. Loss of contribution to the family : Rs.14,40,000/- Loss of consortium : Rs. 1,00,000/- Loss of love and affection to 3 children @ Rs.30,000/- each : Rs. 90,000/- Loss of love and affection to parents at Rs.25,000/- each : Rs. 50,000/- Medical Expenses : Rs. 27,000/- Attendant charges : Rs. 10,000/- Transportation : Rs. 10,000/- Funeral Expenses : Rs. 25,000/- Loss of estate : Rs. 10,000/- Damages to clothes : Rs. 1,000/- Hence, there shall be a reduction in quantum of compensation by Rs.99,000/- with proportionate interest. With reduction of the abovesaid amount, the appeal is partly allowed. No costs. Consequently, the Miscellaneous Petition is closed.

13. Consequent to the above, there shall be a direction to the appellant Insurance Company to deposit Rs.17,63,000/-, the modified award amount with proportionate accrued interest and costs, less the amount already deposited, if any, to the credit

of M.C.O.P.No.79 of 2013 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Hosur, within a period of six weeks from the date of receipt of a copy of this order.

14. On such deposit, the 1st respondent/father is entitled to Rs.25,000/-, 2nd respondent/mother is entitled to Rs.1,15,000/-, 3rd respondent/wife is entitled to Rs.6,33,000/- and the minor respondents 4 to 6 are entitled to Rs.3,30,000/- each. The respondents 1 to 3 are permitted to withdraw their share in the award amount, with proportionate accrued interest and cost, as apportioned by this Court, by making necessary applications. The share of the minors/respondents 4 to 6 shall be deposited in any one of the Nationalised Banks, proximate to the residence of the claimants in a fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors/respondents 4 to 6, shall be paid to the 3rd respondent/mother of the minors once in three months, till they attain majority. 01.07.2014 ars To 1. The Motor Accident Claims Tribunal, (Sub Judge), Hosur.

2. The Section Officer, VR Section, High Court, Madras. S.MANIKUMAR, J., ars C.M.A.No.1783 of 2014 01.07.2014

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