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Court : Chennai

Decided On : Nov-23-2016

Judge : T. Raja

Appeal No. : C.M.A.No. 690 of 2014

Appellant : Devi

Respondent : R. Parthasarathy and Another

Judgement :

(Prayer: Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 16.07.2012 made in M.A.C.T.O.P.No.2739 of 2009 on the file of the Motor Accident Claims Tribunal, XV Additional Judge, City Civil Court, Chennai.)

1. This appeal, at the instance of the Claimant, has been filed seeking enhancement of the compensation.

2. Learned counsel for the appellant submitted that while the mother of the appellant, namely, Mrs.Nalini, aged about 65 years, was standing on the G.S.T.Road, Guduvancherry, Urappakkam near a tea stall on 25.7.2009 at about 7.50 A.M., the rider of the Yamaha Motorcycle bearing Registration No.TN 19 4363 belonging to the first respondent and insured with the second respondent hit against her mother, as a result, her mother, who was carrying on her avocation as a vegetable vendor earning a sum of Rs.6,000/- per month, sustained fatal injuries

and succumbed to the injuries on 1.8.2009 at about 12.25 P.M., in the Government General Hospital, Chennai. Consequently the appellant has been deprived of not only the regular monthly income but also lost her love and affection and finally there is no other person to look after her. When the appellant made a claim for compensation, the Tribunal has wrongly fixed a sum of Rs.4,500/- as the monthly income in the year 2009, instead of fixing a reasonable sum of Rs.6,000/- per month. Although the Apex Court in the case of Syed Sadiq, etc. v. Divisional Manager, United India Insurance Co.Ltd., 2014 (1) TN MAC 459 (SC), has held that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month, in the present case, the Tribunal has wrongly fixed the notional monthly income at Rs.4,500/-. Therefore, the said amount is required to be enhanced to Rs.6,000/- per month as claimed by the appellant herself. Adding further, he submitted that instead of the multiplier '7', the Tribunal has taken a wrong multiplier '5' and with regard to the compensation towards loss of love and affection, a sum of Rs.10,000/- alone has been awarded, which is wholly erroneous, for the reason whether the claimant is married or unmarried, the compensation towards loss of love and affection cannot be curtailed. Therefore at least a sum of Rs.1,00,000/- should have been awarded under this head. Similarly, for funeral expenses, only a sum of Rs.5,000/- has been awarded, which is required to be enhanced to Rs.25,000/-, he pleaded.

3. In reply, the learned counsel for the second respondent Insurance company submitted that the impugned award does not call for any interference. The reason is that the appellant is the daughter of the deceased. When the claimant is a married daughter, question of loss of dependency does not arise, because she is settled with her husband. Likewise, the fixation of Rs.10,000/- by the Tribunal towards loss of love and affection also cannot be found fault with. However, with regard to funeral expenses, a sum of Rs.15,000/- can be enhanced, he pleaded.

4. This Court is not able to find any merit in the submissions made by the learned counsel for the second respondent. When the mother of the claimant was standing on the GST road side bus stop near Urapakkam, Chennai at 7.50 A.M., on 25.7.2009, the rider of the Yamaha motorcycle bearing Registration No.TN 19 4363 belonging to the first respondent, coming in a rash and negligent manner, hit

against her, as a result she succumbed to the injuries in the Government General Hospital, Chennai on 1.8.2009. One Mahesh, being an eye-witness to the occurrence, was examined as P.W.2. He had deposed before the Tribunal that when he was taking tea in the spot in question, a 60 year old lady was waiting at the bus stop to board some bus. At that time the rider of the Yamaha motorcycle bearing Registration No.TN 19 4363 dashed against the old lady. Immediately, in view of the fatal injuries, she was taken to the hospital for treatment, but she succumbed to the injuries later. His evidence with regard to the manner of accident has been accepted by the Tribunal. After fixing the negligence on the rider of the Yamaha motorcycle owned by the first respondent and insured with the second respondent, the Tribunal, for the reason that there was no evidence to prove the monthly income of the deceased, considering the fact that in the year 2009, a vegetable vendor could have earned a sum of Rs.4,500/-, has fixed the monthly income of the deceased at Rs.4,500/-. But this Court is not inclined to accept the said fixation, in the light of the ratio laid down by the Apex Court in the case of Syed Sadiq, etc. v. Divisional Manager, United India Insurance Co.Ltd., 2014 (1) TN MAC 459 (SC) holding that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month. However, in the present case, when the claimant herself had pleaded only a sum of Rs.6,000/- as the monthly income of the deceased, this Court, accepting the monthly income of the deceased at Rs.6,000/-, keeping in mind the age of the deceased at 65 years, following the ratio of the Apex Court in Santhosh Devi v. National Insurance Company Ltd., 2012 (2) TN MAC 1 (SC),is inclined to adopt the right multiplier '7' in this case. Out of the monthly income of Rs.6,000/-, since the deceased would have spent half of the said income towards her personal expenses, the loss of dependency is calculated at the rate of Rs.3,000/- per month with the multiplier '7', which works out to Rs.2,52,000/- (Rs.3000x12x7=Rs.2,52,000), instead of Rs.1,35,000/- awarded by the Tribunal. With regard to funeral expenses, only a paltry sum of Rs.5,000/- has been awarded, therefore, following the judgment of the Apex Court in the case of Rajesh and others v. Rajbir Singh and others, 2013 (9) SCC 54, the said sum is enhanced to Rs.25,000/-. So far as the compensation towards loss of love and affection, this Court has already held that whether the claimant is married or unmarried, the amount towards loss of love and affection cannot be curtailed.

Hence, this Court is inclined to award a sum of Rs.1,00,000/- under this head, instead of Rs.10,000/- awarded by the Tribunal. Accordingly, the award of the Tribunal is modified and the appellant/claimant is entitled to a total compensation of Rs.3,77,000/- together with 7.5% interest per annum from the date of petition till realisation. The second respondent Insurance Company is directed to deposit the entire amount of compensation together with interest to the credit of the M.C.O.P.No.2739 of 2009 on the file of the Motor Accident Claims Tribunal, XV Additional Judge, City Civil Court, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the entire amount with accrued interest by moving appropriate application before the Tribunal, after complying with the formalities. With this modification in the award of the Tribunal, the appeal stands allowed. No costs.