

Mary Selvi and Others Vs. Vannithangam and Another

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Court : Chennai Madurai

Decided On : Apr-13-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : C.M.A.(MD) No. 725 of 2013

Appellant : Mary Selvi and Others

Respondent : Vannithangam and Another

Judgement :

(Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the Award dated 04.06.2012 made in MCOP.No.1335 of 2011 in Motor Accidents Claims Tribunal / IV Additional District Court, Thirunelveli.)

1. The Civil Miscellaneous Appeal is filed against the Award dated 04.06.2012 made in MCOP.No.1335 of 2011 on the file of the Motor Accidents Claims Tribunal / IV Additional District Judge, Thirunelveli.

2. The appellants 1 to 4 are claimants in MCOP.No.1335 of 2013. The first respondent is the owner of the vehicle. The second respondent is the Insurance Company.

3. The facts of the case are as follows:-

According to the appellants, the deceased was working as Conductor in Thirunelveli, Tamil Nadu State Transport Corporation Limited. While he was travelling in the vehicle bearing Regn.No.TN 69 U 5482, on 26.08.2011, a Tata 909 vehicle bearing Registration No.72 AX 5289, belonging to the first respondent was driven in a rash and negligent manner and dashed against the Vehicle in which the deceased was travelling and caused grievous injuries to him. Subsequently, he died in the Government Medical College Hospital, Thirunelveli. Appellants stated that the deceased was working as a Conductor in Transport Corporation and was earning a sum of Rs.16,007.26/- per month and therefore, they claimed a sum of Rs.80,00,000/- as compensation before the Tribunal.

4. The first respondent remained ex parte before the Tribunal.

5. The second respondent denied their liability to pay the compensation and stated that appellants have to prove the manner in which accident occurred, age and income of the deceased. He further submitted that the driver of the vehicle belonging to the first respondent did not have valid driving licence at the time of accident.

6. Before the Tribunal, first petitioner examined herself as PW.1 and another person was examined as PW.2 and marked 8 documents as Ex.P1 to Ex.P8. The second respondent did not let in oral and documentary evidence.

7. The Tribunal considering the pleadings, evidence both oral and documentary and arguments held that accident occurred due to the rash and negligence driving by the driver of the first respondent. The vehicle was insured with the second respondent. Therefore, both the respondents 1 and 2 are jointly or severally liable to pay the compensation and awarded a sum of Rs.13,78,600/- as compensation.

8. Not being satisfied with the amount awarded, the appellants have come out with the present appeal.

9. The learned counsel for the appellants contended that the deceased was 45 years at the time of accident and the Tribunal has not awarded any amount towards future prospects. Further, the Tribunal erred in granting only Rs.40,000/-

towards loss of consortium to the first appellant and not granting any amount for loss of love and affection to the appellants 2 to 4.

10. The learned counsel appearing for the second respondent submitted that Tribunal considered all the materials and has awarded just compensation and there is no reason to enhance the compensation amount and prayed for dismissal of the Civil Miscellaneous Appeal.

11. I have heard the learned counsel appearing on either side and perused the materials available on record.

12. The only question for consideration in this appeal is whether the appellants are entitled for enhancement of compensation or whether Tribunal awarded just compensation.

13. From the facts and materials on record it is seen that the deceased was aged about 47 years at the time of accident and was working as a Conductor and was earning a sum of Rs.16,007/- per month and in support of this, appellants have produced income certificate before the Tribunal and the same was not denied by the second respondent / Insurance Company. The gross salary of the deceased was Rs.16,007/-and after deducting amounts under various heads, he received a sum of Rs. 9,270/- as net salary. The Tribunal arrived at the salary of the deceased at Rs.12,000/- per month. In my considered view the Tribunal was right in arriving at the salary of the deceased as Rs.12,000. The retirement age of the Government Service is 58 years. Therefore, the deceased would have worked for 11 years and earned considerable amount. However, the Tribunal did not award any amount towards future prospects. Hence, this Court is of the view that compensation should be awarded towards future prospects. The deceased was aged 47 years at the time of accident. As per the judgment of Hon'ble Supreme Court 30% of the salary has to be added as future prospects viz., Rs.3,600/-. Considering the age of the deceased, the correct multiplier is 13 and after deducting 1/4th towards his personal expenses and also considering the Judgments of Hon'ble Apex Court in Sarla Verma case reported in 2009(2) TN MAC 1 (SC) (Smt. Sarla Verma Vs. Delhi Transport Corporation and another), the loss of income of the deceased is calculated as under:

One month income Rs. 12,000/-

30% of the salary Rs.12,000/- x 30/100 = Rs.3,600/-

One month salary Rs.12,000 + Rs.3,600/- = Rs.15,600/-

After 1/3rd deduction Rs.15,600/- (-) Rs.5,200/- = Rs.10,400/-

Total loss of income Rs.10,400x12x13 = Rs.16,22,400/-

Hence, a sum of Rs.16,22,400/- (Rupees Sixteen Lakhs Twenty Two Thousand and Four Hundred only) is hereby awarded towards loss of income. The Tribunal awarded a sum of Rs.40,000/- towards loss of consortium, which is too meagre. The deceased was aged about 47 years and therefore, the amount awarded by the Tribunal towards loss of consortium is hereby enhanced to Rs.50,000/-. Further, the Tribunal has not awarded any amount towards loss of love and affection for the appellants 2 to 4. I am of the view that a sum of Rs.50,000/- each towards loss of love and affection to the appellants 2 to 4 has to be granted.

14. In all other aspects, the amount awarded by the Tribunal is hereby confirmed. Therefore, the award of the Tribunal is enhanced from Rs. 13,78,600/- to Rs.19,11,000/- in the following manner:-

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1	Loss of income	12,50,000	16,22,400	Enhanced by Rs.3,72,400/-

2	Loss of love and affection to appellants 2 to 4	-	1,50,000	granted Rs.50,000/- each to the appellants 2 to 4 Total Rs.1,50,000
3	Loss of consortium to first appellant	40,000	50,000	Enhanced by Rs.10,000/-
4	Medical Expenses	78,600	78,600	Confirmed
5	Funeral expenses	10,000.00	10,000	confirmed
	Total	13,78,600	19,11,000	Enhanced by Rs.5,32,400/-

15. The appellants have claimed a sum of Rs.80,00,000/- as compensation in MCOP. A sum of Rs.13,78,600/- was awarded. The appellants have filed the appeal claiming a further sum of Rs.10,00,000/- by way of enhancement, even though, they claimed Rs.80,00,000/- in MCOP. This Court is enhancing the compensation by Rs.5,32,400/-.

16. The second respondent / Insurance Company is directed to deposit the said award amount viz., Rs.19,11,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit and costs less the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellants are permitted to withdraw their share as per the apportionment fixed by the Tribunal with respective

proportionate accrued interest and costs, less the amount.

17. Accordingly, the civil miscellaneous appeal is allowed. accordingly. No costs.

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