Z. Prabhakar and Another Vs. Managing Director, B.M.T.C. Division, and Another

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Court : Karnataka

Decided On : Apr-27-2017

Judge : B. Manohar

Appeal No. : M.F.A. No. 722 of 2012 (MV)

Appellant : Z. Prabhakar and Another

Respondent : Managing Director, B.M.T.C. Division, and Another

Advocate for Pet/Ap. : Sri. K.T. Gurudeva Prasad

Judgement :

1. Appellants are the claimants, being not satisfied with the quantum of compensation awarded in the judgment and award dated 10-8-2011 made in MVC No.8058/2010 passed by the Motor Accidents Claims Tribunal, Bengaluru (hereinafter referred to as 'the Tribunal' for brevity), filed this appeal seeking enhancement of compensation.

2. The Appellants are the husband and son of deceased Rajeshwari. They filed a claim petition contending that on 15-11-2010, at about 9.45 p.m., the deceased Rajeshwari was proceeding on a motor cycle bearing Reg. No.AP-03-AD-5606 along with her husband as a pillion rider near Old Madras Road. At that time, a BMTC bus bearing Reg. No.KA-01-FA-1620 driven by the driver in a rash and

negligent manner dashed against the motor cycle from the hind side. Due to the impact, rider and pillion rider fell down and sustained injuries. The wheel of the bus ran over the body of the pillion rider, as a result, she succumbed to the injuries on the spot. Immediately after the accident, she was shifted to C.M.H. Hospital, wherein she was declared as 'brought dead'. In the claim petition, it was contended that the deceased was working in Aravind Garments, Whitefield, Bengaluru and earning a sum of Rs.7,000/- p.m. The family has lost the bread earner. The claimants have spent more than Rs.50,000/- towards funeral expenses. Due to the negligence on the part of the driver of the bus, the accident occurred. Hence, sought for compensation of Rs.25,00,000/-.

3. In response to notice issued by the tribunal, though BMTC was served with notice, remained unrepresented. The insurance company defended the case by filing written statement.

4. After trial, the tribunal held that due to the actionable negligence on the part of the driver of the offending bus, the accident occurred and the claimants - husband and son are the dependents of the deceased are entitled for compensation.

5. With regard to the quantum of compensation is concerned, the salary certificate of the deceased is produced by the claimants, which clearly discloses that the deceased was getting salary of Rs.4,488/- p.m. The Tribunal deducting rd towards her personal expenses and applying the multiplier '17', as she was aged about 28 years as on the date of death has awarded a sum of Rs.4,88,070/- towards loss of dependency, Rs.20,000/- towards consortium and Rs.35,000/- towards conventional heads. In all, a sum of Rs.5,43,070/- with interest at 6% p.a., was awarded as compensation. Being not satisfied with the quantum of compensation, the claimants have preferred this appeal seeking enhancement of compensation.

6. Sri. K.T. Gurudeva Prasad, learned counsel for the appellants contended that the quantum of compensation is contrary to law. In view of the law laid down by the Hon'ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation Ltd. reported in 2009 (6) SCC 121 : (AIR 2009 SC 3104), the Tribunal ought to have assessed the income of the deceased by adding 50% towards future prospects. The quantum of compensation awarded is on the lower side.

Hence, he prays for enhancement of compensation.

7. On the other hand, Sri. Y.P. Venkatapathi, learned counsel for the insurance company argued in support of the judgment and award and sought for dismissal of the appeal.

8. Having heard the learned counsel for both the parties and on perusal of the judgment and award and oral and documentary evidence, the only issue that arises for my consideration is with regard to the quantum of compensation only.

9. The documents produced before the Tribunal goes to show that the deceased Rajeshwari is a permanent employee who was working in Aravind Garments. The employee number has been given and a portion of her salary is deducted towards the P.F. and E.S.I. Since, she was a permanent employee, the Tribunal ought to have added 50% of her salary towards future prospects while awarding the compensation. In view of the law laid down by the Supreme Court in the aforesaid case, by adding 50% of the income, taking the income of the deceased at Rs.4,488/- p.m. towards future prospects, the total income per month works out to Rs.6,732/- p.m., deducting rd towards her personal expenses and applying the multiplier '17', the loss of dependency comes at Rs.9,15,522/- as against Rs.4,88,070/- awarded by the Tribunal. Further the minor child is entitled for a sum of Rs.20,000/- towards loss of love and affection and a sum of Rs.35,000/- is awarded towards conventional heads. In all, claimants are entitled for total compensation of Rs.9,70,522/- as against Rs.5,43,070/- awarded by the Tribunal with interest at 6% p.a. Accordingly, I pass the following:

ORDER

The appeal is allowed in part. The judgment and award made in MVC No.8058/2010 dated 10-8-2011 by the MACT, Bengaluru is hereby modified and the appellants are entitled for total compensation of Rs.9,70,522/- with interest at 6% p.a. Thereby the claimants are entitled to enhanced compensation of Rs.4,27,452/-.

Appeal partly allowed.