Chandra and ors. Vs. Loganathan and ors.

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Court : Chennai

Decided On : Jul-06-1994

Reported in : I(1995)ACC516; 1996ACJ670

Judge : T. Jayarama Chouta, J.

Appeal No. : C.M.A. No. 872 of 1986

Appellant : Chandra and ors.

Respondent : Loganathan and ors.

Disposition : Appeal allowed

Judgement :

T. Jayarama Chouta, J.

1. This is an appeal filed by the wife, minor children and mother of the deceased Ajeet Singh, who died in a motor vehicle accident on 28.9.1993 at about 5.45 p.m. at General Patters Road, Madras, for enhancement of the compensation awarded by Additional Claims Tribunal, Madras.

2. The appellants filed a claim petition under Section 110-A of the Motor Vehicles Act for compensation of Rs. 4,00,000/- for the death of Ajeet Singh. The averments in the said claim petition were that on 28.9.1993 at about 5.45 p.m. at General Patters Road, Madras, while the deceased Ajeet Singh was going on a

motor cycle bearing registration No. TMM 5148 from south-east to north-west, a lorry bearing registration No. TNJ 1357, owned by respondent No. 1, Loganathan and driven by one Krishnan rashly and negligently at a high speed in the same direction dashed against the deceased from the rear side and caused fatal injuries. They further contended that since the accident was due to the rash and negligent driving of the lorry by its driver, respondent No. 1 as the owner of the lorry and respondent No. 2 as the insurer of the same are jointly, vicariously and statutorily liable to pay compensation to the appellants.

3. The respondent No. 1, owner of the lorry, filed his counter-statement resisting the claim of the appellants on the ground that there was neither rashness nor any negligence on the part of the driver of the lorry. On the other hand, the mistake was entirely due to the deceased, who was very careless in driving his motor cycle. He further contended that on 28.9.1993, the lorry was driven by his driver with a load and proceeding from Adyar to Tondiarpet. When the lorry reached Mount Road from General Patters Road, the deceased came on the motor cycle in a rash and negligent manner from west to east and hit against the lorry on its left rear side and consequently, he was run over by the said lorry. At any rate, he contended that there was contributory negligence on the part of the deceased also. The respondent No. 2 accepted the said objection statement.

4. During the course of enquiry, on behalf of the petitioners five witnesses were examined as PWs 1 to 5 and they got marked Exhs. P-1 to P-4. No witness was examined on behalf of the respondents.

5. After conclusion of the enquiry, the Motor Accidents Claims Tribunal, Madras by its award dated 9.10.1985 in O.P. No. 1151 of 1983 held that the accident was caused due to the rash and negligent driving of the lorry TNJ 1357 and awarded a compensation of Rs. 1,97,000/-. The Tribunal has directed that appellant Nos. 2 and 3 being the daughters of the deceased were entitled to Rs. 40,000/-each and appellant No. 4, the mother of the deceased, was entitled to Rs. 17,000/- and the remaining amount of Rs. 1,00,000/-has been awarded to the appellant No. 1, widow of the deceased. The Tribunal has further directed that respondent No. 2, the United India Ins. Co. Ltd., should deposit the said sum in court within three

months from the date of judgment and in default, appellants will be entitled to interest at 12 per cent till the date of deposit.

6. Being dissatisfied with the quantum of compensation, the claimants have filed this appeal under Section 110-D of the Motor Vehicles Act before this court.

7. Heard the learned advocates for the appellants and the respondents. The appellants' advocate submitted that the compensation awarded by the Tribunal was grossly inadequate and it has not adopted the proper procedure in granting compensation. Further, he submitted that the Tribunal ought to have followed the decision in Manjushri Raha v. B.L. Gupta 1977 ACJ 134 . His grievance was that even though he has given a written argument, the Tribunal has not complied with the requirements made therein.

8. On the contrary, learned advocate for the respondents tried to support the finding arrived at by the Tribunal. He submitted that there is no need to interfere with the award passed by the Tribunal even regarding the quantum awarded by it.

9. Since the respondents have not challenged the award on the question of negligence the finding of negligence has become final and we need not go into the question in this appeal. Further, there are sufficient materials placed before the Tribunal by the claimants to show that the accident has taken place due to the rash and negligent driving of the vehicle by the driver of the lorry.

10. In a recent decision of the Supreme Court in General Manager, Kerala State Road Trans. Corpn. v. Susamma Thomas : AIR 1994 SC1631 , their Lordships have held that the multiplier method is the appropriate method for calculating just compensation and also disapproved the decision adopting a different method of calculating compensation.

11. In the present case, the Tribunal has proceeded on the basis of the entire future earnings for over the period of loss, expectation of life and then making deduction for lump sum payment. The Supreme Court in the above-cited decision has held that it is unscientific and impermissible. The Supreme Court has further observed in para 11 of its judgment as follows:

It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and awarded the resulting sum as compensation. This is clearly unscientific.... It must be borne in mind that multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

12. Keeping in view the Supreme Court decision now, we shall proceed on the basis of multiplier method. The deceased was aged about 36 years. He was a Chief Cashier working in Tamil Nadu Dhadha Pharmaceuticals Limited getting basic salary of Rs. 1,215/- and the total emolument was Rs. 1,960/- at the time of accident. We shall fix his salary at Rs. 2,100, taking into consideration the increment and other benefits, on an average and his family contribution being 2/3rd of it, the annual contribution will be Rs. 16,800/-. If the multiplier of 16 is adopted, we will arrive at the figure of Rs. 2,68,800/-. The claimants have been further awarded a sum of Rs. 5,000/- for the loss of happy married life. We feel that the amount of Rs. 5,0007- awarded under the head 'loss of happy married life' is just and reasonable. Adding the said amount of Rs. 5,000, the claimants are entitled to get a total sum of Rs. 2,73,800/-. While calculating the multiplier as well as the average salary, we have taken into consideration the prospects of advancement in the future career of the deceased and the increment he would have earned.

13. In the earlier case, which has been cited by the learned advocate for the appellants in Manjushri Raha v. B.L. Gupta 1977 ACJ 134 , the court has taken into consideration half of the income of the deceased as family contribution whereas we adopted the later Supreme Court decision and took 2/3rd of the income of the deceased as family contribution and arrived at the above figure which is beneficial to the claimants.

14. For the reasons stated above, we allow this appeal and we declare that the claimants-appellants are entitled to a compensation of Rs. 2,73,800/- instead of Rs. 1,97,000/- awarded by the Tribunal and the said amount should fetch an interest at 12 per cent per annum from the date of the petition till realisation. The other directions given by the Tribunal remain unaltered. The enhanced compensation should be shared equally by appellant Nos. 1 to 3 only. The appellants are entitled for the costs.