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Jayamani, Vs. B. Radhakrishnan and

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Court : Chennai

Decided On : Aug-18-2007

Reported in : 2009ACJ536

Judge : P.P.S. Janarthana Raja, J.

Appeal No. : Civil Miscellaneous Appeal (NPD) No. 615 of 1998

Appellant : Jayamani, ;koni Ammal and ;minor Kannan Rep. by Mother and Next Friend Jayamani

Respondent : B. Radhakrishnan and ;united India Insurance Co. Ltd.

Advocate for Def. : K.S. Narasimhan, Adv. for Respondent No. 2

Advocate for Pet/Ap. : P. Senthil, Adv. for Muthumani Doraisami, Adv.

Judgement :

P.P.S. Janarthana Raja, J.

1. This Civil Miscellaneous Appeal is filed by the claimants against the Judgment and Award dated 13.12.1994 made in MACTOP No. 343/91 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Namakkal.

2. The background facts in a nutshell are as follows:

The claimants are the wife, mother and the son of the deceased. The first respondent is the owner of the car and he was set exparte. The second respondent is the Insurance Company. It was stated in the Claim Petition that the deceased Ramasamy was 32 years of age at the time of accident. On 05.04.1991 at about 8.00 p.m., while the deceased Ramasamy was getting into the well with the help of a rope to clean the oil engine, suddenly slipped and fell down as a result of which he sustained injuries all over the body. Then he was taken from the well and was put up in a Taxi bearing Registration No. TNX 1629 and was taken to the Namakkal Hospital. On the way to the hospital the said Taxi dashed against the Electric Post due to which the injured Ramasamy died on the spot. Hence the legal heirs of the deceased Ramasamy claimed a sum of Rs. 1,00,000/- before the Tribunal. On the side of the appellants, Ex. P1 to Ex. P3 were marked and P.W. 1 was examined. No documents produced or no exhibits marked on the side of the Insurance Company. After considering the oral and documentary evidences, the Tribunal came to the conclusion that the claimants were unable to prove the negligence as well as there was no proof that the deceased was died only due to the road accident, and dismissed the claim petition. Hence the present appeal by the claimants.

3. Learned Counsel appearing for the claimants submitted that the deceased died only due to the rash and negligent driving of the taxi driver and the Tribunal is wrong in not believing the oral evidence of P.W. 1., the wife of the deceased. It is further submitted that there is no dispute regarding the admitted car accident and hence the claimants are entitled to the compensation.

4. Learned Counsel appearing for the Insurance Company submitted that there is no proper evidence filed by the claimants to prove their case. They are also unable to prove that the accident had occurred due to the rash and negligent driving of the taxi driver. Hence the order passed by the Tribunal is in accordance with law.

5. Heard the counsel. The deceased Ramasamy was a young man of 32 years at the time of accident. He was doing agricultural work in his lands at Seventhipatti and earning Rs. 1,000/- per month. The claimants are the dependants of the deceased. The deceased spent whatever income he had earned, for the

maintenance of the family members. On 05.04.1991, at about 8.00 p.m. the deceased Ramasamy was getting into the well with the help of a rope to clean the oil engine and suddenly he slipped and fell down as a result of which he sustained simple injuries. He was taken to the hospital by taxi bearing Registration No. TNX 1629 with his relatives for treatment. The taxi (Ambassador) in which he travelled dashed against the Electric Post on the left side of the road and as a result, the said Ramasamy died on the spot. The driver of the taxi drove the vehicle in a rash and negligent manner and caused the accident by dashing against the Electric Post on the left side of the road. The loss sustained by the claimants is irreparable and incalculable and it cannot be compensated in terms of money. There is no dispute that the deceased Ramasamy died in the accident. Instead of awarding compensation, the Tribunal had rejected the claim petition, without considering relevant materials and evidence. The counsel appearing for the Insurance Company also not disputed regarding the accident and also the death of the deceased Ramasamy in the taxi accident. The Tribunal ought to have awarded a just and reasonable compensation considering the documents and also the fact that the deceased is a sole bread winner of the family. Hence it will be fair and reasonable a suitable compensation ought to have been awarded in this case. There is no dispute that the deceased was earning Rs. 1,000/- per month and hence his annual income can be determined at Rs. 12,000/-. After deducting 1/3rd towards personal expenses and adopting an appropriate multiplier of 13, the contribution to the family of the deceased would be Rs. 8,000 x 13 = Rs. 1,04,000/-. It would also be appropriate to award Rs. 14,000/- towards conventional damages and Rs. 2,000/- towards funeral expenses. Hence the total compensation comes to Rs. 1,20,000/-.

6. However, the counsel for the respondent Insurance Company submitted that earlier injury if any would definitely pinge on the multiplier to be adopted. Further it was stated that in the present case, the deceased fell into the well and sustained injury all over the body. Later, he was taken to the hospital and when the deceased was transporting in the taxi he met with the accident and died. Hence the injuries already sustained by him when he fell into the well also should be taken into consideration in fixing the compensation. Hence he submitted that there is a contributory negligence on the part of the deceased and the same can be

quantified at 50%. The counsel also relied on this Court judgment in the case of M. Muthu Krishna v. R. Brindha and Ors. 1982 A.C.J. (Supp.) 428 to support his contention.

7. It is also not in dispute that the deceased sustained injuries by falling into the well and subsequently he was taken to the hospital by the taxi and his way to the hospital, he met with an accident. Hence taking into consideration of this fact, there is a contributory negligence on the part of the deceased to the extent of 50%. If 50% amount towards contributory negligence is taken into consideration, it works out to Rs. 60,000/- and if the same is deducted from the total compensation of Rs. 1,20,000/-, the claimants are entitled to Rs. 60,000/- as compensation, which is fair and reasonable. The counsel appearing on both the sides have agreed for the same.

8. Under the circumstances, the claimants are entitled to a compensation of Rs. 60,000/- which will carry an interest of 7.5% from the date of petition. The Insurance Company is directed to deposit Rs. 60,000/- with an interest of 7.5% from the date of petition, within six weeks from the date of receipt of a copy of this order. After the amount is deposited by the Insurance Company, the claimants are permitted to withdraw the same.

9. The Civil Miscellaneous Appeal is partly allowed. No costs.

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