

The Managing Director Vs. Shanthadevi

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Court : Chennai

Decided On : Oct-29-2011

Judge : T.Mathivanan, J.

Acts : Motor Vehicles Act - Section 164-A

Appeal No. : C.M.A.(MD)No.1641 of 2010 and M.P.(MD)No.3 of 2010

Appellant : The Managing Director

Respondent : Shanthadevi

Judgement :

1. Challenge is made in this Civil Miscellaneous Appeal to the award, dated 05.12.2008 and made in MCOP No.308 of 2005 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), Madurai,

2.The appellant herein is the respondent in the claim petition. The respondents are the claimants. The claimants 1 to 5 have preferred the claim petition in MCOP No.308 of 2005 before the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), Madurai, claiming a sum of Rs.5,00,000/- for the death of the husband of the first respondent and the father of the remaining respondents/claimants, in a road traffic accident said to have been taken place on 12.11.2004 at 7.15 p.m., involving the passenger bus bearing registration No.TN-67-N-0188, when the deceased was riding his two-wheeler Bajaj-M.80 bearing registration No.TN-58-H-2567.

3.It appears from the averments of the claim petition that at the time of accident, the deceased Mr.P.Ganesan was aged about 58 years and was working as 'House Keeping Manager' in the Hotel Sulochana Palace (Pvt) Ltd., Madurai, and was earning a sum of Rs.15,000/- per month.

4.The appellant Transport Corporation has contested the claim on various grounds.

5.In order to establish their respective cases, both the appellant Transport Corporation and the respondents went for trial. Three witnesses, including the 1st and 5th claimants, were examined as PW1 to PW3 and during the course of their examination, Exs.P1 to P5 were marked. On the other hand, one Mr.Chithambaram, the driver of the bus was examined as RW1. No documentary evidence was adduced on behalf of the appellant/respondent.

6.On evaluating the evidences available on record, the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), Madurai, has award a sum of Rs.3,50,500/- directing the appellant Transport Corporation to pay the said amount to the respondents along with accrued interest at the rate of 7.5% from the date of petition till the date of realisation. Being aggrieved with the award passed by the learned tribunal, the appellant Transport Corporation has approached this Court by way of this appeal.

7.Today, when the appeal came up for hearing Mr.M.Prakesh, the learned counsel appearing for the appellant has submitted that there is no proof with regard to the age and income of the deceased Mr.Ganeshan and hence, the award of Rs.3,50,500/- passed by the learned tribunal is on the higher side and is liable to be set aside.

8.Countering his argument, Mr.C.Vakeeswaran, the learned counsel appearing for the respondents/claimants has contended that in order to substantiate the claim of monthly income of the deceased, PW3, Mr.Subramanian, working in the Hotel Sulochana Place, was examined on behalf of the claimants and in his evidence, he has stated that at the time of death, the deceased Mr.Ganesan was working as 'House Keeping Manager' and was getting a sum of Rs.6,000/- towards his

monthly salary. In support of his evidence, he has filed Ex.P5, Salary Certificate as well as Ex.P4 ratifying the fact that the deceased was working in the said Hotel.

9.It is seen from Ex.P5, it is revealed that the deceased Mr.Ganesan was getting a sum of Rs.6,000/- towards salary per month. However, while arriving at the quantum, the learned Motor Accident Claims Tribunal has determined the monthly income of the deceased at Rs.4,500/-. Accordingly, the learned Motor Accident Claims Tribunal has passed the award in the following manner:-

(i)The monthly income of the deceased has been determined as Rs.4,500/-

(ii)Since, the deceased was aged about 56, at the time of his death, as per Second Schedule to Section 164-A of the Motor Vehicles Act, the multiplier '8' was adopted. Accordingly, the loss of income of the family was determined at Rs.2,88,000/-

(iii)Towards consortium for the first respondent/1st claimant Rs.20,000/-

(iv)Towards the loss of love and affection for respondents 2 to 5 each Rs.10,000/- [In total Rs.40,000/-].

(v)Towards the funeral expenses Rs.2,000/-

(vi)Toward transportation Rs.500/-

In aggregate :Rs.3,50,500/-

10.In this connection, Mr.M.Prakash, the learned counsel for the petitioner would submit that the award passed by the learned tribunal under the head of consortium as well as under the head of loss of love and affection are seems to be on the higher side, and that the respondents 2 to 5 were not the dependency of the deceased and they were residing separately. Hence the question under the head of loss of love and affection, does not arise.

11.On the other hand, Mr.C.Vakeeswaran, the learned counsel appearing for the respondents would submit that though, the respondents 2 to 5 were given in marriage and residing separately, definitely they would have been suffered on

account of loss of love and affection due to the death of their father and hence, the award of compensation granted under the head of loss of love and affection need not be interfered with or reduced.

12.This court has carefully considered the submissions made on behalf of both sides and perused the materials available on record.

13.Keeping in view of the related facts and circumstance, and considering the submissions made on behalf of both sides, this court is of the considered view that with regard to loss of income of the deceased for a sum of Rs.2,88,000/-, this court does not want to interfere. Therefore, the compensation awarded by the learned tribunal under the head of loss of income of the family can be maintained. At the time of death of her husband, the first respondent was aged about 50, the learned tribunal has awarded a sum of Rs.20,000/- towards consortium. Considering the age of the first respondent, this court consider that a sum of Rs.10,000/- can be allowed under the head of loss of consortium. Under the head of loss of love and affection, the learned tribunal has award Rs.40,000/-, in respect of respondents 2 to 5. This court consider that the same amount can be maintained. Under the head of funeral expenses instead Rs.2,000/-, Rs.3,000/- can be awarded. Apart from this, instead of Rs.500/-, a sum of Rs.2,000/- can be allowed towards transportation. In total the respondents/claimants are entitled to Rs.3,43,000/-.

14.In the result, the Civil Miscellaneous Appeal is partly allowed and the award of Rs.3,50,500/- passed by the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), Madurai, dated 05.12.2008 and made in MCOP No.308 of 2008 has been reduced to Rs.3,43,000/-. The appellant Transport Corporation is directed to pay the said amount to the respondents with interest at the rate of 7.5% from the date of petition till the date of realisation. If any excess amount is available, the same shall be refunded to the appellant Transport Corporation.

15.Consequently, connected Miscellaneous Petition is closed. No costs.

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