Vellathai Vs. Tamil Nadu State State Express

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Court : Chennai

Decided On : Jun-20-2012

Judge : R.Banumathi; B.Rajendran, Jj.

Acts : Indian Penal Code(IPC) 1860 - Section 279, 337, 304-A8; Motor Vehicles Act, 1988 - Section 173, 168; Merchant Shipping (Continuous Discharge Certificate) Rules, 1993

Appeal No. : C.M.A.(MD) No.180 of 2004

Appellant : Vellathai

Respondent : Tamil Nadu State State Express

Advocate for Def. : Mr.R.Singaravelan, Adv

Advocate for Pet/Ap. : Ms.K.Mumtaj, Adv.

Judgement :

Prayer

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 11.3.2004 in M.C.O.P.No.642 of 2003 on the file of Motor Accident Claims Tribunal (First Additional Sub-Court, Tirunelveli).

JUDGMENT

R.BANUMATHI,J.

1. Being dissatisfied with the quantum of compensation awarded for the death of deceased Ganeshan alias Suresh in M.C.O.P.No.642 of 2003 on the file of Motor Accident Claims Tribunal (First Additional Sub-Court, Tirunelveli), parents of deceased filed this appeal seeking enhancement of compensation.

2. Brief facts are that deceased S.Ganeshan @ Suresh was a Marine Technology Degree holder and was employed in OMCI Marine Services Private Limited, Mumbai. On 7.6.2002, deceased was riding the 2nd respondent's TVS Suzuki motor cycle bearing Registration No. TN-72 H 6697 from Kallakurichi to Thuraiyur along with his cousin brother - Devendran as the pillion rider to give invitation to his relative at Thuraiyur for a function. When he was proceeding in Tirunelveli - Madurai main road, at about 3.45 p.m., north of Krishna Petrol bunk, Pandarakulam, following the traffic rules, the State Express Transport Corporation bus bearing Registration No. TN-01-N-6638 came from behind, driven in a rash and negligent manner by R.W.1 - S.Balasubramaniam and dashed against the motor cycle, as a result of which the deceased was caught into the rear wheel of the bus and sustained fatal injuries and died on the sport. Pillion rider - Devendran also sustained injuries and he was taken to Tirunelveli Medical College Hospital, Palayamkottai for treatment. A criminal case was registered against the driver of the bus in Crime No.165 of 2002 under Sections 279, 337 and 304-A IPC. Alleging that the accident was due to rash and negligent driving of the bus driver and that the family has lost the support of their bread winner, Claimants, who are parents of deceased, have filed Claim Petition [M.C.O.P.No.642 of 2003] claiming compensation of Rs.60,66,032/-.

3. The 1st Respondent - Corporation resisted the Claim Petition contending that the deceased himself had contributed for the accident and that the accident took place due to the rash and careless driving of the deceased. According to the 1st Respondent Corporation, on 7.6.2002, 1st Respondent bus was proceeding from Tirunevlei to Bangalore. At about 3.45 p.m., when the bus was plying near Krishna Petrol Bunk near Pandarakulam, R.W.1 - driver noticed that two persons were lying on the eastern side of the road with bleeding injuries and the motor cycle was

also lying on the road. The driver slowed down the vehicle and noted the situation and thereafter proceeded further. When the driver reached Gangaikondon Checkpost, the policeman stopped the vehicle stating that the bus had dashed against somebody and caused injuries to them and inquired whether the bus was involved in the accident and also inquired about the accident. According to the 1st Respondent Corporation, the bus driver was not responsible for the accident and therefore, 1st Respondent Corporation is not liable to pay compensation to the Claimants.

4. 2nd Respondent - Kasi, owner of TVS Suzuki motorcycle bearing registration No. TN-72 H 6697 filed counter contending that the accident was due to rash and negligent driving of the 1st Respondent Corporation bus driver and that the criminal case was registered only against the driver of 1st Respondent Corporation.

5. Insofar as pillion rider - S.Devendran, M.C.O.P.No.371 of 2003 has been filed. Before the Tribunal, both M.C.O.P.No.642 of 2003 filed by the appellants and M.C.O.P.No.371 of 203 filed by S.Devendran were tried jointly.

6. To substantiate their Claim, the 1st Claimant -Vellathai in M.C.O.P.No.642 of 2003 examined herself as P.W.1 and pillion rider - S.Devendran (Claimant in M.C.O.P.No.371 of 2003) - eye witness was examined as P.W.2. Dr.Povalingam, who examined and issued disability certificate was examined as P.W.3. Exs.P.1 to P.12 were marked. On the side of Respondents, driver of the bus [S.Balasubramanian], who was on duty was examined as R.W.1 and Ex.R.1 was marked.

7. Upon consideration of oral and documentary evidence and the evidence of P.W.2 - injured witness, Tribunal held that the Registration number of the bus has been clearly stated in Ex.P.1 - F.I.R. and that the defence denying the involvement of the bus is unsustainable. Pointing out that the charge sheet (Ex.P.5) was also filed against the bus driver of 1st Respondent Corporation, the Tribunal held that the accident was due to rash and negligent driving of the 1st respondent's driver and not due to any negligence on the part of the deceased, who drove the motor cycle. Tribunal has awarded total compensation of Rs.3,51,260/- as under:-

Compensation for death of : Rs. 2,76,760/-

the deceased

Funeral expenses : Rs. 2,000/-

Loss of love and affection : Rs. 20,000/- Rs.10,000/- each

Loss of better prospectus : Rs. 50,000/-

of Rs.25,000/- each.

Loss of estate : Rs. 2,500/-

Total : Rs.3,51,260/-

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8. It is not necessary to refer the manner of accident, as to who was responsible for the accident and fastening of liability upon the 1st Respondent Corporation. It is for the reason that the above aspects were recorded infavour of the the Appellants-Claimants. That apart in this Claimants' appeal, only the quantum of compensation awarded by the Tribunal is under challenge and Claimants seek for enhancement of compensation.

9. Deceased Ganeshan @ Suresh was holding a degree in Marine Technology. Ex.P8 is the Continuous Discharge Certificate issued to the deceased Ganeshan under Merchant Shipping (Continuous Discharge Certificate) Rules, 1993. In her evidence, P.W.1 - Vellathai stated that her son Ganeshan was employed in OMCI Marine Services Private Limited, Mumbai and that deceased was getting salary of Rs.28,062.65 per month and that deceased was an income tax assessee. P.W.1 further stated that her deceased son used to give his entire salary to the house.

10. Based upon Ex.P.7 - salary certificate, the Tribunal has taken the monthly income of the deceased at Rs.3,145/-. Deducting 1/3rd for personal expenses, Tribunal has taken the annual income at Rs.25,160/-. Adopting multiplier 11,

Tribunal has calculated the loss of dependency at Rs.2,76,760/-. By perusal of Ex.P.7 - salary certificate, it is seen that what the Tribunal has taken is his wages of Rs.3,145/-. By perusal of Ex.P.7 - salary certificate, it is seen that apart from basic wages, deceased was also getting leave wages, supplement and other allowances. When the deceased was getting substantial amount of wages as well as allowances, Tribunal was not right in taking the income of the deceased at Rs.3,145/- per month. Court cannot lose sight of various allowances/perks paid to the Sea man. Since deceased was a Sea man, he had better future prospects. The Tribunal did not keep in view either the wages drawn by the deceased nor kept in view that he was a sea man, who had better future prospects. The compensation awarded by the Tribunal is very low.

11. Section 168 of the Act uses the word 'just compensation', which should be ascertained in determining the income. It is fairly well settled that the compensation awarded by the Tribunals must be just compensation to mitigate hardship that has been caused due to death of bread winner of the family, legal representatives are entitled to receive just compensation.

12. Claimants have produced Ex.P7 - salary certificate issued by OMCI Marine Services Private Limited, Mumbai to prove the wages paid to the deceased S.Ganeshan. In Ex.P7 - salary certificate, the wages of the deceased is stated as follows:-

Basic Wages ... Rs.3,145.00

Leave Wages ... Rs. 84.00

Supplement ... Rs.1,200.00

Sen Supplement ... Rs. 125.00

Total ... Rs.4,554.00

It is further stated in Ex.P7 - salary certificate that deceased S.Ganeshan was paid the following allowances:-

Subs on Leave 115/- ... Rs. 84.00

OSA 50% ... Rs. 1,572.50

Bonus 15% ... Rs. 471.75

Tanker Allowance 15% ... Rs. 471.75

Exgratia Wages ... Rs. 7,000.00

Pension & Annuity ... Rs. 1,500.00

Total ... Rs.11,100.00

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13. Wages plus Allowances put together is calculated at Rs.15,654/- per month, rounded off to Rs.15,660/- per month. In Ex.P7 - salary certificate, it is stated that deceased was getting the annual income of Rs.2,52,563.87 which includes the Over Time Allowances of Rs.77,319/-. By perusal of Ex.P7 - salary certificate, it is seen that deceased S.Ganeshan joined in OMCI Marine Services Private Limited, Mumbai on 09.04.2001 and sign off on 04.02.2002. The date of accident was 07.06.2002. Neither the employer nor any representative of OMCI Marine Services Private Limited, Mumbai were examined to prove that deceased would have continued to be employed in the said Marine Services Private Limited and that he would have continued to draw the said wages. In the absence of examination of the employer or any representative of OMCI Marine Services Private Limited, Mumbai, the entire wages drawn under Ex.P7 cannot be taken as it is.

14. Deceased S.Ganeshan joined in OMCI Marine Services Private Limited, Mumbai on 09.04.2001 and signed off on 04.02.2002. However, as pointed out earlier, deceased was a seaman. Ex.P8 is the Continuous Discharge Certificate

issued under Merchant Shipping (Continuous Discharge Certificate) Rules, 1993. Since deceased S.Ganeshan was a qualified seaman and was aged 27 years at the time of accident, over the years deceased would have been profitably be employed. In Ex.P7 - salary certificate, deceased was getting wages plus allowances put together at Rs.15,660/- per month.

15. Deceased was employed as seaman and he was unmarried. While he was on duty, he has to spend for his food and take care of himself. Only after return from duty, deceased would have contributed the income to the family. Taking into consideration that deceased was unmarried and that he was a seaman who will be duty on the sea, 50% of the total income i.e. Rs.7,830/- [Rs.15,660 2 = Rs.7,830/-) is deducted towards personal expenses. Thus the monthly contribution to the family is calculated at Rs.7,830/-, rounded off to Rs.7,830/-.

16. Claimants who are parents of the deceased were aged 50 and 56 years respectively. At the time of accident, the deceased S.Ganeshan was aged 27 years. In (2008) 2 SCC 667 [Ramesh Singh and another v. Satbir Singh and another] and other decisions, the Supreme Court held that choice of multiplier would

depend upon the age of the deceased or age of the Claimant which ever is higher. As pointed out earlier, the Claimants are parents of the deceased. Taking the age of both father and mother, the proper multiplier to be adopted is 11, which the Tribunal has rightly adopted and the same is maintained. Taking the monthly income of the deceased at Rs.7,830/- and adopting multiplier 11, the loss of dependency is calculated at Rs.10,33,560/- (Rs.7,830 x 12 x 11 = Rs.10,33,560/-).

17. Claimants who are aged 50 and 56 years respectively have lost their son at his prime youth. Claimants would have reaped the benefits of their labour and have also lost the love and affection of their deceased son. Tribunal has awarded Rs.20,000/- for loss of love and affection and the same is maintained. Tribunal has awarded Rs.2000/- for funeral expenses and Rs.2500/- for loss of estate. Modifying the same, a sum of Rs.5000/- is awarded towards funeral expenses. Tribunal has also awarded Rs.50,000/- (Rs.25,0000/- each) for loss of better prospectus. Since we have calculated the wages on the basis of Ex.P7 - salary

certificate issued by the employer and enhanced the compensation, it is not necessary to award separate compensation under the head loss of better prospectus and

compensation of Rs.50,000/- awarded by the Tribunal under the head loss of better prospectus is deleted.

18. In modification, the compensation of Rs.3,51,260/- awarded by the Tribunal is enhanced to Rs.10,58,560/- as under:-

Loss of dependency ... Rs.10,33,560.00

(Rs.7,850 x 12 x 11)

Loss of love and affection ... Rs. 20,000.00

Funeral expenses ... Rs. 5,000.00

Total ... Rs.10,58,560.00

The Tribunal has ordered that the compensation amount is payable with interest at 9% per annum and the rate of interest awarded by the Tribunal is on the higher side. As held by the Supreme Court in S.Rajapriya's case [(2005) 6 SCC 236], the rate of interest is reduced to 7.5% per annum from the date of filing of the Claim Petition. The compensation of Rs.10,58,560/- is ordered to be apportioned amongst the Claimants equally.

19. In the result, the compensation of Rs.3,51,260/- awarded by the Tribunal in MCOP.No.642 of 2003 dated 11.03.2004 on the file of I Additional Subordinate Judge, Tirunelveli is enhanced to Rs.10,58,560/- payable with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of realisation and the appeal is partly allowed. It was stated before us that 1st Respondent Corporation has not deposited the compensation awarded by the

Tribunal along with accrued interest. Therefore, the 1st Respondent Corporation is directed to deposit the entire compensation amount as awarded in this judgment along with accrued interest to the the credit of M.C.O.P.No.642 of 2003 within a period of twelve weeks from the date of receipt of copy of this Judgment. On such deposit, Claimants are permitted to withdraw the entire compensation amount along with accrued interest. There is no order as to costs in this appeal.