

Sellappan and Another Vs. Hari and Another

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Court : Chennai

Decided On : Aug-07-2012

Judge : THE HONOURABLE MRS. JUSTICE ARUNA JAGADEESAN

Appeal No. : CMA.Nos.2447 & 2909 of 2005

Appellant : Sellappan and Another

Respondent : Hari and Another

Advocate for Pet/Ap. : For the Appellants: S. Gangaram Prasad, Advocate. For the Respondents: R2, K.S. Narasimhan, Advocate.

Judgement :

(Prayer: These Civil Miscellaneous Appeals are filed against the Judgment and Decree dated 30.8.1995 made in MCOP.Nos.27 and 28/1990 by the learned Additional Sub Judge (MACT) Chengalput.)

1. These Civil Miscellaneous Appeals are filed against the Judgment and Decree dated 30.8.1995 made in MCOP.Nos.27 and 28/1990 by the learned Additional Sub Judge (MACT) Chengalput.

2. The facts in brief are that the deceased in both the claim petitions viz. Devanandan and Purushothaman are brothers and sons of the claimants/appellants. On 4.10.1988 at 6. a.m. when the deceased were proceeding in a motorcycle from Madras to M.Pudupakkam, the car belonging to the 1st Respondent came in the opposite direction and dashed against the motorcycle, as a result of which, both the deceased brothers sustained fatal injuries. The claimant, who are the parents of the deceased brothers, claimed compensation of Rs.5 lakhs for the death of the deceased in MCOP.No.27/1990 and Rs.1,50,000/- for the death of the deceased in MCOP.No.28/1990.

3. The 2nd Respondent Insurance Company contested the claim contending that there was no negligence on the part of the car driver and the compensation claimed by the claimants are excessive.

4. On consideration of the pleadings and evidence, the Tribunal concluded that the accident had occurred only due to the rash and negligent driving of the driver of the Car.

5. With regard to the quantum of compensation, the deceased in MCOP.No.27/1990 was a practising Advocate and he was aged about 35 years old at the time of the accident. The Tribunal determined the monthly contribution to the family by the deceased Advocate at Rs.500/- and applying the multiplier of 10, awarded a compensation of Rs.60,000/- towards the loss of future earnings. To this, the Tribunal added Rs.5000/- for the loss of love and affection and Rs.5000/- for pain and suffering and in all, a sum of Rs.70,000/- as total compensation was awarded to the claimants for the death of the deceased in MCOP.No.27/1990.

5. The deceased in MCOP.No.28/1990 was working as Manager in Mosaic Company and he was aged about 27 years old at the time of the accident. The Tribunal determined the monthly contribution to the family by the

deceased Manager at Rs.300/- and applying the multiplier of 10, awarded a compensation of Rs.36,000/- towards the loss of future earnings. To this, the Tribunal added Rs.5000/- for the loss of love and affection and Rs.5000/- for pain and suffering and in all, a sum of Rs.46,000/- as total compensation was awarded to the claimants for the death of the deceased in MCOP.No.28/1990. As against the same, these Civil Miscellaneous Appeals have been filed by the parents of the deceased for enhancement of compensation.

6. This court heard the learned counsel on either side and also perused the records.

7. It is not in dispute that the deceased Advocate was enrolled as an Advocate, after Graduation in Law and he was stated to be practising in different courts. The father of deceased has stated on oath that his son was enrolled as an Advocate on 9.11.1987. According to him, he was earning Rs.5000/- per month and contributed the same to his family. While it is admitted by him that he did not file any document to show the quantum of earnings, but the cross examination by the Respondent herein did not suggest that the quantum of income claimed is incorrect or false. The Tribunal did not assess the income of the deceased Advocate, but however, fixed the contribution to the family at Rs.500/- p.m., which is on the lower side.

8. It is no doubt true that the deceased Advocate was having only 1 years of experience as practising Advocate at the time of the accident and he was at the initial stage of his career. But, when there is evidence on oath by PW.1 before the Tribunal, especially when PW.1 was neither questioned in the cross examination nor contradicted by any evidence of the Respondent, the same should have been taken as the basis for assessing the compensation. That apart, an Advocate practising could have been reasonably assumed to have earned a decent income from his practice.

9. At this juncture, it is relevant to refer to the decision of the Honourable Supreme Court reported in 2012-ACJ-1428 (Santosh Devi Vs. National Insurance Co. Limited and others) wherein it is held that a person who is self employed or is engaged on fixed wages will also get increase in total income over a period of time and it held that some amount has to be added for future prospects. The Honourable Supreme Court has held that the formula for increase of income for future prospects adopted for persons in permanent jobs in Sarla Verma Vs. DTC (2009-ACJ-1298-SC) may also be applied to persons who are self employed or engaged on fixed wages.

10. Considering the future prospects of the deceased Advocate, it is appropriate and just to assess his monthly income at Rs.3000/- p.m. and after deducting, 1/3rd towards his personal expenses, contribution to the family at Rs.2000/- per month. The age of the mother of the deceased is stated to be 40 years old in the claim petition, which factually cannot be correct, as the age of the deceased was 35 years old at the time of the accident. Taking the same into account, the Tribunal fixed the age of the mother as 50 years which shall be maintained. Considering the age of the mother of the deceased, the proper multiplier would be 13. Thus, the total loss of dependency would come to Rs.3,12,000/- (Rs.2000x12x13). Further, a sum of Rs.10,000/- for loss of love and affection and Rs.5000/- for funeral expenses are awarded. In all, a sum of Rs.3,27,000/- as total compensation with interest at 7.5 per cent p.a. for the enhanced amount from the date of the claim petition till the date of realization is awarded to the claimants for the death of the deceased in MCOP.No.27/1990.

11. As regards the quantum of compensation in respect of the deceased in MCOP.No.28/1990, as per Ex.A13, the deceased Manager was 20 years old at the time of the accident. According to the claimants, he was working as a Manager in a Private Mosaic Company and his father PW.1 has stated on oath that his monthly income was Rs.1500/-. When there is evidence on oath before the Tribunal, which is not contradicted by the Respondent, the same should be taken as basis for assessing the compensation. In the year 1995, the notional income was fixed at Rs.1500/- and therefore, the monthly income of the deceased could be taken as Rs.1500/- p.m. After deducting 1/3rd towards his personal expenses, the annual dependency would come to Rs.12,000/-. As his mother was 50 years old at the time of the accident, the proper multiplier would be 13. Thus, the total loss of dependency would come to Rs.1,56,000/-. Further, a sum of Rs.10,000/- for the loss of

love and affection and Rs.5000/- for funeral expenses are awarded. In all, a sum of Rs.1,71,000/- as total compensation with interest at 7.5 per cent p.a. for the enhanced amount from the date of the claim petition till the date of realization is awarded to the claimants for the death of the deceased in MCOP.No.28/1990.

12. In the result, these Civil Miscellaneous Appeal are allowed . The impugned award in both the appeals is enhanced from Rs.70,000/- to Rs.3,27,000/- and from Rs.46,000/- to Rs.1,71,000/- respectively as mentioned above. In all, the claimants are entitled to a total compensation of Rs.3,27,000/- (Rupees three lakhs twenty seven thousand only) in MCOP.No.27/1990 with interest 7.5 per cent p.a. for the enhanced amount from the date of the claim petition till the date of realization and Rs.1,71,000/- (Rupees one lakh and seventy one thousand only) in MCOP.No.28/1990 with interest 7.5 per cent p.a. for the enhanced amount from the date of the claim petition till the date of realization. The 2nd Respondent/Insurance Company is directed deposit the enhanced award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. It is stated that the 1st claimant died and a copy of the death certificate is also filed to that effect. On the deposit being made, the 2nd claimant is permitted to withdraw the entire award amount with interest in both the claim petitions. No costs.

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