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Salini and Others Vs. Meiyarasu and Others

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Court : Chennai

Decided On : Oct-04-2012

Reported in : 2012(2)TNMAC838

Judge : The Honourable Mrs. Justice R. Banumathi & R. Subbiah

Appeal No. : Civil Miscellaneous Appeal No. 1926 of 2010

Appellant : Salini and Others

Respondent : Meiyarasu and Others

Advocate for Pet/Ap. : For the Appellants: P. Solomon Francis, Advocate. For the Respondents: R3, K.S. Narasimhan, Advocate.

Judgement :

(Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Order made in M.C.O.P. No.209 of 2007 dated 03.09.2009 on the file of Motor Accident Claims Tribunal (Fast Track Court No.V), Coimbatore.)

R. Banumathi, J.

1. Being dissatisfied with the quantum of compensation of Rs.6,59,000/- for the death of Aravind in a road traffic accident on 17.7.2005, Claimants have preferred this appeal for enhancement.

2. Brief facts are that on 17.7.2005 at about 7.30 A.M., deceased Aravind was riding the motor cycle bearing registration No.TN-37 AC 6498 on Karumatham patti-Kaniyur National Highways 47 road along with his friend Febin Philp. When they were proceeding on the extreme left side of the road, the lorry bearing registration No.TN-28 W 4647 driven by its driver in a rash and negligent manner in the opposite direction and dashed against the motor cycle. Due to the impact, Aravind and his friend Febin Philp sustained grievous injuries and died on the spot. At the time of accident, deceased Aravind was aged 19 years and was studying II Year B.E. Mechanical Engineering at Park College of Engineering and Technology, Coimbatore. Aravind also working as a part time worker in M/s.Udaya Polymers and was earning Rs.10,000/- per month. Regarding the accident, a Criminal Case was registered against the lorry driver in Crime No.360 of 2005 under Sections 279 and 304(A) I.P.C. of Karumatam Patti Police Station. Alleging that the accident was due to rash and negligent driving of the lorry driver, the Claimants who are parents and sister of deceased Aravind have filed the Claim Petition claiming compensation of Rs.60,00,000/-.

3. Resisting the Claim Petition, 3rd Respondent-Insurance Company has filed the counter contending that the accident occurred only due to the reckless act of the deceased and that the deceased is guilty of contributory and composite negligence. 3rd Respondent-Insurance Company contended that the quantum of compensation claimed by the Claimants is highly excessive and without any basis. 3rd Respondent-Insurance Company also denied the occupation and income, monthly contribution to the family and age of the deceased and contended that the quantum of compensation of Rs.60,00,000/- claimed by the Claimants is on the higher side.

4. Before the Tribunal, 1st Claimant-Salini examined herself as P.W.1. Eye-witness (Ponnusamy) was examined as P.W.2. Manager of M/s.Udaya Polymers viz., Babu was examined as P.W.3. Exs.A1 to A11 were marked on the side of Claimants. On the side of Insurance Company, no oral and documentary evidence was adduced.

5. Upon consideration of evidence of P.W.2-eye witness and referring to Ex.P1-FIR registered against the lorry driver, Tribunal held that the accident was due to rash and negligent driving of the lorry driver and that 3rd Respondent-Insurance Company is liable to pay compensation to the Claimants.

Insofar as quantum of compensation, taking the monthly income of deceased at Rs.6000/- per month and deducting one-third for personal expenses, Tribunal has calculated the loss of contribution to the family at Rs.4000/- per month i.e. Rs.48,000/- per annum. Taking the age of the mother and adopting multiplier '13", Tribunal has calculated the loss of dependency at Rs.6,24,000/-. Adding conventional damages, Tribunal has awarded total compensation of Rs.6,59,000/- as under:-

Loss of dependency (Rs.4,500 x 12 x 13)	Rs. 6,24,000.00
Loss of love and affection	Rs. 30,000.00
Funeral expenses	Rs. 5,000.00
Total	Rs. 6,59,000.00

6. It is not necessary for us to narrate entire facts in detail as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these aspects are recorded infavour of Claimants. The present appeal is filed by the Claimants for enhancement.

7. Learned counsel for Claimants contended that Tribunal failed to consider that at the time of accident deceased was studying II Year B.E. in Mechanical Engineering and was successful in completing the I Year and had very good testimonies to his educational credit. It was contended that it is always expected from the legal heirs of the deceased that after completion of the educational qualification, the deceased would naturally support his family, after put up in a good employment. Learned counsel for Claimants submitted that inspite of the evidence produced that deceased was earning Rs.10,000/- per month by doing part time work in M/.Udaya Polymers, Tribunal erred in taking the monthly income of deceased only at Rs.6000/- per month and urged us to take the monthly income

of deceased at Rs.10,000/- per month and thus prayed for enhancement of compensation.

8. Per contra, learned counsel for 3rd Respondent-Insurance Company contended that Tribunal has rightly taken the monthly income and that the total compensation awarded by the Tribunal is reasonable warranting interference.

9. In her evidence, P.W.1 stated that at the time of accident her son Aravind was doing his II Year student of Engineering Aeronautics in Park College of Engineering and Technology in Coimbatore. The I Year Mark Sheet of Aravind was marked as Ex.A10. P.W.1 also stated that her son was employed as Autocard Part Time operator in M/s.Udaya Polymers, Thekkupalayam, Coimbatore and was earning Rs.10,000/- per month and due to the death of her son, the family is suffering lot. The Manager of M/s.Udaya Polymers was examined as P.W.3. In his evidence, P.W.3 stated that Aravind was employed in their concern as Autocard Partime Operator and his last drawn salary was Rs.10,000/- per month. Ex.A9 is the salary certificate issued by Udaya Polymers.

10. Tribunal held that deceased was not doing Engineering Course in Electronics or Computer Science or Mechanical Engineering and that there is no proof to show that deceased had proficiency in Auto Cad and that by doing Auto Cad work, deceased would not have earned Rs.10,000/- per month as part time worker. In his evidence, P.W.3 has clearly stated that deceased was working in M/s.Udayam Polymers as part time operator and that he used to come daily for work and was working from 6.00 P.M. to 8.00 P.M. P.W.3 further stated that Aravind also used to come on Saturday, Sunday and other holidays for doing Auto Cad work. To disprove the evidence of P.W.3 and also Ex.A9-salary certificate, 3rd Respondent-Insurance Company has not adduced any evidence. When P.W.3 had categorically spoken about the part time work done by the deceased Aravind and that he was earning Rs.10,000/- per month, the Tribunal was not right in not accepting the evidence of P.W.3 and also Ex.A9-salary certificate. Further more, Tribunal was under the mistaken impression that deceased was not doing Engineering Course in Electronics or Computer Science or Mechanical Engineering to do the Auto Cad work. When the evidence of P.W.3 categorically

states that Aravind was doing Auto Cad work in M/s.Udaya Polymers and that his last drawn salary was Rs.10,000/- per month, the Tribunal erred in fixing the monthly income of the deceased Aravind as Rs.6000/- per month.

11. In 2009 (1) TN MAC 373 (National Insurance Company Limited v. T.A.Nicholas and two others), the Division Bench of this Court affirmed the notional income of an Engineering Student, aged 22 years at Rs.10,000/- per month fixed by the Tribunal. As pointed out earlier, at the time of accident Aravind was doing II Year B.E. Engineering Course. Had he been alive, after completing his Engineering Course, certainly deceased would have got better job both in India or elsewhere. Considering the evidence of P.W.3 and also Ex.A9-salary certificate, the notional income of the deceased is fixed at Rs.10,000/- per month. Deducting one-third for personal expenses i.e. Rs.3333/-, the loss of contribution to the family is calculated at Rs.6667/-, rounded of to Rs.6750/- per month and the annual contribution is Rs.81,000/- .

12. At the time of accident, deceased was aged 19 years and was a bachelor. As per the decision in 2008 AIR SCW 1238 [Ramesh Singh and another v. Satbir Singh and another], the choice of multiplier would depend upon the age of the deceased or of the Claimant whichever is higher. First Claimant-mother is aged 48 years. As per II Schedule to M.V. Act, for the age group 45-50 years, the proper multiplier to be adopted is "13" which the Tribunal has rightly adopted. Taking the annual contribution to the family at Rs.81,000/- and adopting multiplier '13", the loss of dependency is calculated at Rs.10,53,000/- (Rs.81,000 x 13 = Rs.10,53,000/-).

13. Insofar as conventional damages, Tribunal awarded Rs.10,000/- each to Claimants 1 to 3 for loss of love and affection and Rs.5000/- for funeral expenses and the same are maintained. Thus the total compensation of Rs.6,59,000/- awarded by the Tribunal is enhanced to Rs.11,00,000/- as under:-

Loss of dependency	Rs.10,53,000.00
Loss of love and affection	Rs. 30,000.00

Funeral expenses	Rs. 5,000.00
Total	Rs.10,88,000.00
Rounded off to	Rs.11,00,000.00

Tribunal has awarded interest at the rate of 7.5% per annum and the same is maintained. The enhanced compensation is to be apportioned amongst the Claimants on pro rata basis as ordered by the Tribunal.

14. In the result, the compensation of Rs.6,59,000/- awarded by the Tribunal in M.C.O.P.No.209 of 2007 dated 03.09.2009 is enhanced to Rs.11,00,000/- and the appeal is partly allowed.

It was stated before us that the 3rd Respondent-Insurance Company has deposited the compensation awarded by the Tribunal with interest and the Claimants are said to have withdrawn their respective share of compensation as apportioned. 3rd Respondent-Insurance Company is directed to deposit the enhanced compensation of Rs.4,41,000/- with interest at the rate of 7.5% per annum within a period of eight weeks from the date of Claim Petition till the date of deposit. On such deposit, the Claimants are entitled to withdraw their respective share of compensation with proportionate interest as apportioned by the Tribunal.

There is no order as to costs.

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