

R. Venkatesan and Another Vs. T. Baskar and Another

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Court : Chennai

Decided On : Oct-15-2012

Reported in : 2012(2)TNMAC814

Judge : C.T. Selvam

Appeal No. : C.M.A. Nos. 1998 & 2774 of 2012 & M.P. No. 1 of 2012

Appellant : R. Venkatesan and Another

Respondent : T. Baskar and Another

Advocate for Pet/Ap. : For the Appellants: F. Terry Chellaraja, Advocate. For the Respondents: J. Chandran, Advocate.

Judgement :

(Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 25.11.2011 made in M.A.C.T.O.P. No.2507 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judge of Small Causes Court), Chennai.

1. These Civil Miscellaneous Appeals arise against the judgment of Motor Accident Claims Tribunal, Chief Judge of Small Causes Court, Chennai, passed in M.A.C.T.O.P. No.2507 of 2008 on 25.11.2011.

2. The Appellants in C.M.A. No.1998 of 2012 and Respondents 1 and in C.M.A. No.2774 of 2012 are the legal heirs of the deceased. The First Respondent in C.M.A.No.1998 of 2012 and the Third Respondent in C.M.A.No.2774 of 2012 is owner of the offending vehicle and the Second Respondent in C.M.A.No.1998 of 2012 and the Appellant in C.M.A.No. 2774 of 2012 is the Insurer thereof.

3. At about 17.45 hours, on 01.06.2008, while the deceased was riding his Motorcycle, a Van bearing registration No.TN-21-E-3966 dashed against him due to which he sustained grievous injuries and despite treatment, died claimants claimed compensation in a sum of Rs.6,00,000/-.

4. Before the Tribunal, on behalf of the Claimants, three witnesses were examined and six Exhibits were marked. None were examined on behalf of the Insurance Company nor were any Exhibits marked.

5. On appreciation of materials before it, the Tribunal awarded compensation as follows:

(a) Loss of Dependency : Rs.4,20,000/-

(b) Medical Bills : Rs.23,000/-

(c) Loss of Love & Affection : Rs.10,000/-

(d) Funeral & Transport Expenses : Rs.10,000/-

Rs.4,63,000/-

The said sum of Rs.4,63,000/- was directed to be paid together with interest at 7.5% per annum from the date of Petition till the date of deposit.

6. Learned Counsel for the Insurance Company submits that the Tribunal has taken Rs.5,000/- as the monthly earning of the deceased in the absence of any proof.

7. Learned Counsel for the Claimants submits that the Tribunal ought to have accepted the evidence of PW-3, who informed of the deceased earning

Rs.15,000/- per month. Learned Counsel further submits that no provision stands made towards Future Prospects of the deceased, who was aged only 22 years at the time of accident and that the multiplier applicable ought to have been arrived at by taking into consideration only the age of the deceased and if so done, the proper multiplier would be '18'.

8. On consideration of rival submissions, this Court finds that the Tribunal is right in rejecting the evidence of PW3 since as against the Claimants' case of the deceased having been a building contractor the evidence of PW3 is to the effect that the deceased was earning a wage under him and there is much discrepancy between his evidence in chief and in cross-examination. This Court considers it appropriate to accept Rs.4,500/- per month as the earning of the deceased as also to provide 30% thereof towards his Future Prospects in keeping with the decision of the Apex Court in Santosh Devi v. National Insurance Co. Ltd. And others, 2012 (2) TN MAC 1 (SC): 2012 ACJ 1428. The decision of the Apex Court in Amrit Bhanu Shali and others v. National Insurance Co. Ltd. And Others, 2012 (2) TN MAC 321 (SC): 2012 ACJ 2002, would require us to adopt the multiplier as would be applicable to the age of the deceased. Accordingly, the compensation payable under the head Loss of Dependency would be Rs.6,31,800/- [Rs.4,500+30% (-) x 12 x 18]. This Court finds justified the award under the other heads.

9. In the result, -

(a) C.M.A.No.1998 of 2012 is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.6,74,800/-.

(b) C.M.A.No.2774 of 2012 is dismissed. The Insurance Company is directed to deposit the enhanced award amount with interest less that already deposited within a period of six weeks from the date of receipt of a copy of this judgment. The Claimants are entitled to withdraw their respective shares to due Application.

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

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