BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.76 of 2014
and
C.M.P.(MD)No.3243 of 2023

1.N.R.Shanthi
2.N.R.Bharatkumar
3.N.R.Kishore Kumar
4.N.V.Natesan (died)
5.N.N.Sakunthala (died) ...Plaintiffs/Appellants

Vs.

1.Tamil Nadu Electricity Board,
Represented through its Chairman,
800-Anna Salai, Chennai.

2.Tamil Nadu Electricity Board,
Represented through its Superintending Engineer,
Madurai Electricity Distribution Circle,
Madurai-625 007. ...Defendants/Respondents

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the portion of the judgment and decree towards the quantum of compensation awarded in the decree and judgment dated 31.07.2008 made in O.S.No.19 of 2006 on the file of the Additional District Court (Fast Track Court No.1) Madurai and to grant the compensation of Rs.15,00,000/- (Fifteen Lakhs only) as prayed for by the Appellant/Plaintiffs in the suit.

For Appellants : Mr.R.Thangasamy
For Respondents : Mr.B.Ramanathan
Standing Counsel

JUDGMENT

This Appeal Suit had been filed not satisfying with the quantum of compensation awarded by the Additional District Court (Fast Track Court No.1) Madurai in O.S.No.19 of 2006, dated 31.07.2008.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Appeal Suit, are as follows:-

(i) The deceased is the husband of the first plaintiff and father of the second and third plaintiffs. The fourth and fifth plaintiffs are the parents of the deceased. The deceased was working as an Assistant Engineer under the first and second defendants. On 27.04.2000, when the deceased was working in Mulk Project 11 KV Breaker, it got fire. The deceased sustained grievous burn injuries. Immediately, he was rushed to the hospital and he succumbed to injuries. A case was also registered in Crime No.597 of 2000. The deceased was aged about 42 years. He was drawing a salary of Rs.1,77,660/- per year. Hence, the compensation of Rs.20 lakhs was claimed.

(ii)The second defendant had filed a written statement admitting that there was a fire accident in the 11 KV breaker. However, he took a stand that the deceased was not wearing any safety equipment. Therefore, he sustained burn injuries. He fairly submitted that the death benefits have been paid to the family. Besides, the compassionate appointment was also given to the first plaintiff, wife of the deceased.

4.Based on the oral and documentary evidence, the trial Court had framed the following issues:

1.Whether the plaintiffs are entitled to compensation of Rs.20 lakhs? ;

2.Whether the accident was due to the negligence on the part of the deceased?; and

3.To what other reliefs the plaintiffs are entitled?

5. Before the trial Court, on the side of the plaintiff P.W.1 was examined and Ex.A1 to A11 were marked. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.B1 was marked.

6.The trial Court on appreciation of the entire evidence adduced on either side had found that the deceased succumbed to injuries, while tried to off the breakers switch and there was serious maintenance problem in the said breaker and fixed the negligence on the part of the respondent. Thereafter, awarded the compensation of Rs.5 lakhs. The trial Court while fixing the compensation, had deducted the salary drawing by the first plaintiff, who was appointed on compassionate ground. Challenging the same, the present appeal had been filed.

7.The learned counsel for the appellants would submit that while fixing compensation, the trial Court ought not to have deducted the salary drawn by the wife of the deceased/first plaintiff, who was appointed under the compassionate ground. Hence, the method adopted by the trial Court is not proper.

8.The learned counsel for the respondents would submit that the accident was occurred only due to the negligence on the part of the deceased himself as he had not worn any safety measures. The trial Court had rightly adopted multiplier method and deducted the salary drawn by the first defendant. Hence, he opposes this appeal.

9.In the light of the above submissions, now the points arise for consideration in this appeal are as follows:

(i) Whether the trial Court is right in deducting the salary drawn by the first plaintiff, who was given compassionate appointment?; and

(ii) Whether the compensation awarded by the trial Court is proper?

10.As far as the negligence aspect is concerned the trial Court had recorded its finding after appreciating the evidence available on record that while the deceased made an attempt to switch off the breakers, he was thrown out as there was leakage of power in the switch and succumbed to injuries. When the main switch itself was provided for safety, and there was a leakage in the switch itself, the negligence can be easily fastened on the respondents. Hence, under the strict liability theory, the respondent cannot escape from the clutches of law. Be that as it may, the findings recorded against the respondents are also not challenged by way of cross appeal. Hence, the respondents now cannot say that the negligence is only on the part of the deceased.

11.As far as the compensation is concerned, it is not in dispute that the deceased was aged about 41 years and he was working as as Assistant Engineer and he was drawing monthly salary of Rs.14,805/-. This has been clearly established before the trial Court. The trial Court had deducted 1/2 of the salary towards his personal income, which is not in accordance with law. Further, the trial Court had deducted the salary drawn by the first plaintiff, who was given a compassionate appointment and awarded a compensation of Rs.5,00,000/-. The Hon'ble Supreme Court in the case of ***Vimal Kanwar and others vs. Kishore Dan and others*** [2013 (3) T.A.C.6 (S.C.)], had held as follows:

> *"The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction." "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary*

Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

12.Further, the Division Bench of this Court in the case of Managing Director, Tamil Nadu State Trans Corporation Ltd., vs. Chandirika and another [2015 ACJ 1000], had held as follows:

> *"As per the dictum laid down by the Hon'ble Apex Court, the monthly salary of the wife of the deceased which she is receiving from the compassionate appointment, has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. Further, we are of the opinion that the tortfeasor is not contributing anything for the compassionate appointment of the wife of the deceased. Therefore, the tortfeasor is not entitled for anybenefit in respect of the salary that the wife of the deceased receives from the compassionate appointment. Hence, there is no need to deduct the wages presently the wife of the deceased is receiving from the job, which she has got on compassionate grounds."*

In view of the above said dictum, the deduction of salary drawn by the first plaintiff made by the trial Court is not in accordance with law and hence, same is hereby set aside.

13.Pending this appeal, an application had been filed claiming interest on the compensation in the appeal stage. The learned counsel for the appellant would submit that the negligently claim of interest had been omitted. Accepting the reasons stated in the affidavit filed in support of the the application, the claim of interest is allowed and 6% interest is fixed. Accordingly, C.M.P.(MD)No.3243 of 2023 is allowed.

14.In view of the above, this Court is fixes the notional income of the deceased at Rs.14,805/- (Rupees Fourteen Thousand Eight Hundred and Five only) as established before the trial Court and if 1/3 is deducted from his salary towards his personal expenses, the income of the deceased would come around Rs.9,870/-. Hence, the income of the deceased is fixed at Rs.9,870/- (Rupees Nine Thousand Eight Seventy only). Considering the age of the deceased, multiplier 15 is adopted and the loss of income of the deceased is fixed at Rs.17,76,600/- (Rs.9870*12*15) (Rupees Seventeen Lakhs Seventy Six Thousand and Six Hundred only). Further, this Court grants a sum of Rs.1,00,000/- (Rupees One Lakh) towards loss of love and affection. In fine, the compensation is fixed at Rs. 18,76,600/- (Rupees Eighteen Lakhs Seventy Six Thousand Six Thousand only).

15. Accordingly the points are answered and the Appeal Suit is allowed with costs and the suit is decreed for the compensation as stated above.

16.The learned counsel for the respondents submitted that already the compensation of Rs.5,00,000/- awarded by the trial Court had been deposited. Hence, the respondents are directed to deposit the enhanced compensation amount of Rs.18,76,600/- (Rupees Eighteen Lakhs Seventy Six Thousand Six Thousand only), along with interest at the rate of 6% p.a. from the date of petition till the date of realization, less the amount already deposited, within a period of twos months from the date of receipt of a copy of this order. The claimants may approach the Tribunal for withdrawal of the said amount, by filing necessary application and if such an application is filed, the Tribunal shall pass orders thereon.

28.03.2023

NCC : Yes/NO
Index : Yes/No
Internet : Yes/No
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N.SATHISH KUMAR, J.

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To

1.The Additional District Court (Fast Track Court No.1) Madurai

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in

A.S.(MD)No.76 of 2014

28.03.2023