

(2008) 02 MAD CK 0237
In the Madras High Court
Case No : C.M.A. No. 2810 of 2002

A. Abdul Khadar and The Divisional Manager, New India
Assurance Co. Ltd.

APPELLANT

Vs

V. Sathiyavathi and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2008) 02 MAD CK 0237

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : C. Ramesh Babu, for the Appellant; N. Damodaran, for respondents 2 to 4 and 7, for the Respondent

Judgement

R. Banumathi, J.—Being aggrieved by the award of compensation of Rs. 6,50,000/- for the death of Vajravelu, insured and the insurer have preferred this appeal.

2. Brief facts which are necessary for disposal of this appeal are as follows:- Deceased Vajravelu was an agriculturist, said to be cultivating about 4 acres of wet lands. On 05.09.2000 at about 8.55 a.m., Vajravelu was going to Pondicherry in the bus Registration No. TMF 6495. The driver of the bus drove the bus in a rash and negligent manner and dashed against a tamarind tree at TV Malai Road, Sorapet near Priya Granite Co. Ltd., Thirukanoor, Pondicherry. Due to the accident, Vajravelu sustained fatal injuries and died on the spot. After his death, the family members are not able to cultivate the lands. Alleging that the accident was due to the rash and negligent driving of the bus driver, claimants have filed claim Petition u/s 166 M.V. Act, claiming compensation of Rs. 10,00,000/-.

3. The claim of the claimants was resisted by the Insurance Company by taking a stand that the bus was driven carefully and that the accident was not due to negligent driving of the bus driver and Insurance Company is not liable to pay

any compensation. Insurance Company also disputed the age and income of the deceased and loss of dependency of the claimants.

4. Before the Tribunal, first claimant examined herself as P.W.1. Village Administrative Officers were examined as P.W.s 2 and 3 and eye witness was examined as PW-4. Exs.A-1 to A-11 were marked. The respondents have neither examined any witness nor marked any document as exhibit. Upon consideration of oral and documentary evidence, Tribunal held that the evidence of PW-4 - eye witness remains unrebutted and held that the accident was due to rash driving of the bus driver and held that the insured and the Insurance Company are jointly and severally liable to pay the compensation. Based on the evidence of Village Administrative Officers and Ex.A-8, Tribunal had taken monthly income of deceased at Rs. 6,250/- and Rs. 75,000/- per annum. Deducting 1/3rd for personal expenses and applying multiplier 13, Tribunal calculated loss of dependency at Rs. 6,50,000/-.

5. It is not necessary to narrate the entire facts in detail and as to how the accident has occurred, who was negligent in driving the vehicle and who was liable to pay the compensation. It is for the reason that these findings are recorded in favour of the claimants and they are not under challenge. In this view of the matter, I do not wish to narrate factual aspects as to the manner of accident.

6. Challenging the quantum, the learned Counsel for the Appellant contended that the Tribunal erred in fixing the income of the deceased at Rs. 75,000/-. It was further submitted that there was no evidence as to the nature of lands, annual yield from the lands and while so, based on the evidence of PW-3 and Ex.A-7, Tribunal erred in taking annual income at Rs. 75,000/-. The learned Counsel for the Appellant further submitted that the deceased being an agriculturist, claimants have inherited the property i.e. the agricultural lands left by the deceased and the family of the deceased/claimants could very well cultivate the lands with the held of a Farm Supervisor and there is no loss of income to the Estate and therefore, the quantum of compensation has to be considerably reduced.

7. The learned Counsel for the respondents/claimants submitted that the deceased has four daughters and a son, and aged mother and having regard to the nature of avocation and age of the deceased, the Tribunal has rightly taken annual income at Rs. 75,000/- and the compensation awarded is just and reasonable and the same cannot be interfered with.

8. The deceased Vajravelu was aged 45 years at the time of his death. He is survived by first claimant/second wife, son and daughters - claimants 2 to 6 - children through first and second wife and aged mother. Admittedly, the deceased Vajravelu was an agriculturist. In her evidence, PW-1 has stated that the deceased had four acres of lands in Vadanur where the deceased was raising sugarcane crops and that he was earning income of more than Rs. 1,00,000/-

per annum. PW-3 - Village Administrative Officer had issued Ex.A-7 stating that the deceased had four acres of lands in Vadanur 1.60.5 H and that he was raising sugarcane and paddy and that the deceased was earning Rs. 1,00,000/- per annum. Deputy Tahsildar, Villiyanur had issued Ex.A-8 stating that the annual income of the deceased was Rs. 12,000/- during the year 2000-2001. Based on the evidence of P.W.s 1 and 3 and Ex.A-7, Tribunal had taken the monthly income at Rs. 6,250/- and calculated annual income at Rs. 75,000/- and awarded Rs. 6,50,000/- for loss of dependency.

9. I have carefully gone through the evidence and materials on record. It comes to be known from Ex.A-8 Certificate issued by the Tahsildar that income of deceased was only Rs. 12,000/- p.m., where as Ex.A-7 Certificate issued by the Village Administrative Officer would indicate that the annual income of the deceased was Rs. 1,00,000/-. In my considered view, the finding of the Tribunal fixing annual income at Rs. 75,000/- has no basis.

10. The deceased was said to be cultivating about four acres of lands, raising paddy and sugarcane. Of course, there is no loss of estate to the family members. The land possessed and cultivated by the deceased continue to remain with the family. While so, the loss of dependency calculated at Rs. 6,250/- p.m. and at Rs. 75,000/- p.a. appears to be on the higher side.

11. Observing that the normal rule about deprivation of income is not strictly computable to cases where agricultural income is the source, in State of Haryana and Another Vs. Jasbir Kaur and Others, , Supreme Court has held as under:

8. It is clear on a bare reading of the Tribunal's decision as affirmed by the High Court that no material was placed before the former to prove as to what was the income. As rightly contended by the learned Counsel for the Appellants, there was not even any material adduced to show type of land which the deceased possessed. The matter can be approached from a different angle. The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered.

12. The same principle was reiterated in New India Assurance Co. Ltd. Vs. Charlie and Another, wherein the Supreme Court has held as under:

19. Normal rule about the deprivation of income is directly not applicable to cases where agricultural income is the source of deceased's or injured's income. In that case other circumstances have to be considered.

13. The Courts and Tribunal have a duty to weigh various factors and quantify the amount of compensation which should be just. What would be just compensation would depend upon particular facts and circumstances of each case. Observing that the compensation is not expected to be a windfall for

quantum and the Courts have a duty to award just compensation, in *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, , the Supreme Court has held as under:

There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of just compensation which is the pivotal consideration. Though by use of the expression, "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression, "just" denotes equitability, fairness and reasonableness and non-arbitrariness. If it is not so it cannot be just.

14. Notwithstanding the death of deceased, the agricultural land remains with the claimants. As such, there is no loss of income and the monthly income fixed by the Tribunal at Rs. 7,250/- is on the higher side. Deceased being aged 45 years, it would be appropriate to take his monthly income from agriculture at Rs. 4,500/-. He would have spent 1/3rd for his personal expenses i.e. Rs. 1,500/- and balance Rs. 3,000/-, he would have contributed to the family. Annual loss of dependency is Rs. 36,000/- [Rs. 3,000/- x 12].

15. The deceased was aged 45 years and the Tribunal has adopted multiplier 12. As held by the Supreme Court in *Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others*, , it would be appropriate to adopt multiplier 12. The total loss of dependency is calculated at Rs. 4,32,000/-.

16. The Tribunal has not awarded any amount for loss of love and affection to the son and daughters through first and second wives and also to the aged mother. For loss of love and affection to the claimants 2 to 6 and aged mother, a sum of Rs. 10,000/- each [totally Rs. 60,000/-] is awarded. For loss of consortium to the first claimant, a sum of Rs. 20,000/- is awarded and for funeral expenses, it would be appropriate to award Rs. 5,000/-.

17. Total compensation of Rs. 6,50,000/- is reduced to Rs. 5,17,000/- as under:

Compensation awarded for Amount in Rupees.	
Loss of dependency	4,32,000
(Rs. 3000 x 12 x 12)	
For loss of love and affection	50,000
to the claimants 2 to 6	
(Rs. 10,000/- each)	
For loss of love and affection	10,000
to the aged mother	
Loss of consortium	20,000
Funeral expenses	5,000
-----	5,17,000

The Tribunal has awarded interest at 9% and the same is maintained. The reduced compensation amount is to be apportioned amongst the claimants on pro rata basis.

18. In the result,

Compensation amount of Rs. 6,50,000/- awarded by the Motor Accident Claims Tribunal, (Principal District Judge), Pondicherry in M.C.O.P. No. 139/2001 is reduced to Rs. 5,17,000/- which is payable with interest at 9%;

Compensation amount payable along with accrued interest is to be apportioned amongst the claimants on pro rata basis;

Claimants [excepting minor claimants] are entitled to withdraw the entire compensation amount payable to them as per the order in this appeal;

The direction of the Tribunal insofar as deposit of minors and direction to withdraw the interest shall hold good.

The appeal is partly allowed. No costs.