

(2010) 03 MAD CK 0068
In the Madras High Court
Case No : C.M.A. No. 2513 of 2005

A. Vasudevan and The Oriental Insurance Co. Ltd.	APPELLANT
Vs	
Subbaia Gounder and Others	RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Citation : (2010) 03 MAD CK 0068

Hon'ble Judges : R. Banumathi, J;M. Venugopal, J

Bench : Division Bench

Advocate : R. Sivakumar, for the Appellant; R. Santhanam, for RR. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellants/ Respondents 1 and 2 have preferred the Civil Miscellaneous Appeal as against the award dated

30.11.2004 in M.C.O.P. No. 1031 of 1998 passed by the the Motor Accident Claims Tribunal-cum-Additional District Court (Fast Track

Court-V), Coimbatore at Tiruppur.

2. The Tribunal-cum-Additional District Judge (Fast Track Court-V), Coimbatore, while passing an award, has granted a total sum of Rs.

12,57,000/- as compensation together with interest at 9% per annum from the date of filing of the petition till the date of realisation and has

directed the Appellants to pay the aforesaid compensation amount jointly and severally and ordered that 5% of the compensation amount shall be

paid to each of Respondents Nos. 1 and 2/Claimants No. 1 and 2 and 45% of compensation amount shall be paid to each of Respondents No. 3

and 4/minor claimants by permitting the claimants to draw the interest once in

six months and further directed that the compensation amount awarded to the minor claimants shall be deposited in a nationalised Bank till they attain majority.

3. Being aggrieved against the award passed by the Claims Tribunal/Additional District Judge (Fast Track Court No. V), Coimbatore at Tiruppur,

the Appellants have preferred this civil miscellaneous appeal before this Court.

4. The learned Counsel for Appellants urges before this Court that the award passed by the Tribunal is contrary to law, weight of evidence and

probabilities of the case and further the Tribunal has committed an error in determining the monthly income of the deceased at Rs. 9,000/- per

month and deducted 1/3rd towards personal expenses and applied the multiplier of 17 and has awarded a sum of Rs. 12,24,000/- as loss of

pecuniary benefits.

5. It is the further contention of the Appellants that the Tribunal ought to have applied 12 as multiplier as per the judgment of the Supreme Court in

Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, and as a matter of fact, the Tribunal has failed to take into account of

the fact that the agricultural land stands in the name of the 1st Respondent/1st Claimant i.e., father of the deceased and therefore in reality, there is

no loss of income on agriculture.

6. Added further, a stand is taken on behalf of the Appellants that the Tribunal has committed an error in awarding a sum of Rs. 30,000/- towards

loss of love and affection without any basis and also not correct in granting a sum of Rs. 3,000/- towards funeral expenses without any basis and

therefore prays for allowing the civil miscellaneous appeal in furtherance of substantial cause of justice.

7. Before the Tribunal, on the side of the respondents 1 to 4/Claimants 1 to 4, P.Ws.1 to 3 were examined and Exs.A.1 to A.9 were marked. On

the side of Appellants/Respondents, no one was examined and no documents were marked.

8. The Tribunal on appreciation of oral and documentary evidence and also by taking note of Ex.P.1 - F.I.R. dated 1.7.1998, and also the

evidence of eye witness P.W.2 - Swaminathan to the effect that the lorry TAO 4799 was driven by its driver in a rash and negligent manner and in

a fast speed and came to an inevitable conclusion that the accident took place on

1.7.1998 at about 2.30 p.m only because of the rash and negligent act of the driver of the offending lorry - TAO 4799 viz., the 1st Appellant/1st Respondent and in this regard we are in total agreement with the view taken by the Tribunal and the point is answered accordingly.

9. Coming to the issue of the quantum of compensation to be awarded, it is pertinent for this Court to point out that respondents 1 to 4/ claimants

1 to 4 have claimed in their petition a sum of Rs. 24,00,000/- as compensation and the brake-up of the same is as follows:

a) Loss of earning from 1.7.1998 to : Rs. 24,00,000/-

1.7.2018 at the net rate of Rs.10,000/-

b) Transport to Hospital : Rs. 1,000/-

c) Damage to clothing and articles : Rs. 1,000/-

d) Funeral expenses : Rs. 25,000/-

e) loss of consortium : Rs. 25,000/-

f) Compensation for pain and

suffering : Rs. 25,000/-

Total : Rs. 24,77,000/-

restricted the claim to : Rs. 24,00,000/-

However, the Tribunal has awarded the total compensation of Rs. 12,57,000/- along with interest at 9% per annum to the respondents/Claimants

1 to 4, payable by the 2nd Appellant/Insurance Company.

10. The evidence of 1st Respondent/1st Claimant as P.W.1 before the Tribunal was to the effect that the deceased Marisamy - his son was doing

the Power Loom business and he was getting a sizeable income of Rs. 1,00,000/- as seen from Ex.P.9 - income certificate of the deceased dated

20.4.1999. As seen from Ex.P.7 - cultivation extract relating to fasli 1407, only P.W.1's (1st Respondent/1st Claimant) name was found and the

name of deceased Marisamy was not to be seen in that document. Therefore, it is candidly clear that the agricultural land belonged to 1st

Respondent/1st Claimant (P.W.1) and even after the death of the son Marisamy, the lands were still available with P.W.1. It is true that no proper

document was filed before the Tribunal to show that the deceased Marisamy was

receiving income of Rs. 10,000/- per month. Even though the lands are in the name of P.W.1/1st Claimant, in his evidence, P.W.1 has stated that the deceased Marisamy was rendering all assistance and doing cultivation also marketing the agricultural produce. Due to the untimely death of Marisamy, the Respondents/Claimants 1 to 4 had lost his expertise, assistance, supervision, labour and nuances of selling the agricultural produce (Business acumen) cultivated from 1st Respondent/P.W.1's land of 6 acres. Having regard to the evidence of P.W.1, the Tribunal justly and fairly has calculated the loss for managerial assistance rendered by the Deceased at Rs. 3,000/- per month, which in our view, is very reasonable and an equitable one too.

11. Further, the candid fact which remains, is that the deceased Marisamy was conducting Power Loom business and as could be seen from

Ex.P.6, electricity card, wherein, the electricity charges are paid and the Power Loom is of 7.5 H.P. Plus 200 watt capacity. Hence, one can safely

conclude that the deceased - Marisamy was doing Power Loom business. In Ex.P.9, the income of deceased Marisamy was said to be Rs.

1,00,000/- and Ex.P.9 income certificate was issued by P.W.3 - Deputy Tahsidlar. Before the Tribunal, the files pertaining to the issuance of

certificate of income - Ex.P.9 were not produced and marked as one of the documents on the side of Respondents 1 to 4/claimants. Though

Ex.P.9 Income certificate was produced before the Tribunal to show that deceased Marisamy had received an income of Rs. 1,00,000/-, it is to

be pointed out that it was not mentioned in the said document as to during which year the said income was received by the deceased. Therefore,

much importance could not be attached to that document. Equally, just because there was no document to prove the exact income of the deceased

Marisamy during his life time, one cannot come to an inescapable conclusion that the deceased Marisamy was not employed and he had no income

at all. Suffice for us to point out that the deceased Marisamy, son of 1st Respondent/Claimant, before his untimely death was doing the Power

Loom business as evidenced from documents - Exs.P.5 dated 1.7.1997 - acknowledgement received from the Textile Department and Ex.P.6 -

Electricity Board card, which unerringly point out that the deceased Marisamy was doing Power Loom business.

12. We are of the view that though no proper document was document to show that income of the deceased was Rs. 1,00,000/-, considering the fact that the deceased Marisamy was running Power Loom, the Tribunal rightly fixed his monthly income from Power Loom as Rs. 6,000/- and by adding his income from agriculture due to managerial assistance of deceased in a sum of Rs. 3,000/-, the total income of deceased was arrived by the Tribunal at Rs. 9,000/- per month and it works out to Rs. 1,08,000/- per year. Since Marisamy was aged about 35 at the time of his death, the proper multiplier to be adopted is 17 as per Second Schedule of Motor Vehicles Act and if we apply multiplier of 17, then it comes to Rs. 9,000 x 12 x 17 = Rs. 12,24,000/-, which represents the Loss of Income/Loss of Dependency. As such, respondents 1 to 4 are entitled to claim the sum of Rs. 12,24,000/- as Loss of Income/Loss of Dependency on account of death of deceased Marisamy. Respondents 1 and 2 are the parents of deceased Marisamy. Respondents 3 and 4 are minor children of the deceased Marisamy at the time of accident. Now respondents No. 3 and 4 had attained 24 years and 22 years of age respectively. They had become majors. Respondent 1 and 2/claimants 1 and 2 were awarded a sum of Rs. 10,000/- towards loss of love and affection by the Tribunal. Equally, Respondents 3 and 4/Claimants No. 3 and 4 (children of deceased Marisamy) are awarded compensation of Rs. 20,000/- towards loss of love and affection towards funeral expenses, a sum of Rs. 3,000/- was awarded by the Tribunal. Thus, in all, the Tribunal had awarded a total compensation of Rs. 12,57,000/- together with interest at 9% per annum from the date of filing of the petition till the date of realisation etc..

13. Viewed from any angle, based on the cumulative facts and circumstances of the case, we are of the considered view that the Tribunal was circumspect and was very much conservative in determining the total compensation of Rs. 12,57,000/- under various heads as referred to supra and it has also granted reasonable rate of interest at 9 percent per annum from the date of filing of the petition till the date of realisation, which we opine at this distance of time are not to be interfered with, since there is no material irregularity or patent illegality in the award passed by the Tribunal and therefore the civil miscellaneous appeal sans merits and consequently the same fails.

14. Earlier this Court in C.M.P. No. 13277 of 2005 on 19.8.2005 has granted an order of interim stay on condition that the appellants deposit 50

percent of the amount due under the award. It was stated that the said order was complied with. By order dated 27.2.2006 this Court permitted

respondents No. 1 to 4/Claimants to withdraw 25 percent of the award amount along with accrued interest and the balance amount was directed

to be deposited in any of the Nationalised Bank initially for a period of three years and thereafter to be renewed periodically under the re-

investment scheme. The appellants are directed to deposit the balance compensation amount within a period of eight weeks from the date of

receipt of copy of this judgement. On such deposit being made, respondents 1 to 4 are permitted to withdraw their respective shares of

compensation along with accrued interest by obtaining necessary orders from the Tribunal declaring respondent No. 4 as major.

15. In the result, the Civil Miscellaneous Appeal is dismissed with the above observation. Considering the facts and circumstances of the case,

there is no order as to costs.