
(1999) 08 MAD CK 0100
In the Madras High Court
Case No : C.M.A. No. 762 of 1997

B. Chellammal and Another	Vs	APPELLANT
J.C. Automobile and Another		RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b)

Citation : (2000) 1 ACC 398 : (2001) ACJ 1626

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : R. Malaichamy, for the Appellant; C.R. Krishnamoorthy and N. Sivasankaran, for the Respondent

Judgement

M. Karpagavinayagam, J.—The claimants, widow and daughter of the deceased, challenging the award of Rs. 48,000, as against the compensation of Rs. 4,00,000 claimed for the death of the deceased, due to negligent driving of the driver of the bus belonging to the respondent No. 1, insured with the respondent No. 2, have presented this appeal, seeking for the enhancement of the compensation.

2. I heard Mr. Malaichamy, learned counsel appearing for the claimants/appellants, Mr. C.R. Krishnamoorthy, learned counsel appearing for respondent No. 1 and Mr. N. Sivasankaran, learned counsel appearing for the respondent No. 2.

3. The deceased, in this case, was working as Headmaster of a school. On the date of occurrence, i.e., on 3.2.1985, he was travelling in the ill-fated bus, belonging to the respondent No. 1, in order to attend his school. The driver of the said bus drove the bus rashly and negligently in the Ghat Road above Sitharevu Hills. At the second hairpin bend also the driver drove the bus in a rash and negligent manner, which resulted in the rolling down of the bus to the depth of 50 feet. Some passengers sustained grievous injuries and some passengers died as a result of the accident. The deceased is one among them.

4. The claimants filed a claim petition, seeking a compensation of Rs. 4,00,000, for the loss of life of the deceased. The Tribunal, after enquiry, concluded that they would be entitled to get Rs. 48,000 as compensation.

5. Aggrieved by the inadequacy of the quantum, claimants have filed this appeal.

6. According to the counsel for the appellants, the assessment over damages made by the Tribunal is not correct and as such, the award may be suitably modified, enhancing the compensation.

7. According to the counsel for the respondents, the award of compensation passed by the Tribunal is in accordance with the guidelines given by this court and on the basis of the materials available on record and as such, the award needs no modification.

8. On consideration of the submissions made by the counsel for the respective parties and on perusal of the records, I am of the view that the quantum fixed by the Tribunal is on the very much lower side. The assessment over the damages was not properly done by the Tribunal.

9. According to PW 1, the claimant No. 1, the monthly salary of the deceased was Rs. 950. The Tribunal fixed Rs. 500 as monthly dependency of the family, which is not correct. So, Rs. 650 could be safely fixed as monthly dependency. Since the age of the deceased was 45, the multiplier of 15 can be adopted. If the annual dependency of Rs. 7,800 is multiplied with 15, the calculation would work out to Rs. 1,17,000 (i.e., Rs. 650 x 12 x 15). In addition to that, Rs. 15,000 could be added towards the conventional damages. So, the total compensation would work out to Rs. 1,32,000.

10. It is made clear that as held by the Tribunal, the respondent No. 2 insurance company would be liable to pay only Rs. 15,000 as provided u/s 95 (2) (b) of the Motor Vehicles Act, 1939, as it stood then. With reference to the legal position, there is no dispute. This is settled law, as held by the Apex Court, in the decision in National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC). The relevant portion of the observation is as follows:

7. ...In this view of the matter, the submission made by learned counsel for the respondents that the appellant had in the instant case undertaken an unlimited liability does not obviously have any substance. The liability under the policy in the instant case was the same as the statutory liability contemplated by clause (b) of Sub-section (2) of Section 95 of the Act, namely, Rs. 20,000. An award against the appellant could not, therefore, have been made in excess of the said statutory liability.

Hence, the insurance company, respondent No. 2 herein, is directed to pay only Rs. 15,000 to the claimants and the owner of the vehicle, respondent No. 1 herein, is directed to pay the balance amount, i.e., Rs. 1,17,000.

11. At this stage, the counsel for the respondent No. 1, the owner of the vehicle,

would submit that even though the claim petition was filed on 23.4.1984 and O.P. was disposed of on 29.10.1987, the claimants/appellants filed the CMA with some delay and that the condone delay petition was allowed only on 17.4.1997 and, thereafter, the CMA got numbered.

12. According to the counsel, this huge delay between 1988 and 1997 was only on the part of the counsel for the claimants or the claimants to get the CMA numbered and for the fault of the counsel for the claimants or the claimants, the owner of the vehicle should not be made to suffer, by directing him to pay the interest for the period between 1988 and 1997.

13. The above submission was resisted by the counsel for the appellants, stating that the claimants would be entitled to the compensation, along with the interest of 12 per cent per annum from the date of the claim petition till the date of payment, as the claimants could not be said to be attributed to any negligence and the delay was only due to the pendency of the petition for condoning the delay in the office. Moreover, it is stated that the petition to condone the delay was allowed by this court on 17.4.1997, by imposing some terms.

14. The counsel for the respondent No. 1 would cite the following decisions, in order to substantiate his plea:

- (1) New India Assurance Co. Ltd. Vs. Abdul Mazid and Another, .
- (2) Sushila Goel and Others Vs. United India Insurance Co. Ltd. and Others, .
- (3) Mrs. Elizebeth Mathew and others, Appellants Vs. Shri Yasdev and Delhi Transport Corporation, .

15. In the decision New India Assurance Co. Ltd. Vs. Abdul Mazid and Another, , the High Court of Orissa, while dealing with the discretionary powers of the Tribunal, held that in some cases the Tribunal could reject the award of interest, if it is found that there was a wanton delay on the part of the claimant in the progress of the proceedings before the Tribunal. These are the following observations:

Legislature has provided that interest can be paid from the date of application only. That does not mean that Tribunal has to award interest from the date of application. When a claimant does not file a proper application on payment of fees prescribed and prays for exemption or deferring the fee payable, Tribunal may consider not to award interest till the application is validly entertained, Equally a claimant may cause delay in taking steps for issue of notice. In such circumstances, Tribunal may exclude the period for payment of interest.

16. In the decision Sushila Goel and Others Vs. United India Insurance Co. Ltd. and Others, , the High Court of Delhi held as follows:

16. The next question that arises for consideration is whether the appellants are entitled to interest according to Section 110-CC...

xxx xxx xxx 19. No doubt, the claim petition was again dismissed for non-prosecution on 22.12.1979 and restored on 9.12.1980. What has weighed in the mind of the trial court for the restoration of the petition seems to be that nobody should be condemned unheard and it will be aggravating the misery of the widow and children of the deceased and would be tantamount to denial of justice. Here there is no finding by the trial court whether the absence on 22.12.79 of the petitioners or their counsel was bona fide or unintentional. Therefore, for the period 22.12.1979 to 9.12.1980, the negligence and lapse can be attributed on the part of the petitioners for causing delay in the disposal of the petition. Therefore, in my opinion, for this period, i.e., from 22.12.79 till 9.12.1980, the petitioners cannot be awarded interest. However, for the entire period from the date of application for compensation till payment, except the period from 22.12.1979 to 9.12.1980, the petitioners are entitled to interest u/s 110-CC.

17. In view of the above observations made by the various High Courts, it is clear that the court has got powers to exclude the period in which there is any negligence or lapse, which could be attributed on the part of the claimants/appellants for causing delay in the disposal of the petition. The said period could be excluded while awarding interest.

18. In the instant case, I am not inclined to hold that there was negligence on the part of the claimants. There may be some lapse on the part of the counsel, since admittedly, in this case, two different counsel have been engaged by the appellants at two different stages. It is also brought to my notice that the application for condoning the delay was entertained by this court and delay was condoned after hearing the respondents. It is strange to see that there was a change of the counsel on behalf of the respondent No. 1, the owner of the vehicle, also. Therefore, I am not able to countenance the submissions made by the counsel for the respondent No. 1 that the delay was caused only by the claimants in the progress of the appeal and, therefore, they would not be entitled to any amount of interest for the period between 18.8.88 and 17.6.97. However, since the respondent No. 1 is not in any way responsible for the delay, I am of the view that in respect of this period, as stated above, it is appropriate to hold that the claimants would be entitled to 6 per cent interest per annum. Accordingly, from the date of filing of the claim petition, i.e., 23.4.1985, excluding the period between 18.8.88 and 17.6.1997, the claimants are entitled to get the compensation of Rs. 1,32,000 along with 12 per cent interest per annum and for the period between 18.8.1988 and 17.6.1997, they would be entitled to get 6 per cent interest per annum.

19. It is further brought to my notice that the entire amount of compensation had already been deposited by the insurance company. While making it clear that the claimants would be entitled to withdraw the entire amount, the insurance company would be at liberty to file a suit against the owner of the vehicle to collect the balance amount.

20. In the result, the appeal is disposed of with the above modification. No costs.