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In the Madras High Court

Case No : C.M.A. No. 228 of 1997

Birendra Sharma, Abishek Kumar and Latha Rani — APPELLANT

Vs

A.V.M. Parcel Service and United India Insurance Co. Limited — RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:
Motor Vehicles Act, 1988 — Section 140

Citation : (2004) 3 ACC 95 : (2005) ACJ 1126 : (2004) 1 LW 233 : (2004) 1 MLJ 12

Hon'ble Judges : S.R. Singharavelu, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : Gangaram Prasad, for the Appellant; Adiseshan, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—Not being satisfied with the award passed in MCOP No.295 of 1993 on the file of the Motor Accident

Claims Tribunal, Madras, the claimants have filed the above appeal.

2. Sharda Sharma, the wife of the first appellant and mother of appellants-2 and 3, while crossing Anna Salai, (Guindy) Madras, from west to east,

was knocked down by a lorry bearing Registration No.TN-55-2377, which was driven in a rash and negligent manner, with the result, she

sustained injuries and ultimately died.

The appellants herein filed a petition under Sections 140 etc. of the Motor Vehicles Act and the rules framed under the said Act, claiming

compensation to the tune of Rs. 2,50,000/-. In the said petition, the appellants contended that she was carrying on the profession of Tailor (self

employed) and earning a sum of Rs. 1500/- per month.

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3. The respondent herein resisted the petition on various grounds and one of the grounds taken is that the quantum of compensation claimed is

highly excessive.

4. Before the Tribunal, both the parties let in oral and documentary evidence. The Tribunal came to the conclusion that the accident took place

only because of the rash and negligent driving of the lorry in question. So far as the quantum is concerned, the Tribunal fixed it at Rs. 1,25,000/-.

The said compensation was awarded under three heads viz., Rs. 30,000/- towards medical expenses; Rs. 11,000/- towards loss of consortium,

loss of love and affection and loss to estate; and Rs. 84,000/- towards loss of services to the family.

5. Inasmuch as the respondents in the M.C.O.P. have not filed any appeal, the only question that arises for consideration is as to what is the ""just

compensation payable to the appellants/claimants.

6. The deceased at the time of accident was 32 years old. The claim of the appellants is that at the relevant time, she was carrying on the

profession of Tailor (self employed) and earning not less than Rs. 1,500/- per month.

Ex.P-5, purported to be a certificate given by S.S. Enterprises, Madras-79, has been marked on behalf of the appellants/claimants. In the said

document, it is mentioned that the deceased was working in that Concern as a Tailor on contract basis for stitching the labourers dress for about

five months prior to the date of accident.

7. First of all, the author of the abovesaid document has not been examined. Secondly, Ex.P-5 conveys as if the deceased was working in that

Concern as a Tailor. But whereas, in the petition it is stated as ""self employed"". For these reasons, this Court is not in a position to place any

reliance on the document filed. The Tribunal is right in rejecting this document and has held that the appellants have not proved that the deceased

was earning a sum of Rs. l,500/- per month at the relevant time.

8. The next question is as to what are the various other heads under which the claimants can claim compensation.

The answer is, they can claim under the following heads:-

(i) Loss of services to the family;

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(ii) Medical expenses;

(iii) Loss of love and affection;

(iv) Loss of consortium; and

(v) Funeral expenses.

9. Before we proceed to consider what is the amount that can be awarded under the head ""loss of services to the family"", we are of the view that

reference to certain rulings will be of much use.

(a) The first ruling that can be referred to is the one reported in Khodabhai Bhagwanbhai and Others Vs. Hirji Tapu and Another, , where a

Division Bench had an occasion to consider what is the amount that can be awarded for the husband and children of the deceased, who was an

agricultural labourer, earning Rs. 4/- per day. The Court pointed out that even if she was not earning, the gratuitous services rendered by her have

to be compensated. We desire to extract the relevant portion from the said Judgment, which runs as follows:-

Thus, all these facts have got to be kept in view while determining the damages on account of the untimely death of the wife and then the

economic loss is to be ascertained for those who are left behind. Under the circumstances, it is not as if that the accidental death of a non-earning

wife means nothing to her dependants and other family members and the economic loss to them would be practically nil as assumed by the Tribunal

in the present case. If the deceased wife was earning then her earning would certainly be considered for computing the net economic loss to her

family members. But, even if she was not earning, the gratuitous services rendered by her would now be required to be substituted by other modes

which will have their own economic importance and value and that the pecuniary benefit from these services in the domestic front as well as in the

agricultural operations of the husband when the wife may have acted as a helpful hand will have to be assessed on the totality of all circumstances

and a proper figure of multiplicand has to be arrived at, and having considered the relative age of the wife and the husband and the dependants a

proper multiplier has to be adopted. As the Claims Tribunal did not adopt the aforesaid correct approach for assessing the damages in the instant

case, we will have to make an attempt in the same direction afresh.

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In that case, the Court assessed at Rs. 75/- per month and adopted the multiplier 8 and arrived at a figure of Rs. 7,200/-.

(b) In Daly v. General Steam Navigation Co. 1980 (3) All E.R. 696, the Court took the view that even in a case, where the plaintiff housewife

sustained some injuries and became incapable of undertaking housekeeping duties and ran her home with the assistance of her husband but without

employing a home help as the family did not, before the award of damages, have the resources to have one. In that case, the plaintiff was held to

be entitled to recover the value of her domestic services and the argument that, before doing so, she must show a firm intention of employing an

assistant in the house, was firmly rejected by the Court of Appeal. Bridge L.J. Said,

Once the judge had concluded, as this judge did, that, to put the plaintiff, so far as money could do so, in the position in which she would have

been if she had never been injured, she was going to need, in the future, domestic assistance for eight hours a week, it seems to me that it was

entirely reasonable and entirely in accordance with principle in assessing damages, to say that the estimated cost of employing labour for that time

... was the proper measure of her damages under this head. It is really quite immaterial, in my judgment, whether having received those damages,

the plaintiff chooses to alleviate her own housekeeping burden ... by employing the labour which has been taken as the basis of the estimate on

which damages have been awarded, or whether she chooses to continue to struggle with the housekeeping on her own and to spend the damages

which have been awarded to her on other luxuries which she would otherwise be unable to afford.

The Court also held that the wife was not entitled to claim the cost of employing the labour which was no doubt needed, but not engaged, between

the time of accident and the time of trial, since this was an expense which was known to have been incurred.

(c) In The New India Assurance Co. Ltd. and Others Vs. Vishwa Bhandhu and Others, , a learned single Judge of the Punjab and Haryana High

Court thought it fit to fix the loss of services at Rs. 1,000/- per month, where the deceased was 28 years old.

(d) In T.C. Bhatia Vs. Oriental Insurance Co. Ltd. and Others, , a Division Bench of the Himachal Pradesh High Court had an occasion to

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consider as to what could be the amount awarded under the head ""loss of services to the family"", where the deceased was aged 50 years. The said

Court took the view that a sum of Rs. 1,00,000/- may be awarded towards loss of services including loss of love and affection and loss to estate.

(e) In yet another case, a Division Bench of the Madhya Pradesh High Court, in Oriental Insurance Co. Ltd. Vs. Gopal Singh and Others, , took

the view that a sum of Rs. 20,000/- can be awarded under the head, expenses to be incurred for running the house-hold work.

(f) The next ruling that can be usefully referred to is the one reported in Lata Wadhwa and Others Vs. State of Bihar and Others, , which arose

under the Fatal Accidents Act. The short facts in that case are that a function held on 3.3.1989 by Tata Iron and Steel Company at Jamshedpur in

connection with the 150th birth anniversary of Sir Jamshedji Tata within the factory premises and a large number of employees, their families

including small children had been invited, but the organisers had not taken adequate safety measures and on the other hand, several provisions of

the Factories Rules and Factories Act had been grossly violated. There was a devastating fire engulfed the VIP Pandal and area surrounding and

by the time the fire was extinguished, a number of persons lay dead and many were suffering with burn injuries. In fact, the death toll reached 60

and the total number of persons injured was 113. Alleging that the State of Bihar had been colluding with the said Company and that there has

been total inaction on the part of State in taking appropriate action against the negligent officers, a petition under Article 32 of the Constitution of

India was filed for issuance of a writ of mandamus or any other writ or directions, ordering prosecution of the officers of the Tata Iron and Steel

Company and their agents for the alleged negligence in organising the function and to direct that appropriate compensation be provided to the

victims by the State Government as well as the company. The Supreme Court, taking into consideration the facts and circumstances of that case,

fixed at Rs. 3,000/- per month.

(g) The last case we refer to is the one reported in I (2003) ACC 572 (DB) (United India Insurance Company Ltd. vs. Banshidhar Gupta &

others), where a house wife died in the age of 29 years. A Division Bench of the Allahabad High Court fixed the annual loss to the claimant at Rs.

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12,000/-. In fact, in the said Judgment, the Bench referred to the ruling of the Supreme Court, which we referred to just above viz., Lata Wadhwa

and Others Vs. State of Bihar and Others, .

10. Coming to the present case, the deceased at that time was aged about 32 years. She died leaving her husband, the first appellant and two

children at the age of 7 years and 6 months respectively. Certainly, there has been loss of services to the family because of the untimely death of

the wife of the first appellant. This Court is of the view that at least a sum of Rs. 1,000/- per month has to be awarded under the head ''loss of

services to the family''. For fixing the said amount, this Court has taken into consideration the fact that the deceased left, apart from her husband,

two children of tender age. Similarly, the possibility of the 1st claimant (husband), who is aged about 47 years as on date, marrying again, cannot

be ruled out. It may be, in a given case, where the claimants are more, say for instance, where the deceased left her husband, three or four minor

children and also in-laws, who are residing in the same house, the compensation should be fixed still on a higher side. Similarly, if the claimant is

only the husband, fixation of compensation at Rs. 1,000/- per month may not be necessary. No hard and fast rule can be fixed and the Court has

to take into consideration the facts and circumstances in each case. Applying the multiplier 17, we arrive at a figure of Rs. 2,04,000/-. With this,

we have to add Rs. 30,000/- towards medical expenses and Rs. 30,000/- towards loss of love and affection, loss to estate and funeral expenses,

thus in all Rs. 2,64,000/-.

11. But in the instant case, what has been claimed by the claimant is Rs. 2,50,000/-. That being so, we have no difficulty in allowing the appeal.

The enhanced compensation of Rs. 1,25,000/- shall attract interest at 9% per annum.

12. In the result, the appeal is allowed. The claimants/appellants shall be entitled for a further compensation of Rs. 1,25,000/- (Rupees one lakh

twenty five thousand only) with interest thereon at 9% per annum from the date of filing of the petition.

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