

(2010) 02 MAD CK 0051
In the Madras High Court
Case No : C.M.A. No. 1488 of 2002

Branch Manager United India Insurance Co. Ltd.	APPELLANT
Vs	
Ravishankar rep. by Uncle and NF Balasubramanian and M. Suresh	RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(1)
Penal Code, 1860 (IPC) — Section 279, 304, 338

Citation : (2010) 02 MAD CK 0051

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : M.B. Gopalan, for the Appellant; S. Udayakumar, for R1, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent against the Award and Decree,

dated 13.09.2001, made in M.C.O.P. No. 93 of 1997, on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Virudhachalam,

awarding a compensation of Rs. 8,50,000/- with 9% interest per annum, from the date of filing petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/second respondent, the Branch Manager, United India Insurance Co., Ltd., Neyveli-3

has filed the above appeal praying to set aside the award and decree passed by the Tribunal.

3. The short facts of the case are as follows:

On 31.10.1995, at about 16.30 hours, when the (deceased) Radhakrishnan was travelling in his cycle, behind the Gandhi Statue at Main Bazar,

Neyveli Township, A TVS 50 motor vehicle bearing registration No. TN31 V2064, driven by its rider in a rash and negligent manner and at high

speed, dashed against the petitioner. Due to the impact, the (deceased) Radhakrishnan was violently thrown out onto the ground from his cycle

and he sustained fatal injuries on his head and body. The (deceased) Radhakrishnan was given first aid treatment in the Ramachandra Hospital,

Mandarakuppam and thereafter he was admitted in the Appollo Hospital on 01.11.1995 and took treatment as inpatient till 11.11.1995, but

succumbed to injuries sustained in the accident. But, for the rash and negligent driving on the part of the rider of the TVS50 the said accident

would not have occurred.

4. The deceased aged 49 years was a Post Graduate Assistant in the NLC School and was earning a monthly salary of Rs. 7,047/-. The first

petitioner is the wife of the deceased Radhakrishnan and the second petitioner is the minor son of the deceased Radhakrishnan. Due to the

accident, the petitioners have lost their only breadwinner of the family. The petitioners have therefore claimed a compensation of Rs. 10,00,000/-

with interest and costs from the first and second respondents, who are the owners of the TVS50 vehicle involved in the accident and its insurer

respectively, u/s 166(1) of the Motor Vehicles Act.

5. Regarding the said accident, a criminal case has been filed by the Township Police Station, Neyveli, as Crime No. 588 of 1995.

6. The second respondent, in his Counter has resisted the claim stating that in the said accident the deceased Radhakrishnan had died due to his

negligence and that there was no negligence or rashness on the part of the driver of the TVS50. Further, it was submitted that the petitioners should

prove that they are the legal heirs of the deceased Radhakrishnan and establish the age, occupation and income of the deceased through

documentary evidence. It has also been submitted that the claim is excessive and as such has to be dismissed with costs.

7. The Motor Accident Claims Tribunal framed three issues for the consideration namely:

(i) Whether the accident, which occurred on 31.10.1995, at 4.30 p.m. was caused by the negligence of the first respondent or by the negligence of

the deceased Radhakrishnan?

(ii) Are the respondents liable to pay compensation to the petitioners?

(iii) If so, what is the quantum of compensation, which the petitioners are entitled to get?

8. The first respondent, the owner of the TVS 50 motor vehicle bearing registration No. TN31 V2064 was not ordered as a party in the

proceedings. The insurer of the above said TVS50 vehicle the second respondent had only given a written counter to the claim, has not let in any

documentary evidence and has not examined any witnesses. The first petitioner, the wife of the deceased Radhakrishnan and the second petitioner,

the minor son of the deceased had filed the claim petition. In the intervening period between the date of filing the claim and the date of taking up the

claim case, the first petitioner died. So, an Interlocutory Petition was filed under I.A. No. 1267 of 1998 and based on the Judgement made on this

petition, the first petitioner's brother, one Balasubramanian was nominated as the guardian of the second petitioner and the claim petition was

amended accordingly.

9. On the petitioners side, two witnesses were examined. The guardian of the second petitioner was examined as PW1 before the Tribunal and the

eyewitness of the accident has examined as PW2 and 12 documents were marked as Exs. P1 to P12.

10. PW1 is not the eyewitness to the accident. He was the blood brother of the deceased, first petitioner, Vallinayaki, and he has stated that the

(deceased) Radhakrishnan was a teacher in the Senior Secondary School at Vridhachalam. He had stated in his evidence that on 31.10.1995, at

about 4.30 p.m. when the deceased Radhakrishnan, after buying Vegetables, was returning in his cycle and travelling from east to west on the road

behind the Gandhi Statue at Neyveli Township, the driver of the TVS 50 motor vehicle bearing registration No. TN31 V2064 came from west to

east and dashed his vehicle against the deceased Radhakrishnan; that in the impact, the (deceased) Radhakrishnan was thrown out of this cycle

and sustained injuries on the back of his head; that the (deceased) Radhakrishnan was initially given first laid at Ramakrishna Hospital, Neyveli and

later on taken to NLC Hospital; that he was subsequently taken to Appollo Hospital, Chennai, and given treatment, and that he was an inpatient in

Appollo Hospital from 01.11.1995 to 11.11.1995 and that in spite of medical

treatment, the (deceased) Radhakrishnan died due to the injuries sustained in the accident on 11.11.1995. He had further deposed in his evidence that the accident was caused only due to the negligence of the first respondent, who was the rider and owner of the said TVS50 vehicle and that the accident had not been caused due to any negligence on the part of the deceased Radhakrishnan.

11. One Elamathiyan, who had proclaimed that he is an eyewitness of the said accident was examined as PW2. The PW2 was working as a

Senior Technician in the Neyveli Lignite Mines. The PW2, in his chief-examination, had deposed that on the date of accident ie. 31.10.1995, when

the deceased Radhakrishnan was riding on his bicycle, he had been coming behind him on his bicycle and that at 4.30 p.m. both of them were

travelling on the road from east to west and that at that time, the TVS 50 motor vehicle bearing registration No. TN31 V2064, driven by its rider

at a high speed and in a rash and negligent manner, had dashed against the (deceased) Radhakrishnan; that the (deceased Radhakrishnan was

initially taken to Ramachandra Hospital at Mandarakuppam for treatment and that he was subsequently taken to NLC Hospital, and later on

admitted at Appollo Hospital, Chennai and that he had been at Appollo Hospital on 11.11.1995 and had seen that the (deceased) Radhakrishnan.

In spite of treatment, had died on 11.11.1995. During cross-examination, the PW2 has clearly stated that he and the deceased Radhakrishnan had

travelled on separate bicycles and that while they were travelling from east to west, on the south side of the road, the said TVS50 had come on the

opposite direction and dashed against the (deceased) Radhakrishnan. He had stated that the accident had been caused only by the negligence of

the rider of the said TVS50.

12. Ex. P1, is the copy of the FIR registered at the Neyveli Township Police. It is seen from a scrutiny of Ex. P1 that the complaint regarding the

accident had been given by one Sivasubramanian and that the complaint has been given as against the rider of the said TVS50, the first respondent,

Mr. Suresh. It is seen that the evidence given by PW2 is inconsonance with the details given in Ex. P1 regarding the manner of accident. After the

death of (deceased) Radhakrishnan, the criminal case, which had been initially registered as under Sections 279 and 338 of I.P.C. was amended

as one u/s 304(a) of I.P.C. and the copy of the amended report has been marked as Ex. P2.

13. As such, the Tribunal, on scrutiny of Exs. P1 and P2 and on examination of the evidence given by PW2, held that the said accident had been

caused only by the negligence of the rider of the said TVS50 ie. The first respondent.

14. Ex. P3 is the copy of the Insurance Policy for the said TVS 50 motor vehicle bearing registration No. TN31 V2064, wherein it has been

mentioned that the said TVS50 had been insured with the second respondent/ Insurance Company and is valid for the period between 25.05.1995

to 24.05.1996. As the accident happened on 31.10.1995, it is evident that the said TVS50 was covered by a policy of insurance on the date of

accident. Ex. P4 is the copy of Registration Certificate, showing that the said TVS50 involved in the accident was owned by the first respondent.

Ex. P5 is the copy of the driving licence of the first respondent. The Tribunal, after considering Exs. P3 and P5, were of the opinion that as the said

TVS50 of the first respondent was averred by a valid policy of insurance with the second respondent and as the first respondent had a valid driving

licence at the time of accident, the second respondent is liable to pay compensation to the petitioners.

15. It has been stated in the claim petition that the (deceased) Radhakrishnan was working as a Teacher at the Senior Secondary School affiliated

to Neyveli Lignite Corporation, at the time of accident and that he was aged 47 years and the second petitioner, his minor son was aged 12 years

at the time of accident. It is seen from the post-mortem report issued by the Madras Medical College Hospital that the deceased Radhakrishnan

was aged 49 years at the time of accident. Ex. P7 is the copy of Death Certificate issued by the Chennai Corporation, regarding death of deceased

Radhakrishnan. Ex. P8 is the copy of the Legal Heir Certificate issued by the Tahsildar at Panrutti. It is seen from the legal heir certificate that the

deceased Radhakrishnan had left behind him only two legal heirs. Ex. P9 is the Salary Certificate of the deceased Radhakrishnan, pertaining to the

salary received by the deceased in the month of December, 1995. Ex. P10 is the Identify Certificate of the deceased Radhakrishnan, issued by

N.L.C. It is seen from this that the deceased was employed in the Senior Secondary School and that his date of birth is 17.12.1946. As such, the

Tribunal on considering his date of birth held that on the date of his death, he was aged about 49 years.

16. Ex. PW1, the uncle of the second petitioner had been nominated as the guardian of the second petitioner as per the Judgment passed by the

Cuddalore District Judge in O.P. No. 8 of 1998, dated 30.03.1998. The copy of this Judgement was marked as Ex. P1. It is seen from the

revised pay scales, which came into effect from 01.01.1996, based on the report of the fifth pay commission nominated by the Tamil Nadu State

Government that the deceased Radhakrishnan's basic pay; dearness allowance would have been modified and a structured chart showing these

details had been marked as Ex. P12.

17. It is seen from a scrutiny of Ex. P12, that if the deceased Radhakrishnan had been alive, he would have received a basic pay of Rs. 9,995/-,

dearness allowance of Rs. 4,368/-, rent of Rs. 620/-, medical allowance of Rs. 50/- and special allowances of Rs. 75/- totalling a sum of Rs.

14,938/- per month. The Tribunal on scrutiny of Exs.P9 and P12, were of the view that the liabilities of the petitioner and the tax deductions made

on his salary have not been shown.

18. The learned Counsel appearing for the petitioner in support the contentions that a high basic pay should be taken in the assessment of

compensation to the petitioner cited Judgement in a case in the Hon''ble Supreme Court, Saraya Dixit and Anr. v. Balvant Yadav and Ors.,

(Madras Journal Report Page 55, Supreme Court), wherein in the case of a 37 year old Army Officer, who had died, the basic salary of the

deceased was Rs. 1,500/- only. For assessment of his future pay, the basic salary was taken as Rs. 3,000/- considering his future prospects and

then this was divided by two and the resulting figure was added to his income to arrive at the figure of Rs. 4,500/-. This was again divided by 2, to

get at the figure of Rs. 2,200/- as the salary, which would have been earned by the deceased Army Officer. Deducting 1/3rd of this for his

personal expenses, the balance amount was assessed as the nett loss of income to his family.

19. The learned Counsel appearing for the petitioners has also cited a Judgment made in another case in the Madras High Court ie. Tamil Nadu

Electricity Board v. Vijayalakshmi and Ors., (Madras Law Journal Report, Page

260), wherein it has been said that "...there can be no dispute that the salary of the deceased would have increased year by year on the basis of the scale of pay of the post, which he was holding. One can reasonably accept that he would have been promoted to a higher post in view of the evidence that he was an efficient and honest officer. It is no necessary for us to speculate on that basis. Even assuming that he would have continued only as Assistant Divisional Engineer, his salary might have certainly been increased periodically.

20. As such, the Tribunal, on the basis of the above cited Judgements made in the earlier related cases, took the revised pay of the deceased as Rs. 9,000/- as per Ex. P12 and added this to the earlier pay of deceased ie. Rs. 7,050/- as was shown in Ex. P9 and then divided the sum of this result by 2 and arrived at the figure of Rs. 8,025/- and considered this as the average future income, which the deceased would have earned, per month. The Tribunal then computed his total earnings for a year as Rs. 8,025/- X 12 = Rs. 96,300/-. Deducting 1/3rd share of this for his personal expenses, the Tribunal assessed that the nett income contributed by the deceased to his family every year would have been Rs. 64,200/-. Adopting a multiplier of 13, as was relevant to the age of deceased ie. 49 years, the Tribunal computed the total loss of income to the petitioner as Rs. 8,34,600/- and accordingly awarded the said amount as compensation to the petitioner. Further, the Tribunal on consideration of the age of minor second petitioner as 12 years, awarded a sum of Rs. 10,000/- to him under the head of loss of love and affection.

21. The Tribunal, on considering that the employer of the deceased Radhakrishnan would have taken care the medical expenses incurred by the deceased family during the time of his treatment at Appollo Hospital, decided not to grant any compensation under the head of medical expenses.

22. The Tribunal granted an award of Rs. 5,400/- under the head of funeral expenses and in total, the Tribunal granted a sum of Rs. 8,50,000/- as compensation to the petitioner for the death of the deceased Radhakrishnan and directed the first and second respondents to jointly and severally deposit the above said award with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 93 of 1997, on the file of the

Motor Accident Claims Tribunal, Additional Sub Court,

Virudhachalam. Further, it was directed that after deposit was made, the award was to be invested in a nationalised bank as fixed deposit till the

second petitioner attains the age of a major and permitted the first petitioner, the guardian of the second petitioner to receive interest on such

deposit once in three months. The excess Court fee of Rs. 1,500/- paid by the petitioner was to be refunded to him. The respondents were

directed to pay the cost of the petition of Rs. 17,887/- to the petitioners, which was inclusive of Advocate fees of Rs. 10,000/-.

23. The learned Counsel appearing for the appellant in his appeal has contended that the Lower Court has grossly erred in awarding a sum of Rs.

8,34,600/- under the head of pecuniary loss, considering that a much higher income than what was stated in the petition or proved in petition was

taken as the basis for such assessment. Further, it was contended that the Tribunal had grossly erred in deducting only 1/3rd whereas the sole

claimant was the minor child; that even on the basis of unit theory, the dependency would have been far lesser than what was considered by the

Tribunal. As such, the appellant's counsel has contended that the entire award of Rs. 8,50,000/- granted as compensation to the petitioner under

various heads was given without acceptable oral and documentary evidence and hence has prayed for reconsideration of the award granted by the

Tribunal. The learned Counsel for the appellant vehemently contended that the multiplier of 13 fixed by the Tribunal is not pertinent and that only a

multiplier of 11 should be taken. So, it was contended that the assessment of loss of income calculated by the Tribunal, on this basis, was

erroneous.

24. The learned Counsel appearing for the respondent argued that the award granted under the head of funeral expenses is on the lower side. The

deceased was a Government employee attached to the NLC School. As such, is getting a regular fixed income and the said income would be

increased periodically from time to time. As such, the Tribunal has to take the higher income of the deceased for assessment of compensation. In

this case that was not considered. The learned Tribunal's compensation award is on the lower side.

25. After considering the facts and circumstances of the case, arguments

advanced by the learned Counsels for their respective parties, this Court is of the view that the multiplier adopted by the Tribunal as 13 is erroneous. So, the Court, after considering the age of the deceased as 49 years, holds that only a multiplier of 11 is to be taken for assessment of loss of income. As such, this Court adopting a multiplier of 11 and taken the annual income of the deceased as Rs. 64,200/-, has assessed the loss of income to the petitioner as Rs. 64,200/- X 11 = Rs. 7,06,200/-. The Tribunal had awarded a sum of Rs. 10,000/- to the claimant under the head of love and affection and this Court confirms the same and award for medical and transport expenses are not permissible in the present case as the same has been borne by the NLC, as the deceased was their employee. The Tribunal awarded a sum of Rs. 5,400/- for funeral expenses, pain and suffering and mental agony of the petitioners. This Court sets aside the award of the Tribunal granted under this head as it is found not pertinent. This Court awards a sum of Rs. 10,000/- under the head of funeral expenses to the petitioner. In total, this Court awards a sum of Rs. 7,26,200/- as compensation to the claimant. Regarding the findings on liability and rate of interest fixed by the Tribunal, this Court finding it to be well-reasoned and fair, confirms the same. As such, this Court awards a sum of Rs. 7,26,200/- as compensation to the claimant, together with interest at the rate of 9% per annum from the date of filing the petition till the date of deposit of compensation.

26. This Court, at the time of admission, on 16.04.2003, imposed a condition on the appellant/United India Insurance Co., Ltd., to deposit the entire award amount with interest and costs, into the credit of the M.C.O.P. No. 93 of 1997, on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Virudhachalam. Further, the Court has permits the first respondent/claimant to withdraw 50% of the award amount with accrued interest and costs.

27. As the accident happened in the year 1995, it is open to the claimant to withdraw the balance compensation amount, lying in the credit of the M.C.O.P. No. 93 of 1997, on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Virudhachalam, after filing necessary payment out application, in accordance with law. Likewise, the excess award amount of Rs. 1,23,800/- with proportionate interest, lying in the

credit of the M.C.O.P. No. 93 of 1997, on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Virudhachalam, can be

withdrawn by the appellant, after observing necessary formalities of the Court.

28. In the result, the Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 13.09.2001, in M.C.O.P. No. 93 of 1997,

passed by the Motor Accident Claims Tribunal, Additional Sub Court, Virudhachalam, is modified. Consequently, the connected miscellaneous

petition is closed. No costs.