

(1996) 07 MAD CK 0041

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 684 of 1993

C. Vijaya Lakshmi and Another

APPELLANT

Vs

N. Siva Bagiyam and Another

RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 166, 166(1)

Citation : (1997) ACJ 799 : (1996) 2 CTC 136 : (1996) 2 LW 238

Hon'ble Judges : P. Sathasivam, J;A. Abdul Hadi, J

Bench : Division Bench

Advocate : R.M. Krishna Raju, for the Appellant;

Judgement

P. Sathasivam, J.—Claimants in M.C.O.P. No. 1183 of 1989 on the file of Motor Accidents Claims Tribunal (Principal District Judge),

Salem are the appellants in the above appeal. The appellants/claimants are the parents of the deceased Thilagavathy. In the accident that took

place on 14.3.89 due to the negligence of the driver of the first respondent herein, the claimant's daughter sustained grievous injuries and after

taking treatment for nearly nine days, she succumbed to the injuries on 23.3.89. According to the claimants, the deceased was their first daughter

and she was a doctor, they are not having a son, and at the time of the accident, the deceased was contributing a sum of Rs. 2000 to the claimants.

After claiming under various heads, altogether they prayed for a compensation of Rs. 5,00,000 for the death of their first daughter.

2. The Tribunal, on the basis of the available evidence passed an award for Rs. 1, 55,000 with interest at 12 per cent from the date of petition in

favour of the claimants. Aggrieved by the quantum of compensation, the appellants have filed the present appeal before this Court. Since this is an

appeal only for enhancement of compensation, we are not discussing the facts leading to the accident and negligence aspect. We have to consider

whether the award of Tribunal is just and proper in the light of the evidence adduced by the parties.

3. In order to substantiate the claim, the father of the deceased, 2nd claimant was examined as P.W.I. The deceased was aged about 21 years at

the time of the accident and she died as a spinster. It is the evidence of P.W.I that the deceased was their first daughter and they are having one

more daughter studying in the high school. He also deposed that except the above mentioned two daughters, they are not having any other

children. Through P.W.1. Exs. A-1 to A-22 were marked. Ex. A-1 is an appointment order issued by District Health Officer, Salem. Ex. A-22 is

salary certificate of the deceased which shows that she was getting a total sum of Rs. 3,068 as pay and allowances at the time of accident Exs. A-

2 to A-16 relate to medical expenses, expenses for boarding and lodging at Vellore for taking treatment for the period from 14.9.89 to 23.9.89.

He has also deposed that the mother of the first claimant is still alive and the father of the 2nd claimant is aged about 93. He further deposed that in

his family normally they lived upto 80 and he himself is a leading practitioner at Salem Town. The Tribunal considering the fact that the deceased

was getting more than Rs. 3,000 come to the conclusion that the deceased would have contributed a minimum sum of Rs. 500 to her mother and

another Rs.500 to her father and after noting that the first claimant is aged about 58 years and second claimant 64 years, the Tribunal applied 17

years multiplier for first claimant and 10 years multiplier for second claimant. In the above manner, the court below arrived a sum of Rs. 1,62,000

as pecuniary loss out of which it deducted 20 per cent towards lumpsum payment. After the said deduction, the court below arrived a sum of Rs.

1,29,600 as compensation for the loss of live. Thereafter the Tribunal on the basis of the evidence of P.W. 1 and in the light of Exs. A-2 to A-16

fixed a sum of Rs. 25,000 towards medical expenses at Vellore and transport charges. After adding the said amount, the court below has passed

an award of Rs. 1,55,000 with interest at 12 per cent from the date of petition.

4. Mr. R.M. Krishnaraju, learned counsel for the appellants submitted that even though both the claimants are not dependents of their deceased

daughter, as legal representatives, they are entitled to get compensation. He also submitted that inasmuch as the deceased was a doctor aged

about 27 years at the time of the accident and in the light of Exs.A-1 and A-22, the award of the Tribunal is very low and he prayed for

enhancement of compensation as claimed in the said O.P. Except the compensation for the loss of life, he has no grievance with regard to the

award fixed in other respects. Though the respondents, owner of the vehicle and Insurance Company have been served, none represented before

us.

5. We have carefully considered the arguments of the learned counsel for the appellants.

6. There is no dispute regarding age and occupation of the deceased. Though both the claimants are not dependents in view of Section 166(I)(c) of

the Motor Vehicles Act, 1988 (in this case the accident took place on 14.3.89), they are entitled to maintain the claim petition. There is no dispute

that the claimants are the legal representatives of the deceased. Hence the present claim made by the appellants is well within the provisions of

Section 166 of the said Act and they are entitled for compensation. The learned counsel for the appellants has also brought to our notice a decision

of the Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, . In the said decision

the Supreme Court has held in the following manner:-

The expression "legal representative" has not been defined in the Act. However, a legal representative ordinarily means a person who in law

represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. The Proviso to Sub-section (1)

of Section 110-A of the Motor Vehicles Act appears to be of some significance. It provides that the application for compensation shall be made

on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(I) thus expressly states that (i) an application for

compensation may be made by the legal representatives of the deceased or their agent, and (ii) that such application shall be made on behalf of or

for the benefit of all the legal representatives. Both the person or persons who can make an application for compensation and the persons for

whose benefit such application can be made are thus indicated in Section 110-A.

This section in a way is a substitute to the extent indicated above for the provisions of Section 1A of the Fatal Accidents Act, 1855 which provides that "every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased". While the Fatal Accidents Act provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased. Section 110-A(I) of the M.V. Act says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent and child. It is further seen from Section 110-B that the Claims Tribunal is authorised to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid. This provision takes the place of the third Paragraph of Section 1A of the Fatal Accidents Act which provides that in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought. Persons for whose benefit such application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by Section 110A and Section 110-B and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the M.V. Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitation of an action under the Fatal Accidents Act. New situations and new dangers require new strategies and new remedies. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of

compensation and that is provided by Sections 110-A to 110-F. These provisions are in consonance with the principles of law of torts that every

injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to ii to be just as

provided in Section 110-B and to specify the person or persons to whom compensation shall be paid, The determination of the compensation

payable and its apportionment as required by Section 110-B amongst the legal representatives for whose benefit an application may be filed u/s

110-A have to be done in accordance with well-known principles of law. It is to be remembered that in an Indian family brothers, sisters and

brothers" children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner

is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal

Accidents Act, 1855 which has been substantially modified by the provisions contained in the Motor Vehicles Act in relation to cases arising out of

motor vehicles accidents.

In view of fact that the present claimants are entitled to maintain the claim petition, we are not referring the other decision referred to by Mr. R.M.

Krishna Raju, learned counsel for the appellants to the effect that the claimant need not be a dependent. The present Section 166 of the New Act

is corresponding to Section 110(a) of the old Act. In view of the decision of the Supreme Court referred above, there is no doubt that the parents

are entitled to claim compensation for the death of their daughter.

7. The only other question we have to consider is whether the Tribunal has correctly arrived the figure or not? The Tribunal after determining the

age of the claimants fixed different multiplier, one for the first claimant and another for the second claimant and arrived a figure of Rs. 1,62,00 as

total pecuniary loss. We are unable to accept the method adopted by the Tribunal fixing two different multipliers one for the mother and another for

the father of the deceased.

8. The learned counsel for the appellant further cited in Udayan Chinubhai Vs. R.C. Bali, and requested us in the light of the said decision to fix

higher compensation for the claimants. In the said case, for the death of earning wife in an accident, husband claimed compensation. Taking note of

the fact that the claimant re-married within 11 months after the death of his wife, the Tribunal passed an award of Rs. 15,000 in favour of the husband. The said amount was enhanced to Rs. 50,000 by the High Court. However, the Supreme Court has not agreed with the enhancement made by the High Court, consequently confirmed the award passed by the Tribunal. Except the fact that even for the death of the wife, husband is entitled to get compensation, the decision may not be helpful to the appellants' case. The other decision referred by the learned counsel for the appellants, is Mohammed Habibullah and Another Vs. Seethammal, which merely says that even married sister of the deceased who died as a spinster is entitled to claim compensation as one of the legal representatives of the victim. As we have already stated, there is no dispute with regard to the said proposition.

9. We have to point to out the important fact that till the decision of the Supreme Court in General Manager, Kerala State Road Transport

Corporation v. Susamma Thomas, 1994 A.C.J. 1 S.C., the Apex Court as well as the other High Courts calculated the compensation on the basis

of longevity of life. In the said land-mark decision, after analysing the earlier case law, the Apex Court has held that the multiplier method alone is

logically sound and legally well established. It is useful to refer the observation of the Supreme Court in this regard:-

It is necessary to reiterate that the multiplier-method is logically sound and legally well established. There are some cases which have proceeded

to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a

percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if

the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency

for 45 years-virtually adopting a multiplier of 45 and even if one-third or one-fourth is deducted therefrom towards the uncertainties of fixture life

and for immediate lump-sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are aware that some

decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have

laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110(b) of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be "just", the statutory determination of a "just" compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier-method is the accepted method of ensuring a "just" compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs. 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rupees 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowances to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowance for immediate lump-sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.

Thereafter, in view of the amendments brought out in the Motor Vehicles Act, the Apex Court in the subsequent judgment reported in *Kirtikant D.*

Vadodaria Vs. State of Gujarat and Another, enhanced the maximum multiplier from 16 to 18. As stated above, the enhancement is in conformity

with the new legislation brought out in the Motor Vehicles Act, 1988. Hence, in the light of the law laid down by the Supreme Court, the only

method to be followed in fixing compensation is the multiplier method. On the basis of the said decisions, now we have to ascertain whether the

compensation fixed by the court below is in accordance with law or it requires modification as requested by the learned counsel for the appellants.

As stated earlier, the only oral evidence is that of P.W. 1, father of the deceased, second claimant in the said O.P. There is no dispute that the

deceased was a doctor. P.W.I in chief examination has deposed thus:

Apart from the oral evidence of P.W.I, Ex.A-22 dated 13.1.92 shows that she was paid a sum of Rs. 3,608 towards salary prior to her death.

Considering the fact that the deceased was aged about 27, un-married and the claimants aged about 58 and 64 respectively, we can safely fix the

proper multiplier as 7. Now we have to find out proper multiplicand as borne out by Ex.A-22 as well as the oral evidence of P.W. 1 to the fact

that in the absence of male child, the deceased daughter was looking after their comforts, it is but proper the deceased would have contributed Rs.

2000 per month to her parents atleast for a period of seven years. In the light of the multiplier and multiplicand fixed above, the pecuniary loss

would come to Rs. 1,68,000. Since we have applied the reasonable multiplier and multiplicand, there is no need to deduct any amount towards

uncertainty of life and lumpsum payment. Learned counsel for the appellants has also cited Hardeo Kaur and others Vs. Rajasthan State Transport

Corporation and another, in order to show that there should not be any deduction on account of lumpsum payment. Since we have applied and

followed the principles enunciated by the Supreme Court in the said decision in General Manager, Kerala State Road Transport Corporation,

Trivandrum Vs. Mrs. Susamma Thomas and others, , we have not deducted any amount either for lumpsum payment or uncertainty of life. Hence,

it is unnecessary to consider the decision cited supra.

10. With regard to the claim under medical expenses, the appellants have claimed a sum of Rs. 20,000 for which, they have filed Exs.A-2 to A-

16. P.W. 1 has also deposed the various expenses spent by them at Vellore during the treatment between 14.3.89 and 23.3.89. However, the

Tribunal has pointed out that as per Exs.A-2 to A-16, the total expenditure is only

Rs. 8,691. Considering the fact that the deceased was taken to Vellore from Salem immediately after the accident on 14.3.89, the expenses regarding the claimants both for lodging and boarding at Vellore, the Tribunal fixed a sum of Rs. 25,000 altogether. In the absence of positive evidence for Rs. 25,000 in the interests of justice, we fix a sum of Rs. 15,000 towards those expenses. Even though, the claimants have prayed for a sum of Rs. 25,000 towards pain and suffering, the Tribunal failed to consider the above claim. In this regard, it is to be noted that from 14.3.89 to 23.3.89 the deceased was in the hospital with severe injuries. Both the parents i.e., claimants were also with the side of the injured till her death on 23.3.89. So in considering the above fact, it is but proper a reasonable amount has to be fixed towards pain and suffering, for which, we quantify a sum of Rs. 17,000 . Net result, the appellants are entitled for a compensation of Rs. 2,00,000 which is reasonable any just compensation. Moreover, there is no opposition by any of the respondents.

11. Under these circumstances, we enhance the compensation from Rs. 1,55,000 to Rs. 2,00,000 with interest at 12 per cent from the date of petition. Accordingly, the Civil Miscellaneous Appeal is allowed in part. There will be no order as to costs.