

(1996) 02 MAD CK 0134
In the Madras High Court
Case No : C.M.A. No. 735 of 1986

Cheran Transport Corporation Ltd.

APPELLANT

Vs

Santhamani and Others

RESPONDENT

Date of Decision : 23-02-1996

Acts Referred:

Citation : (1996) 1 ACC 531 : (1996) 1 LW 306

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

Bench : Division Bench

Advocate : K. Kannan and Sampath Kumar, for the Appellant; K.M. Vatsala, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Against the award of Motor Accidents Claims Tribunal, Coimbatore, Cheran Transport Corporation, Coimbatore, respondent No. 1 in M.C.O.P. No. 64 of 1982 has filed the present appeal before this Court u/s 110-D of the Motor Vehicles Act.

2. The respondent Nos. 1 and 2 are the claimants before the Motor Accidents Claims Tribunal. For the death of the husband of respondent No. 1

herein and father of the minor respondent No. 2 herein, they claimed a sum of Rs. 5,00,000 as compensation u/s 110-A of the Motor Vehicles

Act, 1939. The brief facts leading to the filing of the claim petition are as follow:

On 2.8.1981 at about 9:45 a.m. after purchasing vegetables, when deceased Vasudevan was returning home on the scooter TNN 292 on the

Avinashi Road, from west to east, the bus No. TMN 3873 belonging to the appellant herein and driven by its driver, respondent No. 3, herein, in

a rash and negligent manner from east to west, dashed against the scooter,

thereby the rider of the scooter sustained multiple injuries. It is contended that on the way to hospital, the deceased Vasudevan died. The entire accident happened only due to the rashness and negligence on the part of the driver of Cheran Transport Corporation. It is further contended that one Rajagopal who was riding another scooter No. MDJ 6962 behind the scooter whereon the deceased Vasudevan was riding, has witnessed the occurrence and on seeing the fateful accident, he immediately informed the police. The respondent No. 1 herein is the wife of the deceased, aged about 39 years and respondent No. 2 herein is her minor daughter aged about 8 years. The deceased was 43 years old at the time of the accident and he was employed in Lakshmi Machine Works as Superintendent, earning Rs. 2,270 per month. On various heads, the claimants claimed a sum of Rs. 5,00,000/-.

3. In the counter statement filed by the appellant, they have merely denied the various averments made in the claim petition. The driver, who was impleaded as respondent No. 2, has merely adopted the counter statement of respondent No. 1.

4. On the basis of the oral evidence of PW 1, namely, who was riding on a scooter near the accident spot and on the basis of the first information report Exh. A-1, the Tribunal came to the conclusion that the accident was caused only due to the rashness and negligence of the driver of the appellant Corporation and held that the claimants are entitled for compensation for the death of Vasudevan. With regard to the quantum of compensation, on the basis of the oral evidence of PW 2, namely, wife of the deceased Vasudevan and on the basis of salary certificate, Exh. A-2, salary register, Exh. A-3, post-mortem certificate, Exh. A-4, Motor Vehicle Inspector's report Exh. A-5 and considering the age of the deceased as well as the claimant's, income and occupation of the deceased the Tribunal passed a total award of Rs. 1,71,000/- with interest at 6 per cent per annum from the date of petition in favour of the claimants.

5. The State owned undertaking, namely, Cheran Transport Corporation, owner of the ill-fated vehicle, has filed the above appeal questioning both negligence and quantum aspects. Even though so many grounds have been raised in the memorandum of grounds of appeal, the counsel for the appellant has not pointed out any infirmity in the order of the Tribunal in respect

of the occurrence. The evidence of eyewitness, namely, PW 1, is very clear. According to him, on 2.8.1981 at about 9:45 a.m., when he was proceeding on his scooter behind the scooter TNN 292 whereon the deceased Vasudevan was proceeding on the Avinashi Road from west to east in accordance with the rules, the bus TMN 3873 belonging to Cheran Transport Corporation driven by its driver M. Ramasamy, respondent No. 2 before the Tribunal, in a rash and negligent manner and in an uncontrollable manner, dashed against the scooter No. TNN 292. He categorically deposed that the deceased was proceeding in his scooter in the proper side and the accident happened only due to the fault of the driver of the Cheran Transport Corporation bus. Further, it was PW 1 who informed the nearby police station and gave a complaint Exh. A-1. The evidence of PW 1 before the court and the contents of first information report, i.e., Exh. A-1, are identical, more probable and acceptable. On the other hand, the driver of Cheran Transport Corporation bus was examined as RW 1. As rightly pointed out by the Tribunal, though he was impleaded as respondent No. 2 before the Tribunal, he did not file any counter statement disputing the various averments of the claimants. Even though the appellant herein has filed a counter statement, they have not controverted any of the averments of the claimants. In other words, the transport corporation has generally denied the averments of the claim petition. They have not informed the court how the accident had happened and how they are not responsible for the accident. In the light of the evidence of PW 1, who is an eyewitness to the occurrence and First Information Report, Exh. A-1, which is the earliest document, the Tribunal preferred to accept the claimants' case and rejected the oral evidence of RW 1 as unacceptable. We accept the finding of the Tribunal, which is based on oral and documentary evidence. Hence we confirm the finding of the Tribunal on the negligence aspect.

6. Regarding the quantum of compensation, it is seen from the evidence of claimant No. 1, viz., wife of the deceased Vasudevan, who was examined as PW 2 that her husband Vasudevan was aged about 43 years at the time of accident. Post-mortem certificate, Exh. A-4, also supports the above version. It is the evidence of PW 2 that her husband was employed as a Superintendent in Lakshmi Machine Works, Coimbatore and

earning Rs. 2,270/- per month. In support of her above statement, salary certificate dated 5.8.1981 issued by Lakshmi Machine Works was

marked as Exh. A-2. Likewise, the salary register for the month of April, 1981, relating to the deceased Vasudevan was marked as Exh. A-3.

Exh. A-2 shows that the salary of the deceased was Rs. 2,270 per month. However, the salary register, Exh. A-3, shows that the take home

salary of the deceased was Rs. 1,559.19 only. The Tribunal after deducting a sum of Rs. 259.19 towards expenses for scooter, fixed a sum of Rs.

1,300/- as the contribution of the deceased to his family per month. By fixing 65 as average life span of an Indian, in the absence of any evidence

regarding the retirement age of the deceased, the Tribunal applied 12 years" multiplier. On the above basis, it fixed a sum of Rs. 1,87,200/- as

probable monetary loss to the family of the deceased. From and out of the said amount, a sum of Rs. 17,200/- was deducted by the Tribunal

towards uncertainty of life and for lump sum payment. Hence, a sum of Rs. 1,70,000 was fixed towards pecuniary loss to the family of the

deceased. On the basis of Exh. A-5, Motor Vehicle Inspector's Report and Exh. A-6, quotation for spare parts relating to the scooter, the

Tribunal added a sum of Rs. 1,000/- towards damage to the scooter. In the above manner, the Claims Tribunal passed an award of Rs.

1,71,000/- with interest at 6 per cent from the date of petition till the date of payment as compensation to the claimants.

7. The claimants in respect of the disallowed claim filed cross-objections in the present appeal filed by the transport corporation. The learned

Counsel for the cross-objectors raised the following points for consideration:

(1) The Tribunal having found that the deceased died on account of negligent driving of the driver of transport corporation ought to have awarded

the entire compensation, namely, Rs. 5,00,000/- in favour of the claimants.

(2) The Tribunal having relied upon Exh. 3 wherein it was found that the deceased was earning Rs. 2,270/- erred in holding that the deceased

would contribute only Rs. 1,300/- per month to his family.

(3) The Tribunal erred in fixing 12 years" period as multiplier in fixing quantum of compensation.

(4) The Tribunal failed to note the future prospects of the deceased in the employment and the increase in emoluments for few years till his

retirement.

(5) The Tribunal erred in not awarding any amount towards pain and suffering.

(6) The Tribunal committed an error in not awarding any amount towards loss of consortium.

(7) The rate of interest, viz., 6 per cent for the award amount fixed by the Tribunal is too low and contrary to the decisions of the Supreme Court.

8. In the light of the above submissions, we considered the quantum of compensation fixed by the Tribunal.

9. Even though no one from the employer side was examined to prove Exhs. A-2 and A-3, the contents of those documents were not disputed by

anyone. A reading of Exh. A-2 clearly shows that the deceased was getting Rs. 2,270/- per month. This was spoken to by PW 2, wife of the

deceased. It is also seen from her oral evidence that her husband was qualified as Diploma holder in Mechanical Engineering. The oral evidence of

PW 2 runs as follows:

x x x

(Omitted)

The above oral evidence of PW 2 coupled with Exhs. A-2 and A-3 supports the version of the cross-objectors.

10. In respect of life expectancy, the Supreme Court in the case of Jyotsna Dey v. State of Assam 1987 ACJ 172 (SC), has fixed 70 years. Even

though there is no specific evidence regarding the retirement age of the deceased, fixation of 55 as the retirement age by the Tribunal is improper.

Inasmuch as the deceased was a holder of Diploma in Mechanical Engineering and aged about 43 and in the light of future prospects of the

deceased in the employment and increase in emoluments in future years, apart from the amount fixed by the Tribunal, it is but proper that another 5

years" period has to be considered for fixing pecuniary loss to the family of the deceased. Even if we accept the same amount as fixed by the

Tribunal, namely, Rs. 1,300/- as probable monthly contribution of the deceased and the same is multiplied by another period of 5 years, it comes

to Rs. 78,000/-. After deducting a sum of Rs. 8,000/- towards lump sum payment and uncertainty of life, a sum of Rs. 70,000/- can be safely

added to the monetary loss already fixed by the Tribunal.

11. It is the evidence of PW 1 who is the eyewitness of the occurrence that the accident took place at about 9:45 a.m. and the deceased died only on the way to hospital. It shows that the deceased was alive for some time with multiple injuries. Hence, the claimants are entitled to a reasonable amount of Rs. 10,000/- towards pain and suffering. It is the evidence of PW 2 that the deceased was aged about 43 years at the time of the accident and she is aged about 39 years. Considering their ages, it is but proper that a sum of Rs. 10,000/- has to be awarded for the loss of consortium. Even though there is no specific claim towards loss of consortium under a separate head in the claim petition, in the interest of justice, it is open to the court to award such amount. It is a well established principle of law that failure of a person seeking remedy in a court of law should not be held as not entitling to get his/her legal claim on the ground of failure to use specific columns while claiming compensation.

11-A. It was contended by the learned Counsel for the cross-objectors that the rate of interest fixed by the Tribunal, viz., 6 per cent per annum is too low. Considering the delay in disposal of cases and the depreciation of money value, the court can safely award interest at 12 per cent from the date of claim petition till the date of actual payment. The above view has been accepted by the Apex Court in various decisions. See the case of *Narcinva V. Kamat v. Alfredo Antonio Doe Martins* 1985 ACJ 397 (SC) and *Chameli Wati v. Delhi Municipal Corporation* 1985 ACJ 645 (SC). Hence, while accepting the request of the learned Counsel for the cross-objectors, we are granting interest at the rate of 12 per cent from the date of petition till the date of payment for the amount already awarded by the Tribunal as well as fixed by us in the present cross-appeal.

12. Accordingly, we dismiss the appeal preferred by the transport corporation. No order as to costs. However, in cross-appeal we modify the award in the following manner:

Apart from the award of the Tribunal, namely, Rs. 1,71,000/-, we now further enhance a sum of Rs. 90,000/-. The appellant transport corporation is directed to deposit in the court below the enhanced compensation of Rs. 90,000/- with interest at 12 per cent per annum from the date of petition till the date of actual payment. In the enhanced amount, we fix the share of the minor as Rs. 50,000/- and the remaining Rs. 40,000/- in

favour of the claimant No. 1. We also make it clear that the claimants are entitled to get interest at the rate of 12 per cent per annum for the amount fixed by the Tribunal.