

(1996) 09 MAD CK 0096

In the Madras High Court

Case No : Appeal Against Order No. 166 of 1994

Cholan Roadways Corporation Ltd.

APPELLANT

Vs

S. Perungovai and 3 others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 166(3), 173

Citation : (1996) 09 MAD CK 0096

Hon'ble Judges : Sathasivam, J;Abdul Hadi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abdul Hadi, J.—The Transport Corporation, the owner of the vehicle involved in the accident, is the appellant in this Civil Miscellaneous Appeal against the order 29.10.1993 of the Tribunal below in M.C.O.P. No. 148 of 1992, granting a compensation of Rs 4,87,350/- (as against the claim of Rs. 7 lakhs) for the death of one Somu in the motor accident that took place on 17.3.1992. The said compensation has been apportioned among the four respondents-claimants, (who are widow and three children, one of whom, being a married daughter), thus: Rs. 2,00,000/- to the 1st claimant widow, Rs. 37,350/- to the 2nd claimant, who is the married daughter and Rs. 1,25,000/- each to claimants 3 and 4 the other children. It is not now in dispute that the age of the deceased was 53 at the time of the accident. He was a village Welfare Officer in a Panchayat Union. Though learned counsel for the appellant argued both on the aspects of negligence and quantum of compensation, the emphasis was mainly on the aspect of quantum of compensation. In the circumstances, we are not setting out the entire pleadings. However, we shall deal with the negligence aspect shortly.

2. Admittedly, the appellant's bus was proceeding from west to east and the deceased Somu was riding in his TVS 50 from east to west and there was a collision between the two vehicles and as a result, the said Somu died on the

spot. The Tribunal below has held that the bus driver was negligent. Learned Counsel for the appellant points out that no sketch was marked showing the positions of the abovesaid vehicles immediately after the accident. He also points out that there is also no evidence that the bus went to its right side and hit the said TVS 50. Further, he also points out that R.W.1, the driver has deposed that the deceased, when he saw the bus coming from the opposite side, instead of applying the break, had applied the accelerator.

On the other hand, learned counsel for the claimants reiterates the reasonings of the Tribunal below and argues that the conclusion of the Tribunal on the abovesaid question of negligence should only be upheld.

3. After considering the rival submissions, we have to agree only with learned counsel for the claimants. Even R.W.1, the driver only deposed that the accident took place at the centre of the road. His actual deposition regarding the spot at which the accident took place is as follows:-

Further, he also deposed thus:-

Further, R.W.1, himself admitted that just before the accident, he saw TVS 50 coming from the opposite side 50 feet away. If so, he could have slowed down the bus. In the circumstances, his evidence that the deceased, instead of applying the break, applied the accelerator, can not be believed. Further, there is also no such plea in the counter. Further, P.W.2, the eye witness, who was coming in a cycle behind the TVS 50 driven by the deceased, deposed thus:-

P.W.2 has also deposed that the body of the deceased, after the accident, was lying to the right side on the front of the bus. Further the Tribunal also points out regarding Ex.P.3, the Motor Vehicle Inspector's report thus:-

The Engine Grill Certainly pressed bend damaged".

(Emphasis supplied)

Taking all these into account the finding of the Court below on the aspect of negligence has only to be confirmed.

4. No doubt, learned counsel for the appellant also faintly argues that there was contributory negligence on the part of the deceased. But, there is no merit in this contention. Neither there is such a plea in the counter statement of the appellant in the Tribunal below, nor R.W.1, the driver said so.

5. Then, coming to the quantum of compensation awarded, it is not in dispute that the deceased was working in Panchayat Union Office as Village Welfare Officer, and on the date of the accident, he was drawing a sum of Rs. 2,858/- per month as salary. Ex.P.5 certificate given by the Block Development Officer of the said Panchayat Union shows his abovesaid salary on the date of the accident and it also shows other details as to how much increment and other benefits he would have got if he were alive and continued in the job. It also mentions about his future promotional prospects, that might have occurred in 1992 if he were

alive. It also mentions that if such promotion takes place, his pay might finally reach the figure of Rs. 3,495/- per month. Taking these features into account, learned Judge has fixed his total earning from the abovesaid employment, if he were alive upto the date of his retirement at Rs. 1,70,278/-. Further he has also added another sum of Rs. 48,300/- as his earning from milk business " for 5 years and 9 months" and another sum, of Rs. 2,07,000/- as his income from his landed properties for the said" 5 years and 9 months ". Further towards repair charges of TVS 50 he has added another sum of Rs. 7,000/-. Then he has also added towards consortium, loss of love and affection, etc. a sum of Rs. 19,000/- in respect of the abovesaid widow and Rs. 11,000/- each in respect of the abovesaid three children. Then, adding another sum of Rs. 2,750/- towards funeral expenses of the deceased, the learned Judge arrived at the figure of Rs. 4,87,328/- and rounded it off to Rs. 4,87,350/-.

6. Regarding these calculations made, learned counsel for the appellant mainly stresses that there is absolutely no evidence in respect of the alleged income of the deceased from his alleged milk business and agricultural lands. According to him, abovesaid figures in relation to the said milk business and agricultural lands, have necessarily to be reduced from the total figure arrived at by the Tribunal. In other words, according to him, there must be reduction of Rs. 48,300/- + Rs. 2,07,000/-. In this connection he points out that Exs.A.9 to A.12, with regard to his abovesaid alleged milk business, cannot be considered as acceptable or genuine documents and that at any rate from them it cannot be concluded that he would have secured the abovesaid sum of Rs. 48,300/- in the abovesaid 5 years and 9 months, after the date of the accident, as stated by the Tribunal. He also points out that how actually, the Tribunal came to the conclusion that he would have done business for the abovesaid 5 years and 9 months, is not at all clear. Further, according to him, it is also not clear how the Tribunal has arrived at his monthly income from the said milk business at the rate of Rs. 700/-. He also points out that the Tribunal below itself observes that Ex.A.9, is not in the name of the deceased, but is only in the name of his mother. Likewise, he also points out that Exs.P.17 to P.25 sale deeds relating to the agricultural lands, only stand in the name of the mother of the deceased and only Exs.P.26 and P.27 sale deeds are in the name of the deceased. Further, he points out that at any rate even from Exs.P.17 to P.25, it cannot be concluded how much the deceased would be getting as income from those lands, standing in his name. According to said learned Counsel, without any evidence, the Tribunal below has come to the conclusion that for five years and nine months after his death, he would have earned from the agricultural lands the abovesaid sum of Rs. 2,07,000/- if he were alive. Further, he also points out that even assuming that the abovesaid milk business and the lands were that of the deceased, there is no acceptable evidence to the effect that the incomes therefrom have been totally substantially lost after his death. He also points out that even P.W.1, the widow only deposed generally and vaguely thus:-

Learned counsel points out that with reference to the income from the lands,

there is no evidence at all as to what extent the income from the said lands got reduced after the death of the deceased. Further he also points out that except the abovesaid ipse dixit of P.W.1, there is no other independent or documentary evidence on the abovesaid aspect. As against these weighty arguments, of learned Counsel for the appellant in so far as the alleged loss suffered by the claimants in relation to the abovesaid agricultural lands and milk business, learned Counsel for the claimants did not seriously argue on the abovesaid factual aspects, but only mainly contended that the Tribunal below should not have fixed the multiplier only at about 5 since according to him, the deceased would have lived much longer period than the age of 58 or so. He specifically pointed out that as per the new amendment introduced to the Motor Vehicles Act by the Amending Act 54 of 1994, the multiplier to be adopted is 11 if the deceased was aged 53. In this connection he also relied on *U.P. State Road Transport Corporation and others v. Trilok Chandra & Others* (1996-2-L.W.266), where according to him, the multiplier of 18 was adopted as per the new schedule that came into being pursuant to the said amendment, even though the earlier view was that maximum multiplier could only be 16 as per *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas and others* (1994 ACJ 1) (SC). Further, according to him, even though the said amending Act came into force on 14.11.1994, it is-retrospective and that is why, according to him, the said amending Act was referred to in 1996-2-L.W.266 (supra) (Judgment dated 7.5.1996 by three Honourable Judges of the Supreme Court) even though the accident therein took place on 1.8.1977 itself. He also drew our attention to *Rattan Lal Metha v. Rajinder Kapoor* (1996 ACJ 372 (Delhi)), where also, the said amending Act was referred to even though the accident therein took place on 28.3.1978. He also referred to *Dhannalal v. Vijayavargiya* (1996(4) Scale 458 = 1997-1-L.W. 190) (Judgment of the same date, viz., 7.5.1996 delivered by two Honorable Judges of Supreme Court). In the said Supreme Court decision, the accident took place on 4.12.1990. This decision was relied on to how that the above said amending Act is retrospective. He also relies on *Dhanapal Perinbam Roadways & Another v SMT. Indirani Ammal & others* (1996-2- L.W. 283), a decision by us, where while the age of the deceased was 63 at the time of the accident, the multiplier adopted was 5. He also relies on *C. Vijayalakshmi & Another v N. Siva Bagiyam & Another* (1996-2-L.W. 238 @ 242), which is also a decision rendered by us and in which the multiplier adopted was 7 while the claimants were parents, aged 64 and 58. As against these legal submissions, learned Counsel for the appellant submits relying on *Ramesh Singh and another Vs. Cinta Devi and others*, that in so far as the substantial rights, the amending Act could only be considered as prospective since the rights accrued under the old Act, cannot be taken away.

7. We have considered the rival submissions: so far as the above referred to factual aspects relating to quantum of compensation, we find that there is acceptable evidence to fix the quantum of compensation in relation to the alleged income of the deceased from the abovesaid milk business and agricultural lands,

as has been done by the Tribunal below. In so far as the abovesaid milk business, the Tribunal below itself finds that Ex.A9 belongs to the milk business of the mother of the deceased. That a part, after seeing Ex.A10, we feel that not much credence can be given to the said document. Further, the said document also does not show that it relates to the milk business run by the deceased though in some casual way in the first page of the said small pocket note book the same Somu is written, that too not exactly at the top of the said page. Invariably we find some writings of certain dates and figures. It does not seem to be a regularly maintained account book. In Ex.A11 almost all the pages are scored out. That apart, the said document also does not convey anything relating to the actual income earned by the deceased. The same comments would apply even to Ex.A12, No. doubt, P.W.1, the widow says in her chief -examination that the deceased was having ten cows and earning Rs. 1000/- per month in the said milk business. But in cross - examination she deposed thus:-

In the light of the above evidence, it cannot be considered that the deceased who was employed as Villages Welfare Officer in the Panchayat Union as stated above, was doing the above said milk business also. Further, there is no account book showing both income and expenditure in relation to the alleged milk business of the deceased. The net result is, the abovesaid Rs. 48,300/- has to be deleted from the abovesaid compensation arrived at by the Tribunal below.

8. Further, with reference to the agricultural lands, we have already seen that Exs.A17 to A25 are sale deeds of lands in favour of the mother of the deceased only. Further, as already mentioned, P.W.1 did not specifically say how much actually the income from the lands got reduced in view of the death of the deceased. She also admitted that the lands have been leased out after the death of the deceased. Neither any lessee has been examined, nor any document shows the actual income realised from the alleged lands, both before and after the death of the deceased. Anyway there may be some deficiency in the income, realised from the lands belonging to the deceased after his death since the management of the land done by him earlier could not be continued in view of his death. In the circumstances of the case, we think that ends of justice would be met if only a sum of Rs. 50,000/- is added under this head and not abovesaid sum of Rs. 2,07,000/- as arrived at by the Tribunal below:

9. Then, coming to the abovesaid legal aspect argued by learned Counsel for the claimants relating to the application of the new Schedule introduced into the Motor Vehicles Act by the new S.163 A of the abovesaid amending Act, no doubt if the deceased is aged 53, the multiplier noted on the said Schedule is 11. But, it must be first of all noted that the said amending act came into force only on 14.11.1994, while the accident in the present case took place on 17.3.1992 itself. No doubt, in 1996 (4) Scale 458 (supra) the application of one of the provisions of the said amending Act, in a case where the accident took place on 4.12.1990 and where the claim petition was filed on 7.12.1991, came to us for consideration. That provision in the amending Act deleted Sec.166 (3) of the

parent Act of 1988. The said Sec.166 dealt with a procedural aspect in the Motor Vehicles Act, in relation to filing of the application for compensation under the Act. In that context only, the Supreme Court observed that though from the amending Act it did not appear that Sec. 166(3) has been deleted retrospectively there is nothing in the amending Act to show that the benefit of deletion of sub-section (3) to Sec.166 is not extended to pending claim petitions, where a plea of limitation has been raised.

10. Generally the law is that in contrast to legislative provisions dealing with substantive rights, those provisions dealing with merely matters of procedure are presumed to be retrospective unless such construction is textually in admissible, (vide Jose Da Costa and Another Vs. Bascora Sadasiva Sinai Narcornim and Others, . Even in a matter relating to procedure, we find Ramesh Singh and another Vs. Cinta Devi and others, held that the new Motor Vehicles Act, 1988 (59 of 1988) which replaced the original Motor Vehicles Act (4 of 1939) would not apply and hence the deposit of a particulars sum out of the award granted by the Tribunal below insisted for the first time in the said new Act would not apply in a case, where the accident took place, on 27.5.1988 and the claim application was filed on 23.12.1988 while abovesaid new Act came into force from 1.7.1989. The said decision relies on three earlier Supreme Court decisions and observes thus:-

"In all these decisions the view taken is that unless the New Act expressly or by necessary implication makes the provision applicable retrospectively, the right to appeal will crystallise in the appellant on the institution of the application in the Tribunal of first instance and that vested right of appeal would not be dislodged by the enactment of the new Act. In other words, the appellant would be entitled to file the appeal without being required to make the deposit under the proviso to Sec. 173 of the new Act".

11. In the present case , the aspect dealt with is not procedural, but substantial rights relating to quantum of compensation. In such a case, the law generally is, the Legislative provision is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (Vide Mahadeolal Kanodia Vs. The Administrator-general of West Bengal,

12. No doubt, there is reference to the abovesaid amending Act 54 of 1994 in 1996-2-L.W.266 (supra) and the multiplier adopted therein is 18, which is found in the abovesaid Schedule of the amending Act. That does not strictly mean that the Supreme Court, in terms, applied what is contained in the said Schedule itself. It only points out the amending legislation that has come into being and taking an over all view, adopts the multiplier of 18 as against the multiplier of 34, adopted by the High Court below, Earlier 1994 ACJ 1(SC) (supra) held that the multiplier, normally cannot exceed 16. That decision too does not necessarily mean that in no case the multiplier can exceed 16 by adding one or two more as multiplier. Further, in the abovesaid Supreme Court decision in 1996-2-L.W.266 there was no discussion at all as to whether the amending Act is prospective or

retrospective. That apart, even in that decision, the Supreme Court points out that the abovesaid schedule has several defects. Following is the relevant observation in the above said Supreme Court decision:-

"We must at once point out that the calculation of compensation and the amount worked out in the schedule suffer from several defects. For examples, in item No. 1, for a victim aged 15 years, the multiplier is shown to be 15 years, and the multiply and is shown to be Rs. 3000/-. The total should be $3000 \times 15 = 45,000/-$ but the same is worked out at Rs. 60,000/-. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9000: the total should have been Rs. 1,44,000 but is shown to be Rs. 1,71,000/-. To put it briefly, the table abounds in such mistakes. Neither the Tribunals nor the Courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of Multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased a bachelor, dies at the age of 45 years and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited, to actual (? actuary) calculations only and not in respect of other items".

Such mistakes are also pointed out in *Rattan Lal Mehta Vs. Rajinder Kapoor*, which also holds that the said schedule is prospective.

13. It must be noted that in the abovesaid 1996-2-L.W. 266, the multiplier of 18 was adopted, while the age of the deceased was 26. Here the age of the deceased is 53. In the circumstances, we do not see any good reason to change the multiplier adopted by the Tribunal below, which roughly comes to 5. The net result is, the compensation awarded by the tribunal below is reduced by Rs. 48,300 + Rs. 1,57,000/-, that is, Rs. 2,05,300/-. Thus the decision of the Tribunal below is modified and the award is reduced to Rs. 2,82,050/- This amount will bear interest at the rate of 12 per cent per annum, as granted by the Court below. The apportionment of the abovesaid amount among the claimants also shall be in the same ratio as adopted by the Tribunal below. Accordingly the appeal is allowed in part to the extent indicated above. No costs.