

(1994) 08 MAD CK 0005
In the Madras High Court

G. Ganesan and Another

APPELLANT

Vs

C. Polycarp Pancharathnam and Others

RESPONDENT

Date of Decision : 22-08-1994

Acts Referred:

Succession Act, 1925 — Section 306

Citation : (1996) 2 ACC 170 : (1996) 1 LW 491

Hon'ble Judges : T. Jayarama Chouta, J;Arunachalam, J

Bench : Division Bench

Judgement

T. Jayarama Chouta, J.—These three appeals arise out of three claim petitions decided by the Subordinate Judge, Ariyalur in a single

accident which have been tried together and passed a common award. Hence, we heard all these appeals together and pass a common judgment.

2. C.M.A. No. 87 of 1986 arises out of M.C.O. No. 3 of 1984 whereas C.M.A. No. 40 of 1987 is against M.C.O.P. No. 4 of 1984 and

C.M.A. No. 41 of 1987 is challenging the award in M.C.O.P. No. 6 of 1984.

3. The appellant in C.M.A. No. 875 of 1986 filed a claim petition on the averments that he was working as an Assistant No. 3 in the District Court

of South Arcot at Cuddalore on a salary of Rs. 900/- per month. On 1.12.1993, the petitioner and his friends including the claimants in the other

petitions, were going in an van belonging to the first respondent. When it was nearing Valikandapuram, a lorry belonging to the second respondent

came rashly and negligently from the opposite direction and knocked down the van, as a result of which the van was smashed and the petitioner

and others sustained various injuries. He claimed a total compensation of Rs. 2 lakhs with interest under different heads. Similarly, the appellant in

C.M.A. No. 40 of 1987 claimed a total compensation of Rs. 2,00,000/- on the ground that he is a retired Tahsildar and is working as a Manager

in M/s. Sudha Enterprises, Pondichery drawing a monthly salary of Rs. 1,400/-. The appellant in C.M.A. No. 41 of 1987 claimed a total

compensation of Rs. 1,00,000/- on the allegations that he is an Advocate practising in criminal side and due to the injuries he had sustained during

the accident he is not in a position to sit, walk or travel continuously and it has affected his profession.

4. In all these claim petitions, the third respondent Insurance Company filed its counter statement contending that the driver of the lorry was not

rash and negligent and disputing the manner of accident and also the quantum of compensation. The first respondent also disputed the Claim

Petitions.

5. The Tribunal took all the claim petitions together. On behalf of the claimants, six witnesses were examined including the injured and got marked

Exs. A 1 to A 213. No witness was examined on behalf of the respondents. The Tribunal, after conclusion of the inquiry by its order dated

20.9.1985 has proceeded on the basis that the lorry driver was rash and negligent and awarded a total compensation of Rs. 25,000/- in M.C.O.P.

No. 3 of 1984, a compensation of Rs. 15,000/- in M.C.O.P. No. 4 of 1984 and a sum of Rs. 15,000/- in M.C.O.P. No. 6 of 1984 with @ 9%

of interest per annum in all the cases from the date of petition till the date of deposit.

6. Being not satisfied with the quantum of compensation, the injured have filed the above mentioned appeals for enhancement. Since the

respondents have not challenged the finding regarding negligence by filing independent appeals or cross-objections, we need not go into that

question as it has become final.

7. In C.M.A. No. 40 of 1986 during the pendency of the appeal, the sole appellant died and his legal representatives have filed three applications

viz., C.M.P. Nos. 11121, 11122 and 11123 of 1994 to come on record by condoning the delay in filing the legal representative application and

also to set aside the abatement. Learned Advocate for the respondent, Insurance Company, orally opposed the said applications and contended

that the appeal does not survive after the death of the injured/claimant, as the

cause of action does not survive to the legal representatives of the claimant as the appeal abated. In this regard, he cited two decisions in C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, and Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair, In the earlier case, considering the provision of Section 306 of the Indian Succession Act, the Court has held that the cause of action regarding the disallowed portion of the claim, which was the subject matter in appeal does not survive after the death of the petitioner/claimant and therefore, appeal abates. The Court has not considered whether the damages or compensation to the estate of the deceased survives or not. And hence, we see this decision has no application to the present case. The second decision cited by the learned Advocate for the Insurance Company is that in respect of suit claiming damages for defamation in which the Supreme Court has held that an appeal against the decree for damages, since the right to sue does not survive in a defamation action, when the appellant does during the pendency of the appeal, his right to sue does not survive, the appeal will abate and the legal representative will have no right to be brought on the record to continue the appeal. There in that case, their Lordships have observed the maxim ""actio personalis moritur cum persona"".

Hence, this case is also not applicable to the facts of the present case.

8. Learned Advocate for the legal representatives of the deceased/appellant invited our attention to a decision in Thailammal and Others Vs. A.V. Mallayya Pillai and Others, , and confined his claim only to damages to the estate of the deceased which according to him will survive. In that decision, the High Court has held that the claim of the legal representatives in an appeal when the sole appellant/claimant died during the pendency of the appeal survives in respect of damages to the estate of the deceased. The said decision also made reference to the decision in C.P. Kandaswamy and Others Vs. Mariappa Stores and Others, and made a distinction after considering the provisions of Section 110-A of the Motor Vehicles Act. Since the learned Advocate confines his claim only with regard to the damages to the estate of the deceased, the ratio of the present, case Thailammal and Others Vs. A.V. Mallayya Pillai and Others, , is applicable to this case. Accordingly, we allow all those three applications and proceed with the appeal on merits.

9. In C.M.A. No. 875 of 1986, the Tribunal has granted Rs. 25,000/- against a claim of Rs. 2,00,000/-. The claimant was working as an

Assistant Nazir in the District Court, South Arcot at Cuddalore and was aged 52 years at the time of the accident. Due to the accident, there was

permanent disability, disfigurement and his right hand has become ineffective. He had lost teeth and power in his arm. He was in hospital for more

than 25 days and having physical pain and discomfort. He has lost his promotion and lost his future earning and he was compelled to have

premature retirement. Taking into consideration all these factors, we deem a total sum of Rs. 75,000/- is the proper and just compensation. The

Tribunal has awarded interest at the rate of 9% per annum. But, in view of the recent decision of the Supreme Court, we award @ 12% interest

per annum to the said amount from the date of the petition till realisation.

10. Now coming to C.M.A. No. 40 of 1986, the Tribunal has awarded a total compensation of Rs. 15,000/- with @ 9% interest per annum. The

injured at that time was aged 59 years, retired Tahsildar working in a private company drawing a salary of Rs. 1,400/- per month. He has claimed

Rs. 2,00,000/-. Since the sole claimant had died during the pendency of this appeal and his legal representatives have confined their claim towards

the loss to the estate at Rs. 70,000/-, we hold a total sum of Rs. 40,000/- with @ 12% interest will be the proper and just compensation. The said

amount should be divided equally by all the appellants. While granting this sum of Rs. 40,000/-, we have taken into consideration the salary, the

period of his earning capacity and also loss to the estate of the original claimant.

11. Now turning to C.M.A. No. 41 of 1986, the Tribunal has awarded a total sum of Rs. 15,000/- as against the claim of Rs. 1,00,000/-. The

injured claimant is a practising Advocate, having restricted movement of the spinal cord towards all directions and is getting pain during such

movement. X-ray revealed damages to lumbar, spine, impaired function of sciatic nerve and the permanent disability is 25%. He has spent good

amount towards the treatment and medicine. He has produced the bills towards these expenditures. The doctor has given evidence regarding his

treatment and the permanent disability. Taking into consideration all these factors, we fix a compensation of Rs. 30,000/- with @ 12% interest per

annum as just, proper and reasonable.

12. For the reasons stated above, we allow these appeals in part. In C.M.A. No. 875 of 1986, the appellant is entitled for Rs. 75,000/- while in C.M.A. No. 40 of 1987, all the appellants are entitled for a total compensation of Rs. 40,000/- which they have to share equally and in C.M.A. No. 41 of 1987 the appellant is entitled for Rs. 30,000/-. All these amounts will fetch @ 12% interest per annum from the date of petitions till realisation. There will be no order as to costs in these appeals.