

(1988) 12 MAD CK 0024
In the Madras High Court

Govindamma and Others

APPELLANT

Vs

Pallavan Transport Corporation Ltd.

RESPONDENT

Date of Decision : 16-12-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1989) 2 ACC 27

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Judgement

Padmini Jesudurai, J.—The widow, the minor children and the mother of the deceased Govindaraj, in whose favour the Motor Accidents Claims Tribunal has passed an Award for a sum of Rs. 31,000/- have filed the present appeal for enhancement of the above amount.

2. The deceased, Govindaraj aged 37 years. at the time of his death on 2-5-1981, was the husband of the first appellant, the father of appellants 2 to 6 and the son of the seventh appellant. He was employed as a Mazdoor in the Port Trust at Madras, drawing a salary of Rs. 711-50. He was knocked down by the PTC bus M.S.W. 197 belonging to the respondent, being driven by the driver in a rash and negligent manner. The appellants filed M.O.P. No. 349 of 1981 before the Motor Accidents Claims Tribunal (Subordinate Judge), Chengalpattu, u/s 110-A of the Motor Vehicles Act claiming a total compensation of Rs. 75,000/-.

3. The respondent contested the claim alleging that the accident was not due to the rash and negligent driving of the driver of the bus and that the amount claimed as compensation was excessive.

4. Before the Tribunal, the first appellant examined herself as PW 1 and examined one Babu, an eyewitness to the occurrence, as PW 2. The salary certificate of the deceased Govindaraj was marked as Ex. A-1. The post mortem certificate and the death report were marked as Exts. A-2 and A-3 respectively and the birth report of the minor children of the appellants herein as Exts. A-4 to

A-6. On behalf of the respondent, Nagarathinam, the driver of the bus was examined as RW 1. No documents were marked on the side of the respondent.

5. The Tribunal, on the above evidence, held that the accident was due to the rash and negligent driving of the bus by R W 1 and that the respondent, therefore, was liable to pay compensation. The quantum of compensation was assessed at Rs. 31,000/-, out of which a sum of Rs. 3000/- was directed to be paid to the seventh appellant herein, a sum of Rs. 8000/- to the first appellant and the remaining sum of Rs. 20,000/- to be equally distributed to the minor children; appellants 2 to 6, each getting sum of Rs. 4000/-. The share of appellants 2 to 6 was required to be deposited in the fixed deposit in the Indian Overseas Bank, Chengalpattu with liberty to the first appellant to draw interest every six months. Holding that the compensation awarded was grossly inadequate, the appellants have filed the present appeal for enhancement of compensation.

6. Learned Counsel for the appellants, Thiru S. Veeraraghavan, urged the following contentions in support of his prayer:

(1) The Tribunal was wrong in deducting half the amount of the deceased, as being the amount which the deceased would have spent for his personal expenses; a lesser fraction could have been deducted;

(2) The Tribunal had deducted a sum of Rs. 200/-, which is being paid to the appellants as family pension. Such a deduction, is contrary to the decisions of the Supreme Court;

(3) A further deduction of 1/5th has been made for the receipt of Rs. 10,000/- under the Family Benefit Fund and possible employment to the first appellant and receipt of the family pension. Such a deduction was unwarranted, particularly when considering the very facts, half the income had already been deducted towards personal expenses of the deceased;

(4) No amount had been awarded for pain and suffering under one by the deceased, after the accident and before his death;

(5) No separate amount had been awarded towards the loss of consortium; (6) The Tribunal had awarded interest at the rate of 6% p.a. on the amount awarded. Interest should have been awarded at least at the rate of 12% p.a.

Learned Counsel referred to certain decisions, which I shall refer to later.

7. Thiru M. Krishnamoorthy, learned Counsel for the respondent, contended relying upon certain other decisions, that the multiplier of 20 adopted was too high and that a multiplier of 7 or at the most 13 ought to have been adopted. Learned Counsel also contended that deductions had been rightly made and the appellants were not entitled to any amount towards pain and suffering of the deceased, since there was no evidence that the deceased was conscious after the accident. Finally, learned Counsel contended that awarding of interest was only

discretionary, as found in Section 110(C)(C) of the Motor Vehicles Act and the exercise of the discretionary power of the Tribunal, need not be disturbed in the absence of arbitrariness.

8. Before discussing the various contentions raised by the learned Counsel for the appellants, it would be useful to state the basis adopted by the Tribunal in fixing the compensation. The deceased was aged 37 and his monthly income, as seen from Ex. A-I, the pay certificate, was roughly Rs. 720/-. Half of the amount was deducted as being the expenses of the deceased himself. This figure, one half, has been adopted by the Tribunal on the basis of three facts, viz., that the appellants had been given family pension of Rs. 200/- p.m. by the Port Trust Authorities, that the first appellant was promised a Sweeper post in the Port Trust Department and that the family had received a lump sum of Rs. 10,000/- from the Port Trust, possibly under the family benefit fund scheme. Considering these three facts, the Tribunal chose to deduct one half of the income of the deceased for his expenses. The Tribunal arrived at the figures Rs. 360/- p.m. At this stage, the Tribunal made a second deduction of Rs. 200/- which was paid to the first appellant as family pension. After this deduction, the Tribunal arrived at the figure of Rs. 160/- p.m. which worked out to Rs. 1920/- per year. The Tribunal adopted a multiplier of 20 and arrived at the figure Rs. 38,440/-. Thereafter, the Tribunal, made a third deduction of 20% of this amount on three considerations viz., the fact that the appellants were paid monthly pension of Rs. 200/-, the fact that the first appellant was provided with a job with a salary of Rs. 350/- p.m. (this is factually incorrect since the first appellant in her evidence has stated that she had only been promised a job, but had not been given one) and also on the fact that the family had been paid a sum of Rs. 10,000/- by the Port Trust Authorities. On these three considerations, a further reduction of 1/5th of Rs. 38,440/- was made and after the deduction the figure of Rs. 30,720/- was arrived at. This amount was rounded off to Rs. 31,000/- which was fixed as compensation for the death of the deceased.

9. I shall now take up the contentions in the order in which they are made.

10. Contention No. 1 : According to the learned Counsel for the appellants, the Tribunal ought not to have deducted as high an amount as half the salary towards expenses of the deceased. According to the learned Counsel, when the income is low no deductions are called for, at any rate, a smaller fraction could have been adopted under this head. Learned Counsel relied upon a decision of the Delhi High Court reported in *Kela Devi v. Ram Chand* 1986 ACJ 818 where a single judge of the Delhi High Court had expressed the view that, where the income is on the lower side, deduction towards personal expenses need not be made. However, several decisions of the Supreme Court indicate that where the monthly salary is roughly about Rs. 700/- or so, deduction of held towards expenses of the deceased would not be improper. In fact, in the decision relied on by the learned Counsel for the appellants, in *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, the Supreme Court, for the deceased who was aged

37 and who was drawing a salary of Rs. 620/- per month, had deducted one half towards the expenses of the deceased and had held that only the remaining half could be included in the valuation for loss of dependency. Under these circumstances, I hold that the Tribunal did not err in taking half the amount towards the personal expenses of the deceased; though the basis on which this fraction half was arrived at viz., the receipt of family pension, promise of a job to the first appellant and the receipt of the family benefit fund, could not be considerations for fixing the quantum that could be deducted for personal expenses of the deceased. Deducting half the income of the deceased for his personal expenses as done by the Tribunal, is maintained.

11. Contention No. 2: The second contention of the learned Counsel for the appellants in that the Tribunal was not justified in deducting Rs. 200/- which the appellants were receiving towards the family pension of the deceased. The first appellant as PW. 1 has admitted that the family was being paid Rs. 200/- per month. The Supreme Court in *N. Sivammal v. Pandian Roadways Corporation* 198S ACJ 75 in a case from Madras, held that deducting a pension of Rs. 120/- p.m. paid to the widow of the deceased could not be justified. Such a deduction was set aside. Under these circumstances, the Tribunal was not justified in deducting the family pension that was being paid to the first appellant by the Port Trust Authorities as family pension. That amount, therefore, cannot be deducted.

12. Contention No. 3 : The third contention of the learned Counsel for the appellants is that a further deduction of 1/5th made by the Tribunal for the very same considerations, on the basis of which the first deduction of half the salary had been made, cannot be justified. As the learned Counsel for the appellants rightly points out, the Tribunal, having deducted the family pension from the salary and having considered the fact of receipt of family pension as one of the reasons for deduct half the salary as being spent on the deceased, could not again consider the same factor to make further deduction of 20%. The second consideration for making this deduction of 1/5 viz., that the first appellant was provided with a job with a salary of Rs. 300/- per month is factually incorrect. Examined as PW 1 the first appellant has stated that she was only promised a job and the job would be a Sweeper's post, which might fetch a salary of Rs. 350/- per month. She has repeatedly stated that she had not been provided with a job. Even if the first appellant had been provided with a job, the salary that she would have received, would only represent the salary for the work that she would do as a Sweeper. These considerations cannot come in, while fixing the pecuniary loss to the family. The third consideration for deducting 1/5 is that the family had received a sum of Rs. 10,000/- from the Port Trust Authorities. This fact had been the basis for the initial deduction of half salary of the deceased and had again been the basis for a further deduction of 1/5. The deduction of 1/5 on these considerations cannot be made.

13. However, as the learned Counsel for the respondent contends, Courts have

often deducted a percentage for the advantage of a lump payment of compensation arising out of accidents. Since, it is a settled position of law that a reasonable deduction for the lump payment could be made, it is needless to refer to the decisions placed before me by the learned Counsel for the respondent wherein such deductions have been made. I, therefore, hold that a deduction of 1/5 for lump payment could be made; though not for the reasons mentioned by the Tribunal in its order.

14. Contention 4 : The fourth contention of the learned Counsel for the appellants viz., that no amount has been awarded for pain and suffering undergone by the deceased cannot be accepted, since it is not established that the deceased was conscious after the receipt of the injuries. In fact, he has died the same day and unless the appellants establish that the deceased was conscious enough to undergo the pain and suffering, no amount can be awarded under that head.

15. Contention No. 5 : The next contention of the learned Counsel for the appellants is that no amount has been awarded for the loss of consortium. Though courts have been awarding separate amounts for loss of consortium, in view of the manner in which I propose to calculate total compensation in this case, I do not feel that awarding a separate amount under the head "loss of consortium" is necessary in the facts of this case.

16. Contention No. 6 : -The last contention of the learned Counsel for the appellants, is, that interest has to be charged not at the rate of 6% p.a. as awarded by the Tribunal, but at least at 12% p.a. as is being done by various High Courts and also by the Supreme Court. It is true that rate of interest to be awarded on the amount, is within the discretion of the Court. However, in the instant case, considering all the facts and circumstances, I do not think that the rate of interest ordered by the Tribunal, requires any interference.

17. Dealing with the contention raised by the learned Counsel for the respondent that adopting a multiplier of 20 is too high, we find that the Supreme Court in *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, adopted a multiplier of 18 where the deceased was aged 37 years. And was drawing a monthly salary of Rs. 620/- and also added the gratuity the deceased would have received at his retirement. As the Supreme Court in that case points out, while fixing the quantum of pecuniary loss of the deceased, who have been in permanent employment with proper condition of service, we cannot lose sight of the fact that the salary of the deceased would increase as his service increases. He would also be getting increments and other emoluments. There would also be pay revisions. In the instant case, the evidence of the 1st appellant is that the age of retirement for the deceased is 60 and that he would be given bonus and overtime allowances as well- No weight age had been given for all this. Under these circumstances, I feel that adopting a multiplier of 20 is not improper and the Tribunal has rightly done so.

18. On the basis of the findings expressed above, the calculation is made this way. The monthly pay of the deceased was Rs. 720/-. Deducting half from it towards his personal expenses, we get the figure Rs. 360/- p.m. as the contribution of the deceased to his family. The annual contribution comes to Rs. 4320/-. Adopting a multiplier of 20, it comes to Rs. 86,400/-. 20% of it as advantage for lump payment is Rs. 17,280/-. After deducting this amount are get Rs. 69,120/-. The compensation could be rounded off to Rs. 69,000/-.

19. Regarding apportionment, the seventh appellant, who is the mother of the deceased, was aged 60 in 1981. She had been awarded Rs. 3000/- by the Tribunal. She will now be awarded Rs. 5000/-. The first appellant was aged 26 and was awarded Rs. 8000/-. She will be awarded Rs. 6000/- more, which makes her share Rs. 14,000/-. Appellants 2 to 6, who are the four daughters and one son of the age 10, 8, 4, 3 and 1 respectively, who were awarded Rs. 4000/- each will be awarded Rs. 10,000/-, each making a total of Rs. 50,000/-. For the enhanced amount of Rs. 38,000/- interest at the rate of 6% p.a. will be paid from the date of the filing of the claim petition before the Motor Accidents Claims Tribunal till the date of deposit. The enhanced share of such those appellants, who are still minors, will be deposited in the same Bank as ordered by the Tribunal and the first appellant will be at liberty to draw interest there from, once in six months. The appeal is allowed in the above terms. No costs.