

(2009) 12 MAD CK 0167

In the Madras High Court

Case No : C.M.A. No. 1986 of 2007 and M.P. No. 1 of 2007

Iffco-Tokio General Ins. Co. Ltd.

APPELLANT

Vs

P. Karunakaran and Others

RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 163A, 166, 173
Penal Code, 1860 (IPC) — Section 279, 304(A), 337, 338

Citation : (2009) 12 MAD CK 0167

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; N. Sankaravadivel, for RR1 to 5 and R6, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/second respondent, against the award and decree order dated 27.03.2007, made in M.C.O.P. No. 965 of 2004, on the file of the motor accident claims tribunal, additional district court and Essential Commodities Act, Special Court Salem, awarding a compensation of Rs. 7,85,000/-, with 7.5% interest per annum, from the date of filing petition to till the date of payment of compensation.

2. Aggrieved by the said award and decree, the appellant/second respondent, The Managing Director, Iffco-Tokio General Ins. Co., Ltd., has filed the above appeal praying for reconsideration of the award granted by the Tribunal.

3. The short facts of the case are as follows:

On 19.04.2004, at about 15.30 hrs, the deceased Karthik was riding his Hero Honda Passion, bearing registration No. TN30 A5820, from Salem Kuranguchavadi to State Bank Routana, near Salem State Bank Bye-Pass

Rountana, and travelling on the left side of the road. At that time, a Minidor Auto bearing registration No. TN30 Z6447, came from opposite side (from State Bank Rountana to Kuranguchavadi), and driven by its driver in a rash and negligent manner, hit against the Hero Honda Passion vehicle and the said Karthik. In the result, Karthik was seriously injured on his head and sustained injury all over his body.

4. Immediately, after the accident, the deceased Karthik was taken to Bharat Hospital, Salem and then was taken to K.G. Hospital, Coimbatore for better treatment and admitted in the Intensive Care Unit. After three days, Karthik died at K.G. Hospital, Coimbatore. Post-mortem was done at Government Mohan Kumaramangalam Medical College Hospital, Salem.

5. The deceased Karthik was a fourth year B.E. Computer Science Student. At the time of the accident, the deceased Karthik was hale and healthy and aged about 21 years only. The first petitioner, the father of the deceased, second petitioner, the mother of the deceased, the third petitioner, sister of the deceased, the fourth petitioner, brother of the deceased and the fifth petitioner, the grandmother of the deceased, have claimed a compensation of Rs. 24,00,000/- from the respondents namely owner of the Auto and the insurer of the said Auto bearing registration No. TN30 Z6447, as the accident had occurred purely due to rash and negligent act of the first respondents Minidor Auto bearing registration No. TN30 Z6447, u/s 166 of the Motor Vehicles Act, 1988.

6. On the complaint given by one S. Sivasakthi Murugan of Mukil Nagar, Narasothipatty (eye witness of the accident), a case has been registered against the driver of Minidor Auto bearing registration No. TN30 Z6447, by the Traffic Investigation Wing, Salem in Crime No. 213/2004, dated 20.04.2004 for offences under Sections 279, 337, 338 and 304(A) of I.P.C.

7. The second respondent in his Counter has resisted the claim and has denied the age, status and the supposed income of the deceased. The place, date and time of the accident have also not been admitted. The period of treatment and expenses met thereof are denied. Further, the driver of the Minidor Auto did not have a valid driving licence to drive the Auto. So, liability, if any, should be shouldered only by the owner of the Minidor Auto. Further, the Motor Vehicles Report of both vehicles i.e. the Hero Honda Passion and the Minidor Auto reveals that the two wheeler had hit the Minidor Auto and not vice versa. As per the F.I.R., the deceased and another motorcyclist were heading to a destination (Junction. Investigation reveals that both the motorcyclists were racing against each other and while the deceased was riding his bike at a high speed, this accident had taken place. As such, the deceased had also contributed to the accident. Further, the claim is excessive. The petitioners have not explained the reason for the delay in filing the FIR. The petitioners also have to prove that they are legal heirs of the deceased. As such, the second respondent has prayed for dismissal of the petition.

8. The Motor Accident Claims Tribunal framed two issues for consideration namely:

(i) Was the driver of the Minidor Auto, belonging to the first respondent, rash and negligent in driving the auto and was he responsible for the accident?

(ii) Are the petitioners entitled to get compensation? If so, what is the quantum of compensation, they are entitled to?

9. On the petitioners' side, two witnesses were examined as PW1 and PW2 and six documents were marked as Exs.P1 to P6. On the respondents side, one witness was examined as RW1. No documents were marked. As the owner of the Minidor Auto did not render appearance, he was considered absent and set aside.

10. It has been stated by the petitioners that on 19.04.2004, while the deceased Karthik was riding his Hero Honda bearing registration No. TN30 A5820 from Salem Kuranguchavadi to State Bank Rountana, and that while he was riding on the leftside of the Salem State Bank Bye-Pass rountana, at that time the minidor auto bearing registration No. TN30 Z6447, driven rashly and at high speed by its driver, had hit against the deceased and that the deceased Karthik had sustained injuries all over his body. He had been taken to Salem Barath Hospital and subsequently to K.G. Hospital, Coimbatore for treatment, but had succumbed to the injuries and died. The second respondent has contended that only the deceased Karthik had ridden his bike in a rash and negligent manner and dashed against the minidor auto.

11. On the petitioners side, one Chinnaian was examined as PW2 and in his oral evidence he has deposed that on 19.04.2004, when he was coming in his two wheeler from Manal Market to Kuranguchavadi, at about 3.30 p.m. in the afternoon, when he was nearing State Bank Colony, he had seen two motorcyclists travelling in front of him and at the time a minidor auto, driven at a high speed by its driver, had dashed against one of the motorcyclists from behind and hence had said that the accident had been caused only due to the fault of the minidor auto driver. He had further deposed that after the deceased Karthik was hit, he and some others had taken him to Barath Hospital for treatment.

12. On the respondents side, one Shanmuga Vadivel was examined as RW1. The RW1, in his evidence has adduced that he was the Area Manager of the Salem Branch of the second respondent Insurance Company; that the Investigating Officer of their Insurance Company had also conducted enquiry of the said accident and had submitted a report that the accident had been caused only by the rash and negligent driving of the deceased Karthik. But, the Investigation Report was not filed before the Tribunal. Further, the Tribunal held that the rashness or negligence on the part of the deceased Karthik can only be stated correctly by the first respondents driver. But, the second respondent has not made any efforts to examine the first respondent's driver before the Tribunal. From a scrutiny of Ex.A1, it is evident that the Criminal Case has also been filed

only against the driver of the first respondent. As such, the Tribunal considering the Ex.A1 and evidence of PW2 held that the accident had been caused only by the rash and negligent driving of the first respondent driver.

13. It has been contended on the second respondent's side that the first respondent's minidor auto was a goods vehicle and that the driver of the minidor auto did not have valid driving licence to drive a goods vehicle. But, the second respondent has not taken any initiative to produce the badge, which would have been issued by the RTO Office to the driver of the minidor auto, if he had been a certified driving licence holder for driving goods vehicle. Further, the driver of the first respondent's vehicle has also not been examined as a party in this case. The second respondent has also contended that the driver of the first respondent had only a Learners Licence at the time of the accident and in proof of this they had marked Ex.R2. But, the Tribunal on scrutiny of Ex.R2 held that the period for which the learners licence is valid has not been clearly seen in the said exhibit and was of the view that the original learners licence of the driver of the minidor auto should have been produced to ascertain the period of validity. Further, the Tribunal held that the first respondent's driver subsequent to this, could have also got his permanent driving licence. As such, the Tribunal was of the view that the non-examination of the first respondents driver renders the claim made by the second respondent not maintainable. As such, the Tribunal held that the first and second respondents are liable to pay compensation to the petitioners.

14. The Tribunal then considered the issue regarding quantum of compensation. It was observed by the Tribunal that the deceased Karthik was an unmarried person and that he was a 4th year student in an Engineering College studying Computer Science. It was also evident that the deceased was not an earning member at the time of the accident. As such, the Tribunal on considering that he was a fourth year Engineering Student in Computer Science was of the view that he could have earned a salary of Rs. 10,000/- per month, if he had been alive. To determine the prospective income of the deceased, his mark sheet, which had been marked as Ex.A4, was scrutinised by the Tribunal. From this, the Tribunal was not able to come to a conclusion that the deceased had passed all his subjects in the first attempt. Further, it was evident that the deceased had also failed in a subject. As such, the Tribunal was disinclined to believe that the deceased could have got a very high salary immediately after he got his Engineering Degree. As such, the Tribunal was not inclined to fix the salary of the deceased as more than Rs. 10,000/- per month. At the time of his death, the deceased was aged about 21 years. It was argued by the learned Counsel for the respondents that only the age of the parents of the deceased should be taken into consideration for computing quantum of compensation and not the age of the deceased, as the deceased, after marriage, may not be able to contribute the same amount to his parents as he had done before his marriage. In support of this, they had cited a Judgment in a case of Supreme Court in *The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another*, the headline notes of which are mentioned below:

Quantum "Fatal accident" Deceased aged 18, student belonging to a respectable and educated family Claimants: father aged 47 and mother aged 43 Tribunal assessed income at Rs. 3,000 p.m., adopted multiplier of 15 and assessed compensation of Rs. 5,60,000/- including loss of expectation of life, made deduction of 25 per cent for lump sum payment and awarded Rs. 4,01,250 "Award upheld by High Court" Apex Court adopted multiplier of 10, assessed compensation of Rs. 3,60,000/- made deduction of 25 per cent for contributory negligence of the deceased and allowed Rs. 3,00,000/- inclusive of loss of expectation of life Award of Rs. 4,01,250 reduced to Rs. 3,00,000/-.

15. As such, the Tribunal considering the age of father of deceased the first petitioner as 48 years and that of the mother of the deceased, the second petitioner as 42 years, adopted a multiplier of 14 as per Section 163A in the 2nd Schedule of the Motor Vehicles Act and assessed the total income, which could have been earned by the deceased as Rs. 10,000/- $\times 12 \times 14 =$ Rs. 16,80,000/-.

16. Further, the learned Counsel for the respondents had argued that as the deceased was an unmarried person, he could not contribute the same amount to his family after marriage and hence had argued that only 1/3 of his income could be taken as contribution to his family in future and in support of this had referred the Judgment cited in a case in Allahabad High Court in Mohd. Shakir Ali and Others Vs. United India Insurance Co. Ltd., , the operative portion of which are as follows:

Loss of dependancy Assessment of Deceased persons bachelors Tribunal assessed dependency of claimants as 1/3rd of income of deceased contention, dependency should be 2/3rd after deduction of 1/3rd income of deceased in respect of personal expenses Supreme Court in Donat Louis Machado and others VL Ravindra & others laid down cogent reasons for fixing dependancy of parents to 1/3rd of income only same applicable in present case impugned Judgment does not suffer from any error of infirmity.

17. As such, the Tribunal considering the present case in consonance with the case cited above decided that the deceased contribution to his family could be taken as 1/3rd of his total income only. As such, the Tribunal taking 1/3 of Rs. 16,80,000/- as Rs. 5,60,000/- decided that a sum of Rs. 5,60,000/- could be granted as compensation to the petitioners for loss of income suffered by them due to death of deceased. Further, considering that the deceased was a fourth year Engineering Computer Science Student, the Tribunal was of the view that the petitioners could have spent Rs. 2,00,000/- on him for his educational expenses and so granted a sum of Rs. 2,00,000/- to the petitioners towards this expense. They also granted a sum of Rs. 2,000/- for funeral expenses.

18. For considering medical expenses incurred by the petitioner, for treatment of deceased, which has been stated as Rs. 52,777/-, the Tribunal scrutinised the medical bill given by Salem Barath Hospital dated 02.05.2004, wherein it has been stated that the deceased was admitted in the Hospital on 19.04.2004 and

was discharged on 02.05.2004. On an inspection of Ex.A2, the Post-mortem Certificate of deceased, it is evident that the examination of body of deceased had been conducted on 21.04.2004 at 5.45 p.m. As such, Tribunal was disinclined to believe the report of Hospital, wherein it has been stated that the deceased had been discharged only on 02.05.2004. As such, the Tribunal was not satisfied with the authenticity of medical bills produced and considered that the deceased had taken treatment only from 19.04.2004 to 21.04.2004 and granted a sum of Rs. 23,000/- only towards medical expenses. In total, the Tribunal granted a sum of Rs. 7,85,000/- to the petitioners and apportioned an award of Rs. 2,80,000/- each to the first and second petitioner; and apportioned the balance of Rs. 2,85,000/- of the award has to be shared equally amongst the 3rd to 5th petitioners.

19. The Tribunal directed the respondents to deposit the above award with interest at the rate of 7.5% from the date of filing the petition till the date of payment of compensation, within a period of two months, into the credit of the M.C.O.P. No. 965 of 2004, on the file of the motor accident claims tribunal, additional district court and Essential Commodities Act, Special Court Salem and the apportioned share of the 1st to 3rd and 5th petitioners apportioned share has to be invested in a Nationalised Bank for a period of three years and the fourth minor petitioner's share has to be invested in a Nationalised Bank until such time he becomes a major and permitted the petitioners to receive interest on such deposits. The petitioners were directed to pay Court fees, within a period of 15 days from the date of its Order. The Advocate fees was fixed as Rs. 14,050/-.

20. The learned Counsel for the appellant has contended in his appeal that the award of Rs. 5,60,000/- towards pecuniary loss is too high, considering the age of the deceased and the age of the claimants. Further, it has been contended that a sum of Rs. 2,00,000/- granted towards loss for education of the deceased is not tenable. The total compensation of Rs. 7,85,000/- under various heads is far in excess of what may be justified in the circumstances of the case. As such, the learned Counsel for the appellant has prayed for re-consideration of the huge sum granted as compensation to the petitioners.

21. The learned Counsel for the respondents argued that the deceased was an Engineering Student and just about to complete his Professional Course and hence could have taken good care of his family. Though, the claimants had extended their maximum support for educating their son, it has not been fruitful to them. The Tribunal had awarded a compensation of only Rs. 7,85,000/-, which is on the lower side. Supporting his case, the learned Counsel has marked a citation of a Judgment in 2009(4) CTJ 469, High Court of Madras, Madurai Bench, the operative portion of which is stated below:

Compensation Quantum Determination Fatal Accident Deceased, aged 22 years, B.E. Final Year student, non-earning member and bachelor Income/Future Prospects: Rs. 7,000 fixed in Appeal as against Rs. 4,500 Deduction for Personal Expenses:1/3 deducted by Tribunal, confirmed Multiplier: of 15 adopted by

Tribunal in view of age of mother of deceased (43) years, confirmed Loss of Income: Rs. 8,40,000 Tax Deduction 10% - Net Loss of Income: Rs. 7,56,000 awarded as against Rs. 5,40,000 Loss of Live and Affection:Rs.40,000 confirmed Funeral Expenses: Rs. 5,000 confirmed Total Compensation: Rs. 8,01,000 as against Rs. 5,85,000 awarded by Tribunal Interest: 7.5% p.a. Motor Vehicles Act, 1988 (59 of 1988), Sections 166 & 173 Deduction for Personal Expenses Death of non-earning member Engineering student Deduction $\frac{1}{3}$ or = - Deceased was a bachelor Ratio in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, , applied Normal rule in India is deduction of $\frac{1}{3}$ rd from monthly income towards Personal Expenses.

Facts: A final year Engineering student, a bachelor died in a road accident. The claim was made on the ground that the deceased had potential to earn and the compensation was claimed at Rs. 10 lakhs. The Tribunal awarded 5,85,000/- which was challenged by the Insurance Company in Appeal.

23. Based on the Judgment and considering his position as student studying final year B.E. (Automobile Engineer), this Court could fix the monthly income of the deceased at Rs. 10,000/-. There was no contra evidence before the Tribunal to rebut the evidence adduced by the claimant. However, in the absence of any Appeal by the claimant, such an exorbitant amount need not be fixed. Therefore, this Court fixes the monthly income of the deceased at Rs. 7,000/- per month. This exercise is being done by this Court, considering the facts and circumstances of the case by invoking Order 41, Rule 33 of C.P.C.

29. The aforesaid ratio adopted by the Hon''ble Supreme Court in a number of cases would demonstrate the normal rule in India is deduction of $\frac{1}{3}$ rd amount from monthly income towards personal expenses. This case is not exceptional case where 50% has to be deducted. There is no statutory mandate in the Motor Vehicles Act that 50% should be deducted for the death of the bachelor. On the other hand, in some of the cases, it is noticed that no amount was deducted towards personal expenses. However, to strike a fine balance, $\frac{1}{3}$ rd towards personal expenses and it does not warrant any interference by this Court.

22. After considering the facts and circumstances of the case and hearing the arguments advanced by the learned Counsel on either sides, and citations given in support thereof by both sides, this Court is of the view that the Tribunal deducted $\frac{2}{3}$ of income of deceased for his personal expenses, which is erroneous. The notional income of Rs. 10,000/- fixed by the Tribunal for a non-earning members is also on the higher side. At the same time, the claimants are 6 in number. The Hon''ble Supreme Court of India had held in several Judgements that where the claimants are more than 3, only $\frac{1}{4}$ th of the income has to be deducted for personal expenses. But, the Tribunal had considered, hypothetically, about marriage prospects of deceased and had held that $\frac{2}{3}$ of income of deceased has to be deducted for his personal expenses. The citation submitted by the learned Counsel for the respondent is squarely applicable in

this case, wherein the Tribunal had granted only Rs. 5,85,000/- to the claimants, whereas the High Court has enhanced this compensation as Rs. 8,01,000. Further, the Tribunal had not awarded compensation for loss of love and affection.

23. Considering all these aspects, this Court confirms the award passed by the motor accident claims tribunal, additional district court and Essential Commodities Act, Special Court Salem, in M.C.O.P. No. 965 of 2004, which is a sum of Rs. 7,85,000/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition, till the date of payment of compensation, as it is found to be fair and equitable.

24. This Court, on 22.08.2007, imposed a condition on the appellant to deposit a sum of Rs. 6,00,000/-, into the credit of the M.C.O.P. No. 965 of 2004, on the file of the motor accident claims tribunal, additional district court and Essential Commodities Act, Special Court Salem. Now, this Court directs the appellant to deposit the entire compensation amount, a sum of Rs. 7,85,000/- together with interest at the rate of 7.5% per annum from the date of filing the petition, till the date of payment after deduction of earlier amount of Rs. 6,00,000/- as per the conditional Order of this Court, within a period of four weeks from the date of receipt of this Order.

25. As the accident happened in the year 2004, it is open to the 1st and 2nd claimants to withdraw Rs. 2,50,000/- each as their respective apportioned amount with accrued interest and the other claimants are permitted to withdraw their share of Rs. 95,000/- with accrued interest, lying in the credit of the M.C.O.P. No. 965 of 2004, on the file of the motor accident claims tribunal, additional district court and Essential Commodities Act, Special Court Salem, after filing necessary payment out application, in accordance with law.

26. In the result, the above Civil Miscellaneous Appeal is dismissed and the award passed by the motor accident claims tribunal, additional district court and Essential Commodities Act, Special Court Salem, in M.C.O.P. No. 965 of 2004 is confirmed. Consequently, connected miscellaneous petition is also closed. The parties are directed to bear their own costs.