

(2010) 03 MAD CK 0067
In the Madras High Court
Case No : C.M.A. No. 721 of 2005

Jayabalan and Jayalakshmi

APPELLANT

Vs

R. Lalitha and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 03 MAD CK 0067

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

Bench : Single Bench

Advocate : C. Munusamy, for C. and K. Law Firm, for the Appellant; S. Ramalingam, for R2, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellants/petitioners against the Award and Decree, dated

10.11.2003, made in M.C.O.P. No. 572 of 2001, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Villupuram,

awarding a compensation of Rs. 72,000/- together with interest at the rate of 9% per annum from the date of filing the petition till the date of

payment of compensation.

2. Aggrieved by the said Award and Decree, the appellants/petitioners have filed the above appeal praying to enhance the award amount from Rs.

72,000/- to Rs. 2,72,000/- with interest and costs.

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

On 03.06.2001, at about 8.30 hours, when the (deceased) Nethaji was walking on the extreme left side of the GST Road near Kannigapuram Bus

stand, an Ambassador car bearing registration No. TN09 D0642, which was driven at a high speed by its driver from Chennai towards Trichy,

dashed against the (deceased) Nethaji and caused the accident. In the result, the (deceased) Nethaji sustained grievous injuries all over his body

and succumbed to the injuries on the way to hospital. Post-mortem was conducted at Tindivanam Government Hospital.

4. The petitioners, Jayabalan and Jayalakshmi are the father and mother of the (deceased) Nethaji. As the accident had been caused by the rash

and negligent driving by the driver of the first respondent's car and has been insured with the second respondent, the Insurance Company, at the

time of accident, the petitioners have claimed a compensation of Rs. 3,00,000/- together with interest and costs, from the respondents u/s 166 of

the Motor Vehicles Act.

5. The second respondent, United India Insurance Co., Ltd., Villupuram, has denied the averments in the claim that the vehicle involved in the

accident had been covered under a valid and effective insurance policy at the time of alleged accident. The second respondent has also not

admitted that the driver of the vehicles had a valid and effective licence to drive the vehicle at the time of accident. It has also been specifically

denied that the RC, FC, permit and driving licence were all in order at the time of accident. The averments in the claim regarding the manner of

accident was also not admitted by the second respondent. It has been stated that the accident could have happened because of the fact that the

deceased might have suddenly crossed the road, without noticing the on-coming vehicle and so the deceased had contributed to the accident. It

has been submitted that as the claim is excessive, it has to be dismissed with costs.

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

(i) Whether the driver of the first respondent's vehicle is responsible for the accident? Whether the first and second respondents are liable to pay

compensation to the petitioners?

(ii) What is the quantum of compensation, which the petitioners are entitled to get?

7. The case of the petitioners is that the accident had occurred only due to the rash and negligent driving of the first respondent's car driver and

that the vehicle was insured with the second respondent on that date. The

contention of the second respondent is that the accident might have happened on account of the fact that the deceased suddenly crossed the road without noticing the oncoming vehicle and had contributed to the accident. Ex.A1 is the copy of FIR, registered on the complaint given by one Siva, in which it is stated that on 03.06.2001, at about 08.30 a.m. when he was walking along with his relative's son Nethaji, an ambassador car bearing registration No. TN09 D0642 came from Chennai towards Trichy driven in a rash and negligent manner by its driver and dashed against the said Nethaji; that he sustained severe injuries; that he was taken to a private hospital, Tindivanam and then he was referred to Pondicherry Jipmer Hospital; that he died on the way to hospital and that the accident was only due to the rash and negligent driving of the car driver. Ex.A2 is the copy of the Motor Vehicle Inspector's Report, in which it is mentioned that the accident had not happened due to any mechanical defect in the vehicle. Ex.A3 is the copy of Rough Sketch, with regard to the accident, which shows that the accident took place on the extreme left side of the GST Road. Ex.A4 is the copy of Judgment passed in C.C. No. 238 of 2001, from which it is seen that the accused/car driver had admitted the offence and paid the fine amount. PW2, Siva, who was an eye witness of the accident has deposed evidence, which is in line with the allegations contained in the FIR, with reference to the accident. As the second respondent had not adduced any oral evidence with regard to the accident, the Tribunal held that the accident was caused due to the fault of the first respondent's vehicle driver.

8. Ex.A6 is the copy of the Insurance Certificate, which shows that the first respondent's car was insured with the second respondent from 29.08.2000 to 28.08.2001. Though the second respondent has denied that the said vehicle had the relevant F.C. Permit and Insurance and also denied that the driver of the car had a valid driving licence, he has not chosen to examine any witness to prove the above facts. Hence, the Tribunal held that the first respondent's vehicle was covered under a valid policy of insurance on the date of accident with the second respondent and therefore held that the first and second respondents are jointly and severally liable to pay compensation to the petitioners.

9. PW1, the father of the deceased had stated in his evidence that the age of his

son at the time of accident was 6 years and that he was studying in Pre-KG and that he is the only son and that he has one daughter. Ex.A5 is the copy of the Post-mortem Certificate, which shows that the age of the deceased was six years. Hence, the Tribunal on considering that both the petitioners would have been benefited, had the deceased been alive, in their old age and considering the age of the deceased and facts of the instant case, awarded a lumpsum compensation of Rs. 70,000/- to the claimants for the death of their son. The Tribunal further awarded a sum of Rs. 2,000/- as funeral expenses to the petitioners. In total, the Tribunal awarded a sum of Rs. 72,000/- to the petitioners and directed the first and second respondents to jointly or severally pay the award amount to the petitioners along with interest at the rate of 9% per annum from the date of filing the petition till the date of payment of compensation with proportionate costs and deposit the said award with interest, into the credit of the M.C.O.P. No. 572 of 2001, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Villupuram, within a period of two months from the date of its Order. The Tribunal apportioned Rs. 36,000/- each with interest to the first and second petitioners from and out of the award amount and the first and second petitioners were directed to deposit a sum of Rs. 15,000/- each from and out of their apportioned share, in a nationalised bank as fixed deposit for a period of three years and they were directed to receive their respective remaining amount from the Court directly. The excess Court fee paid by the petitioners was to be refunded to them. The Advocate fees was fixed at Rs. 3,250/-. The respondents were directed to pay the cost of Rs. 3,503/- to the petitioners.

10. The learned Counsel appearing for the appellants has contended that the learned Judge did not consider the human value in the proper perspective and erred in not awarding any sum towards loss of love and affection to the parents of the deceased. It has also been contended that the learned Judge erred in not awarding any sum towards mental agony to the parents of the deceased as against the claim of Rs. 50,000/-. The counsel has also pointed out that the award of Rs. 70,000/- passed by the learned Judge is erroneous as he has not considered the value of life and limb of a human being and had not considered that the award granted under this head is for a death of a boy aged six years in a gruesome accident.

11. As such, the learned Counsel appearing for the appellants has prayed that the compensation awarded has to be enhanced from Rs. 72,000/-

to Rs. 2,72,000/-.

12. The learned Counsel appearing for the appellants, in support of his contentions, has cited the following Judgments made in 2009 (1) TN MAC

593 (SC) R.K. Malik and Anr. v. Kiran Pal and Ors., the relevant head notes of which are as follows:

Motor Accident Claim

Compensation - Determination

School Children proceeding to School in School Bus - Bus driven in rash and negligent manner, fell in river causing death of 29 children - Claim

u/s.163-A.

Deceased non-working and non-earning members : Notional Income of Rs. 15,000 p.m. fixed as per Schedule Schedule.

Multiplier : 15 for children below 15 years and 16 for children between 16-18 years.

Pecuniary Loss - 1,50,000 for children in age group of 10-15 years - Funeral Expenses : Rs. 5,000 each - Rs. 1,000 each awarded by High

Court towards Loss of Books, etc.

Non-pecuniary Loss: Rs. 75,000 each awarded in Appeal by High Court.

Loss of Future Prospects: Not awarded by Tribunal & High Court : Rs. 75,000 awarded by Supreme Court in Appeal.

Interest : 6% awarded by Tribunal for 4 years : 7.5% awarded by High Court from date of Claim Petition till payment - Held, proper.

Pecuniary Loss", "Non-pecuniary Loss", "Loss of Future Prospects" - Assessments - Principles governing.

2006 ACJ 320, High Court of Delhi at New Delhi, Shyam Narayan and Anr. v. Kitty Tours & Travels, the relevant head notes of which are as

follows:

Quantum - Fatal accident - Deceased a girl aged 5 - Claimants: father aged 28 and mother aged 26 - Tribunal awarded Rs. 1,00,000 - Appellate

court assessed notional income at Rs. 15,000 p.a. As per Second Schedule to the Motor Vehicles Act, 1988, adopted multiplier of 15 and

allowed Rs. 2,25,000 plus Rs. 50,000 towards loss of company and pain and

suffering-Award of Rs. 1,00,000 enhanced to Rs. 2,75,000.

2005 ACJ 99, Supreme Court of India, Manju Devi and Anr. v. Musafir Paswan and Anr., the relevant head notes of which are as follows:

Quantum - Fatal accident - Principles of assessment - Multiplier method - Award of compensation should be made by multiplier method as it

ensures payment of just compensation and it brings uniformity and certainty to the awards.

Quantum - Fatal accident - Deceased boy aged 13 - Claimants: parents - Tribunal awarded Rs. 90,000 - Apex Court assessed notional income

for a non-earning person at Rs. 15,000 p.a., adopted multiplier of 15 and allowed Rs. 2,25,000 - Award of Rs. 90,000 enhanced to Rs.

2,25,000.

13. The learned Counsel appearing for the respondents argued that the Tribunal's award of Rs. 72,000/- granted for the death of a 6 years old

boy was reasonable. The parents of the deceased boy were aged 42 and 38 years. As such, the quantum of compensation awarded by the

Tribunal is fair and equitable.

14. Considering the facts and circumstances of the case, this Court is of the view that as the deceased was a student aged six years, the

compensation should have been assessed by adopting multiplier method and hence the lumpsum award granted by the Tribunal is not proper. This

Court on taking that the notional income of the deceased as Rs. 15,000/- per year and deducting 1/3rd share for his personal expenses holds that

the deceased could have contributed Rs. 10,000/- to his family every year. Adopting a multiplier of 15, this Court computes the total contribution

to his family as Rs. 1,50,000/- and accordingly this Court grants an awards a sum of Rs. 1,50,000/- to the claimants under the head of loss of

income. This Court grants an award of Rs. 25,000/- each to the claimants i.e. in total Rs. 50,000/- as compensation under the head of loss of love

and affection. This Court further grants an award of Rs. 10,000/- under the head of funeral expenses and a sum of Rs. 5,000/- under the head of

transport expenses. In total, this Court grants an award of Rs. 2,15,000/- as compensation to the claimants and apportions the award to be shared

equally amongst the claimants. In effect, this Court has enhanced the compensation awarded to the claimants from Rs. 72,000/- to Rs. 2,15,000/-.

15. This Court hereby directs the respondent/United India Insurance Co., Ltd., to deposit the additional compensation amount of a sum of Rs.

1,43,000/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation, into the

credit of the M.C.O.P. No. 572 of 2001, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Villupuram, within a period

of four weeks from the date of receipt of this Order.

16. After such deposit has been made, it is open to the claimants to withdraw their apportioned share of award amount, with proportionate

accrued interest thereon, lying in the credit of the M.C.O.P. No. 572 of 2001, on the file of the Motor Accident Claims Tribunal, Principal District

Judge, Villupuram, after filing necessary application, in accordance with law.

17. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 10.11.2003, in M.C.O.P. No. 572 of

2001, passed by the Principal District Judge, the Motor Accident Claims Tribunal, Villupuram, is modified. There is no order as to costs.