
(1987) 02 MAD CK 0006
In the Madras High Court

K. Vasantha and Others

APPELLANT

Vs

Venugopal Achari and Others

RESPONDENT

Date of Decision : 02-02-1987

Acts Referred:

Citation : (1987) 2 ACC 317 : (1988) ACJ 196 : (1987) 100 LW 563 : (1987) 2 MLJ 35

Hon'ble Judges : Venkataswami, J

Bench : Division Bench

Judgement

Venkataswami, J.—The petitioners in O.P. No. 4 of 1978 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Cuddalore, are

the appellants in this appeal.

2. One Krishnamoorthi working as B Grade tinker in Tamil Nadu Small Scale Industries Engineering Workshop at Villupuram, was killed by lorry

bearing registration No. TNF 6221, belonging to the second respondent driven by the first respondent on 18th May, 1977. The first appellant is

the widow of the deceased Krishnamoorthi and appellants 2 to 4 are the minor daughters of the deceased. In the petition, the appellants claimed a

total compensation of -Rs.50,000. However, the Motor Accidents Claims Tribunal, Cuddalore, awarded a sum of Rs. 4,000, and aggrieved by

that order of the Motor Accidents Claims Tribunal, Cuddalore, this appeal has been filed for enhancement of the compensation.

3. At the outset, it may be mentioned that against the finding of the Tribunal below, to the effect that the insurance company, the 3rd respondent

herein was not liable to pay any compensation as the first respondent who drove the vehicle did not possess a valid driving licence, no appeal was

filed by the other respondents.

4. The Tribunal, on an appreciation of oral and documentary evidence has found that the accident was due to the rash and negligent driving of the

lorry TNF. 6221 by the first respondent. This finding has not been and cannot be challenged by the respondents. Therefore, I proceed on the

footing that the accident was caused as a result of rash and negligent driving of the lorry by the first respondent.

5. The next question will be whether the quantum of compensation given by the Tribunal was adequate and whether the Tribunal is justified in law

in deducting the sum of Rs. 10,000, received by the appellants towards the Family Benefit fund scheme and also the pension receivable by the

appellants. The Tribunal has found on facts that the deceased was getting a monthly salary of Rs. 265.50 including allowance and out of which, the

appellants would have got the benefit of Rs. 160 per month. The Tribunal has also found that the deceased was aged about 35 years at the time of

death and he would have been in employment but for the death for a period of 23 years. Normally, the Tribunal would have calculated the lump

sum payment taking into account the sum of Rs. 160 as the basis but for the fact that the Tribunal thought that out of Rs. 160, Rs. 100 must be

deducted towards the family pension scheme receivable by the appellants and therefore, the actual loss of dependants would be Rs. 60 per month

for a period of 23 years. On that basis, the Tribunal fixed the lump sum payment at Rs. 14,000 and from that lump sum the Tribunal, further

deducted Rs. 10,000 paid to the appellants towards Family Benefit Fund and therefore, fixed the net compensation at Rs. 4,000.

6. Mr. R. Balasubramaniam, learned Counsel for the appellant contended that a Division Bench of this Court in Pallavan Transport Corporation

Ltd. (Metro) rep. by Mg. Director v. Visalakshi and Ors. C.M.A. No. 21 of 1981, has taken the view that payment towards the Family Benefit

Fund Scheme being an ex-gratia payment, should not be taken into account in calculating the compensation, payable which is on different

principles. Therefore, the deduction of Rs. 10,000 is unsustainable. The learned Counsel also cited a judgment of the Supreme Court reported in

N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, , in support of his contention that the Tribunal was

wrong in deducting the family pension receivable by the appellants from the compensation amount. According to the learned Counsel, if these two deductions are disallowed, the appellants would be entitled to the compensation as claimed in the appeal.

7. Mr. Ganapathi, learned Counsel for the first respondent submitted that the compensation granted by the Tribunal itself was excessive and the appellants are not entitled to any excess compensation. Mr. Vedantatn, learned Counsel appearing for the 3rd respondent, submitted that the Tribunal was right in holding that the Insurance Company was not liable to pay any compensation as the vehicle involved in the accident was driven by a person who had no licence to drive the vehicle.

8. Mr. Elamurugan, learned Counsel appearing for the second respondent, submitted that the petition for compensation itself is not maintainable inasmuch as the appellants were paid compensation by the Additional Commissioner for Workmen's Compensation by his proceedings, dated 21.7.1978. Further, Mr. Elamurugan contended that assuming the petition was maintainable, the Tribunal erred in taking the full 23 years for multiplication. According to the learned Counsel in assessing damages, the Tribunal should have taken into account the uncertainties of life and the fact of accelerated payment and also the fact of the appellant's getting lump sum payments, which but for the death of Krishnamoorthi would have been available to them in dribblets over a number of years. In support of this, he cited a judgment of the Supreme Court reported in *M.P.S.R.T. Corporation v. Sudhakar*, 1977 ACJ 290 (SC) .

9. In reply to the first contention of Mr. Elamurugan, Mr. R. Balasubramaniam, submitted that this Court has held in *Messrs, Oriental Fire and General Insurance Co. Ltd, v, Valliammal and Ors.* (1981) 94 L.W 503, that if the application for compensation is filed under the Motor Vehicles Act and later on some payment was given under Workmen's Compensation Act, the claim under the Motor Vehicles Act should not be thrown out, but the amount awarded under the Workmen's Compensation Act must be given due consideration, while awarding the compensation under the Motor Vehicles Act. Therefore, the amount already received by the appellants under the Workmen's Compensation Act could be deducted from the amount awardable under the Motor Vehicles Act. On the second point,

the learned Counsel submitted that the Tribunal had not taken into account the increments and other promotions that the deceased would have got, had he continued in service and that factor would set off the non-consideration of uncertainties of life, and the accelerated and lump sum payment.

10. After carefully considering the rival contentions I am inclined to agree with the argument of the learned Counsel for the appellants. On the question whether the Tribunal was right deducting Rs. 10,000, paid towards Family Benefit Schemes, V. Ramaswami, J., speaking for the Division

Bench has ruled as follows:

The Court in arriving at the compensation, has deducted a sum of Rs. 10,000 which is payable to the legal representatives of the deceased under the Family Benefit Scheme and this is one of the claims in the cross objections. That amount should not have been deducted, because that is an ex gratia payment made by the Government and should not be taken into account in calculating the compensation payable, which is on different principles. Even if the deceased is a rich man, that could not deprive a person of the entitlement for compensation. The disallowance of that sum of Rs. 10,000 is therefore, incorrect.

The above ruling of the Division Bench squarely applies to the facts of this case, and therefore, I do not find any difficulty in holding that the Tribunal was wrong in deducting Rs. 10,000 from the compensation amount arrived at. Further, the Tribunal has deducted a sum of Rs. 100 per month representing family pension receivable by the appellants. The Tribunal in paragraph 34 has observed as follows:

As it is admitted by P.W.I, that proposals would have been sent for family pension she would " receive it sooner or later. But she has not stated what the quantum would be. It can be taken judicial notice of the fact that after 1st February, 1975, wife and minor children of a Government servant will be entitled to a minimum family pension of Rs. 60 D.A. Rs. 32, pension increase of Rs. 5 and additional D.A. Rs. 5 all totalling to Rs. 102 per month. It may be roughly taken as Rs. 100 which the petitioners will get sooner or later as soon as it is sanctioned by the head of the department and approved by the Accountant-General. This amount the petitioners would not have been entitled, but for the death of the deceased

Krishnamoorthi. So it will have to be given credit to in the loss of dependency of Rs. 160 by them. Then the actual loss of dependency comes to

Rs. 60 per month, i.e., Rs. 720 per year.

The above deduction is also not sustainable in the light of the ruling of the Supreme Court in N. Sivammal and Others Vs. Managing Director,

Pandian Roadways Corporation and Another, . In that case, the Supreme Court has observed as follows:

The High Court next proceeded to evaluate the pensionary benefits which the widow, appellant 1 would enjoy. Appellant 1 as the widow of the

deceased is entitled to pension at the rate of Rs. 120 per month, for a period of seven years where after the amount will taper down. The High

Court evaluated the monetary benefit of pension and reduced the amount of compensation by Rs. 10,000. We are unable to appreciate this

reduction. We find no justification for it.

Therefore, the Tribunal was not right in making two deductions referred to above while arriving at the compensation payable to the appellants. If

these two deductions are disallowed, then the compensation amount payable on the basis of the Tribunal's finding will be Rs. 160 per month, for

the period of 23 years. That will be Rs. 44,160. From this amount, Rs. 4,000 already paid as per the award of the Tribunal has to be deducted.

Then, the amount will be Rs. 40,160. From this Rs. 40,160 the amounts received by the appellant under the Workmen's Compensation Act have

to be deducted. That amount comes to Rs. 12,700. The balance will be Rs. 27,460. In this appeal, the appellants will be entitled to Rs. 27,460.

The other arguments of the learned Counsel for respondents 1 and 3 are not tenable and the argument of the learned Counsel for the second

respondent that uncertainties and the payment of lump sum will be set off as against the factor not considered by the Tribunal, viz., the increments

and the promotion that the deceased would have got had he continued in service.

11. In the result, I hold that the appellants are entitled to Rs. 27,460 in addition to the amount already received by them with interest at 12 per cent

per annum from the date of the original petition. This appeal is accordingly allowed with costs. Out of the enhanced amount, as per this judgment,

the minors' share shall be deposited in a fixed deposit in a Nationalised Bank by the Tribunal below.

12. The guardian of the minors can withdraw the interest once in six months from the fixed deposit account.