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(1999) 07 MAD CK 0042

In the Madras High Court

Case No : C.M.A. No''s. 1297 and 1298 of 1994

Kattabomman Transport Corporation Ltd. APPELLANT

Vs

Mariyal and Others RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Citation : (2000) 1 ACC 340 : (2001) ACJ 1926 : (2000) 1 LW 348

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Kala Ramesh, for the Appellant; M. Maharaja, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—C.M.A. Nos. 1297 and 1298 of 1994 could be disposed of in a common judgment since in both the claim

petitions, common enquiry was conducted and common judgment was rendered.

2. Kattabomman Transport Corporation has filed these appeals challenging the award of Rs. 30,000 to the injured and the award of Rs. 2,25,000

to the dependants of the deceased, mainly on the ground of quantum.

3. On 21.5.1990 at about 7.30 p.m., the deceased Paulkani was proceeding on his bicycle in Sivagiri-Rajapalayam main road on the extreme left

side. One Periyasamy was also proceeding in the road by cycle along with his brother. At that point of time, the bus belonging to the appellant

Corporation, driven at a high speed, in a rash and negligent manner, hit against both Paulkani and Periyasamy. Both were taken to the Government

Hospital, Raja-palayam, wherein the said Paulkani died due to serious injuries sustained by him in the above accident. Periyasamy, who was

initially treated in the Rajapalayam Government Hospital was referred to the

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Rajaji Government Hospital, Madurai for further treatment.

4. The claimants, the wife and children of the deceased, filed a claim petition in O.P. No. 115 of 1991 claiming compensation of Rs. 3,00,000 for

the death of the deceased. The injured, Periyasamy, filed O.P. No. 22 of 1991 claiming compensation of Rs. 1,00,000 for the injuries sustained by

him due to the accident.

5. In both these petitions, as agreed by the parties, a common enquiry was conducted.

6. On behalf of the claimants, PW 1, wife of the deceased, PW 2, injured Periyasamy, PW 3, Sundararajan, the Manager of the factory in which

the deceased was working were examined. Exhs. A-1 to A-7 were marked.

7. On behalf of the appellant Corporation, RW 1, the driver of the bus was examined. Though the driver of the bus, Tamilmani, was the

respondent No. 1 in O.P. No. 22 of 1991 in the claim petition filed by the injured, he did not choose to appear and remained ex parte. However,

the counter was filed by the appellant Corporation in both the claim petitions stating that the driver was not negligent.

8. The Tribunal, after enquiry, concluded that the driver of the bus was negligent and the injured would be entitled to the compensation of Rs.

30,000 as against the total compensation of Rs. 1,00,000 claimed and the claimants, dependants of the deceased, would be entitled to Rs.

2,25,000 as against the total compensation of Rs. 3,00,000.

9. In these appeals, the counsel for the appellant would mainly argue on the aspect of quantum. Though there was no serious challenge for the

quantum of Rs. 30,000 awarded to the injured, the learned counsel for the appellant vehemently contended that the award of Rs. 2,25,000

payable to the claimants, dependants of the deceased, is highly excessive and the assessment made for fixing the amount of compensation is

without any basis.

10. The learned counsel for the respondents in both these appeals would argue that the Tribunal is perfectly correct in fixing the quantum of

compensation payable to the respondents.

11. As indicated above, since there is no serious challenge to the quantum of compensation awarded, namely, Rs. 30,000, it is unnecessary to

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refer about the reasonings given by the Tribunal for fixing the amount as compensation payable to the injured. But, the quantum fixed for the

claimants, the dependants of the deceased, according to the counsel for the appellant, was not in accordance with the guidelines given by the Apex

Court over the manner of assessment for fixing the damages.

12. The Tribunal fixed the monthly salary of the deceased as Rs. 1,000. But, instead of adopting the multiplier theory, the Tribunal would simply

say that the deceased, aged about 28 years, would have lived for further 29 years and as such, the dependants of the deceased, namely, the

claimant No. 1, wife of the deceased, who lost her marital life, would be entitled to Rs. 75,000 and minor children, claimant Nos. 2 to 4, would be

entitled to Rs. 50,000 each and the Tribunal worked out Rs. 2,25,000 as total compensation.

13. In my view, the above calculation, on the basis of longevity theory without giving any details as to how the assessment has been made, could

not be said to be proper approach. But, however, it is appropriate that in a fatal case, the court has to take overall picture to assess the loss

suffered as best as it can.

14. As laid down by the Apex Court in the decision in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs.

Susamma Thomas and others, the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of

himself and his dependants and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards

both self-maintenance and pleasure and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the

dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years'' purchase.

15. Though there were two methods adopted for determination and for calculation of compensation in fatal accident cases, the best method could

be adopting the multiplier theory which is logically sound and legally well established. The multiplier method involves the ascertainment of the loss

of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The

choice of the multiplier is determined by the age of the deceased. According to

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the Supreme Court, the method of determining the compensation

on the basis of aggregating the entire future earnings for over the period of the life expectancy and deducting the percentage therefrom towards

uncertainties of future life and awarding the resulting sum as compensation, is clearly unscientific.

16. In the light of the ruling of the Apex Court, the method of calculation adopted by the Tribunal is wrong. But, on the whole, this court has to

take into consideration the several circumstances, in order to find out whether the amount awarded by the Tribunal was ''just''.

17. As pointed out by the counsel for respondents, the Supreme Court in the decision in Smt. Sarla Dixit and another Vs. Balwant Yadav and

others, would observe that while adopting the multiplier theory, the future prospects of advancement in life and career should also be sounded in

terms of money to augment the multiplicand. The ascertainment of the multiplicand is the more difficult exercise, inasmuch as, there are many

factors which have to be put into the scales to evaluate the contingencies of the future. The Supreme Court would further observe that when fixing

the monthly dependency, the courts have to keep in view the future prospects also.

18. In the light of the above observation, we have to see whether the total amount of compensation awarded to the claimants, the dependants of

the deceased, would be the adequate compensation.

19. There is no dispute that the deceased was the only breadwinner in the family. He met with an accident and died in the prime period of the life,

at the age of 28. PW 3, the Manager of the factory, would state that the deceased was the permanent employee drawing a salary of more than Rs.

1,000. Therefore, there is no difficulty in coming to the conclusion that he had a large number of years of service ahead of him which would have

certainly taken him to a position wherein he would be able to get more amount. In the light of the future prospects, it is appropriate to fix the

monthly dependency at Rs. 900.

20. The maximum multiplier is 18. Therefore, the total amount comes to Rs. 1,94,400. The age of the wife of the deceased, claimant No. 1, at the

time of death of the deceased, was 33 years. The other minor children, claimant No. 2, son Raju was six years'' old, claimant No. 3 daughter

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Thenammal was two years'' old and claimant No. 4 Vetri Selvi, the baby in the arms was of 4 months. So, in view of the age of the claimants, it

should be appropriate to award Rs. 10,000 towards loss of consortium, loss of love and affection would be fixed at Rs. 10,000 to all the three

children and Rs. 10,000 towards pain and suffering to all the claimants. The total amount of compensation is thus arrived at Rs. 2,24,400 which is

rounded off to Rs. 2,25,000 which is the very same figure awarded by the Tribunal.

21. In these circumstances, though the method of calculation made by the Tribunal is wrong, ultimately the total amount of compensation awarded

is just and proper even when the proper method is applied as indicated above.

22. In such circumstances, I am not inclined to disturb the finding of the Tribunal regarding the quantum.

23. In the result, the appeals are dismissed. No costs.

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