

(2010) 03 MAD CK 0143
In the Madras High Court
Case No : C.M.A. No. 889 of 2005

L.C. Jayakaran and Jaison

APPELLANT

Vs

Thanthai Periyar Transport Corporation Limited, St. Francis
Matriculation School, United India Insurance Co., Ltd. and
S.M. Kamala

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Citation : (2010) 03 MAD CK 0143

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

Bench : Single Bench

Advocate : N. Maninarayanan, for the Appellant; P. Jagadeeswaran, for R1, 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 23.09.1998, made in M.C.O.P. No. 418 of 1988, on the file of the Motor Accident Claims Tribunal, Sub Court, Tindivanam, awarding a compensation of Rs. 3,48,600/- together with interest at the rate of 15% 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 for an enhancement of additional compensation of Rs. 4,51,400/- together with interest from the date of filing the claim petition till the date of payment of compensation.

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

The first petitioner is the wife and the minor second petitioner is the only child of the deceased Jayakaran. The deceased was a B.Ed., Teacher and drawing a monthly salary of Rs. 1,089/- besides this he was alone engaged in private tuition and thereby earning a sum of Rs. 1,000/- per month and also cultivating some lands on lease basis and was earning a sum of Rs. 500/- approximately per

month. Thus, his total monthly income was around Rs. 2,500/-.

4. The deceased Jayakaran on 20.08.1988, was travelling in a Jeep belonging to the second respondent from Pondy to Tindivanam. While the jeep was nearing Ayyanar Temple, the first respondent's Corporation bus was coming in the opposite direction at high speed and proceeding towards Pondy besides also travelling on the wrong side of the road and dashed against the petitioner's jeep. The jeep was crushed between the bus and a tamarind tree, resulting in the deceased succumbing to the might impact. The second respondent, the owner of the jeep and the third respondent is the insurer and the fourth respondent being the mother of the deceased, has filed an application impleading her and it was allowed. Therefore the petitioners pray for a compensation of Rs. 8,00,000/- with interest.

5. The second respondent has filed a counter statement and stated that the accident had happened due to the rash and negligent driving by the driver of the vehicle belonging to the first respondent. As such, the first respondent alone is liable to pay the compensation to the petitioners. Further, the second respondent's vehicle was insured with the third respondent. Hence, if at all any compensation is to be paid by this respondent, the third respondent is bound to pay the same being the insurer.

6. The first respondent has filed a counter statement denying that the driver of the bus had driven the vehicle in a rash and negligent manner. The jeep that came from the opposite direction, and the driver of the jeep was in a drunken mood. The driver of the bus had driven his vehicle in a cautious manner and observing the rules of the road. But, the second respondent the driver of the jeep had committed the offence due to his drunkenness. As such the claim petition is not maintainable against the first respondent.

7. The third respondent has filed a counter statement and denied the averments of the claim petitioner. Actually the first respondent's bus, the driver had driven the bus at a high speed and in a rash and negligent manner and dashed against the jeep. As such, the jeep driver had not committed any offence. The petitioners' claim of compensation is an excessive one. The petitioners have to prove the age, income and occupation of the deceased.

8. The fourth respondent, the mother of the deceased Jayakaran, has filed a counter statement stating that on 28.08.1988 her son Jayakaran had died in the accident, which had happened on the Pondy to Tindivanam road. The first petitioner being the wife of the deceased is claiming a compensation for herself and her minor son, who is the second petitioner. The first petitioner wantedly and deliberately omitted the fourth respondent as necessary party. Hence, the fourth respondent had filed I.A. No. 340 of 1989 and the same was allowed.

9. The Motor Accident Claims Tribunal framed three issues for the consideration namely:

(i) Whether the accident had happened due to the negligence of the driver of the first respondent?

(ii) Whether the accident had happened due to the negligent driving by the driver of the jeep?

(iii) Whether the petitioners are entitled to get compensation? If so, what is the quantum of compensation?

10. One Elumalai (claimant in M.C.O.P. No. 127 of 1989) was examined as PW4. In his evidence he adduced evidence stating that he is working in the second respondent's organisation. On 20.08.1988, the accident had happened on the Pondy-Tindivanam road near Ayyanar Temple. The first respondent's driver had driven the bus at high speed and in a rash and negligent manner and dashed against the jeep, resulting in the jeep being crushed with the impact. Jayakaran and Nagaraj had died on the spot. He further adduced evidence that the driver of the bus was the cause of the accident.

11. The first respondent Corporation bus driver one Durai had adduced evidence stating that on the date of the said accident he was the driver of the bus and he had driven the bus at normal speed and observing proper care. The driver of the jeep came in the wrong direction and dashed against the bus. Further, the driver claimed that he was discharged from the criminal proceedings. The FIR marked as Ex.P1. The contents of the FIR disclosed that the first respondent's bus was proceeding from Tindivanam towards Pondy and when he was nearing Ayyanar Temple, the bus had dashed against the jeep, which was coming from the opposite direction.

12. The Tribunal after considering the evidence of the PW4, the driver of the bus and the FIR, the Tribunal had come to the conclusion that the first respondent is liable to pay compensation, since the first respondent's bus driver committed the offence.

13. The PW3 had adduced evidence stating that she is the first claimant and the widow of the deceased Jayakaran. The second petitioner is her minor son. She further stated that her husband studied upto M.A., B.Ed., and he was a post graduate teacher at Walter Victor School, where he was drawing a salary of Rs. 1,089/- besides an agricultural income of Rs. 500/-. In total he was earning a sum of Rs. 2,500/- per month. Supporting his income, PW10 was examined and he confirmed his occupational income, stating that the deceased was earning through tuition, on cultivation and as a teacher. As per Ex.P15-S.S.L.C. Certificate, the deceased's age was 26 at the time of accident. Ex.P16-Post-mortem Certificate indicates that the deceased's age was 35 years at the time of accident. On the basis of the post-mortem certificate, the Tribunal had come to the conclusion that the deceased's age was 35 years and multiplier 18 was adopted.

14. As per Ex.P17, the deceased Jayakaran would be retiring in the year 2016, if

he had been alive. As such he would have completed 28 years of service. Considering the income source of the deceased, the Tribunal assessed the income of the deceased as Rs. 2,400/- per month. So, the Tribunal awarded the compensation as follows:

1. The Tribunal awarded a compensation of Rs. 5,18,400/- under the head of loss of income. Out of this amount a sum of Rs. 1,72,800/- deducted as personal expenses of the deceased. The balance amount of Rs. 3,45,600/- was awarded under the head of loss of income.

2. The Tribunal awarded a compensation of Rs. 3,000/- under the head of funeral expenses.

In total, the Tribunal awarded a compensation of Rs. 3,48,600/- to the petitioners together with interest at the rate of 15% 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. 418 of 1988, on the file of the Motor Accident Claims Tribunal, Sub Court, Tindivanam and a sum of Rs. 5,880.50 was awarded as costs.

15. The Tribunal further ordered that the said compensation amount has to be apportioned equally among the three claimants i.e. wife, son and mother of the deceased. The Tribunal directed the first respondent to deposit the entire compensation amount into the Court, in turn the amount to be deposited in a nationalised bank for a period of three years under the scheme of fixed deposit.

16. Learned Counsel appearing for the appellants argued that the quantum of compensation is on the lower side. The Tribunal failed to consider the head of love and affection and consortium. Funeral expenses are also on the lower side. The learned Counsel further argued that the deceased was the breadwinner of the family. The claimants are, young widow, minor son and aged mother, depending upon the income of the deceased.

17. Learned Counsel appearing for the respondents argued that the deceased was a teacher and was earning a sum of Rs. 1,089/- per month. For the rest of the income of the deceased there is no documentary proof, even through the Tribunal fixed the income of the deceased as Rs. 2,400/- per month and granted a compensation to the claimants. The accident had happened in the year 1988. Considering the year of the accident, the compensation amount is fair and equitable. As such, the appeal is not maintainable.

18. Considering the facts and circumstances of the case, scrutiny of the findings of the Tribunal, arguments advanced by the learned Counsel appearing on either side, this Court is of the view that the Tribunal failed to consider the compensation for consortium, love and affection, which are pertinent in the fatal case. So, this Court awards compensation to the claimants as follows:

1. This Court awards a sum of Rs. 15,000/- as compensation under the head of consortium to the first claimant,

2. This Court awards a sum of Rs. 10,000/- each as compensation to the second and third claimants under the head of love and affection,

3. The Tribunal awarded a compensation of Rs. 3,000/- under the head of funeral expenses, this Court enhances it to Rs. 5,000/-,

4. This Court grants a sum of Rs. 2,000/- under the head of transport to bring the dead body from the hospital to the residence of the claimants.

In total, this Court awarded a sum of Rs. 39,000/- as additional compensation to the claimants and this amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 418 of 1988, on the file of the Motor Accident Claims Tribunal, Sub Court, Tindivanam.

19. Therefore, this Court directs the first respondent to deposit the additional compensation amount of Rs. 39,000/- together with interest as observed above within a period of four weeks from the date of receipt of this order, into the credit of the M.C.O.P. No. 418 of 1988, on the file of the Motor Accident Claims Tribunal, Sub Court, Tindivanam.

20. After such deposit made into the credit of the M.C.O.P. No. 418 of 1988, on the file of the Motor Accident Claims Tribunal, Sub Court, Tindivanam, the first petitioner is permitted to withdraw a sum of Rs. 19,000/- with accrued interest thereon. The second petitioner is permitted to withdraw a sum of Rs. 10,000/- with accrued interest and the third petitioner is permitted to withdraw a sum of Rs. 10,000/- with accrued interest thereon after observing necessary formalities in accordance with law.

21. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 23.09.1998, in M.C.O.P. No. 418 of 1988, passed by the Motor Accident Claims Tribunal, Sub Court, Tindivanam, is modified. There shall be no order as to costs.