
(2006) 07 MAD CK 0176

In the Madras High Court

Case No : C.M.A. (NPD-S) No's. 306 and 307 of 1998

Managing Director, Thanthai Periyar Transport Corporation

APPELLANT

Vs

Chinnang Konar and Others

RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2006) 4 ACC 149

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : G. Muniratnam, for the Appellant; G. Rajan and P. Veena for T.R. Rajaraman, for the Respondent

Judgement

V. Dhanapalan, J.—Thanthai Periyar Transport Corporation, Villupuram ("the transport Corporation"), aggrieved by the common award

dated 16.9.1997 passed by Motor Accidents Claims Tribunal (District Court, Tiruvannamalai) ("the Tribunal") in M.C.O.P. Nos. 466 and 527 of

1995, has preferred the above civil miscellaneous appeals.

2. In respect of death of one Kannan in a motor accident on 20.2.1995, his parents, brother and sisters have filed M.C.O.P. No. 466 of 1995 and

his wife and minor children have filed M.C.O.P. No. 527 of 1995 before the Tribunal seeking compensation of Rs. 7,50,000 and Rs. 7,00,000

respectively.

3. According to respondents-claimants in both the appeals, when the deceased Kannan was walking along Anna Salai in Tiruvannamalai, he was

dashed by a bus bearing registration No. TN 32-0245 belonging to the transport Corporation which was driven in a rash and negligent manner and

in the said accident, the deceased sustained serious injuries and died on the

spot. It is their case that the deceased who was aged 39 years, was a graduate teacher in a panchayat school, drawing a monthly salary of Rs. 3,510.

4. On the other hand, the transport Corporation filed a counter statement contending that the alleged accident occurred only due to the careless and negligent act of the deceased who is solely responsible for the alleged accident. Further, the transport Corporation contended that its bus was not involved in the said accident and it questioned the age and income of the deceased and the dependency factor of the claimants. According to the transport Corporation, the deceased is a sick person and on several occasions, he had attempted to commit suicide and he was not a fit person, both physically and mentally to do any work.

5. On the side of the claimants, the wife of the deceased, an eyewitness to the accident by name, Manikkam and the father of the deceased were examined as PW 1 to PW 3 respectively and 10 documents were marked to substantiate their claim. On the side of the transport Corporation, the driver of the bus in question was examined as RW 1 and a judgment of C.C. No. 115 of 1995 was marked as Exh. R1.

6. The Tribunal, after analyzing the oral and documentary evidence, came to the conclusion that the accident had occurred only due to rash and negligent driving of the driver of the bus belonging to the transport Corporation and fixed the compensation as Rs. 5,40,000, the break up being Rs. 1,40,000 payable to the parents, brother and sisters of deceased and Rs. 4,00,000 payable to the wife and minor children of the deceased, with interest at the rate of 9 per cent per annum from the date of petition till the date of deposit.

7. Before this Court, the learned counsel for the appellant transport Corporation has put forward twofold submission, namely, that the accident took place only because of the negligence on the part of the deceased and that the Tribunal has erred in fixing a compensation of Rs. 5,40,000 payable to the claimants.

8. It is seen that PW 2 by name Manikkam, an independent witness, has deposed that when the deceased was walking on the left side of the road, the bus belonging to the transport Corporation, driven in a rash and negligent manner, dashed against the deceased in which impact, the deceased sustained serious injuries and died on the spot. Further, in his cross-examination

he deposed that he is working as a "master" in a tea stall near the scene of occurrence and he has seen the accident at a distance of about 15 ft and around 75 persons who were in the tea stall also witnessed the accident.

9. On the other hand, RW 1 has deposed that near Periyar Statue, he saw two persons stumble while walking and he stopped the bus immediately and thereafter, those two stepped into the bus and while so, one of them fell down. It is his further deposition that only on information from the persons in the tea stall, he had seen the person who had sustained injuries and died and as such, he is not the cause for the accident. "

10. Based on the oral and documentary evidence, Tribunal has come to the conclusion that the accident occurred only due to rash and negligent driving of the bus driver and accordingly, fixed the negligence on the part of the bus driver. In my considered view, the circumstances under which the accident took place and more particularly, the evidence of an independent eyewitness to the accident would rather persuade this Court to come to the conclusion that the accident took place only due to rash and negligent driving of the bus driver. Accordingly, the negligence fixed on the part of the bus driver is confirmed.

11. Next, let me proceed to consider as to whether the claimants in M.C.O.P. No. 466 of 1995 are the dependants of the deceased. To substantiate that they are the dependants of the deceased, they have marked Exh. P8, the legal heir certificate. It is not in dispute that the claimants in M.C.O.P. No. 527 of 1995 are the wife and children of the deceased. In so far as M.C.O.P. No. 466 of 1995 is concerned, the claimants have joined with the wife and children of the deceased in claiming compensation and their claims have not been resisted by the wife and children of the deceased. Therefore, the Tribunal has decided that the claimants in M.C.O.P. No. 466 of 1995 are the dependants of the deceased since the deceased had supported them during his lifetime. In such a view of the matter and in the absence of any conflicting evidence to disprove the dependency factor, I confirm the finding of the Tribunal that claimants in M.C.O.P. No. 466 of 1995 are also the dependants of the deceased.

12. The last point to be decided in these appeals is that whether there is any point to interfere with the award of the Tribunal. Taking the age of the

deceased as 39 years which is corroborated by Exh. P3, postmortem certificate and the evidence of PW 3 and his income as Rs. 3,510 based on

Exh. P9, the salary certificate and considering the fact that he was left with 19 years of service, Tribunal has proceeded to apply the multiplier of

19 and determined the loss of income as Rs. 8,00,280 (Rs. 3,510 x 12 x 19) and after deducting Rs. 2,66,760 being one-third for his personal

expenses had he been alive, arrived at a sum of Rs. 5,33,520 towards pecuniary damages and further awarded Rs. 6,480 towards funeral

expenses and in total, awarded a sum of Rs. 5,40,000. This sum has been apportioned by Tribunal as Rs. 1,40,000 to the claimants in M.C.O.P.

No. 466 of 1995 and Rs. 4,00,000 to claimants in M.C.O.P. No. 527 of 1995.

13. The learned counsel for the appellant transport Corporation has strenuously argued that the multiplier applied is on the higher side and in

support of his contention, he has relied on a decision of the Apex Court in the case of Tamil Nadu State Transport Corporation Ltd. Vs. S.

Rajapriya and Others, , wherein the multiplier of 12 has been applied in respect of death of a 38 years old person.

14. In response to the above contention of the counsel for the appellant transport Corporation, counsel for the respondents has relied on a decision

of Apex Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , wherein it was observed as

under (para 18):

...To put it briefly, the Table abounds in such mistakes. Neither the Claims Tribunals nor the courts can go by the ready reckoner. It can only be

used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the

deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the

multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the

multiplier cannot exceed 18 years" purchase factor....

15. Further, the U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , has been quoted in the decision in the case

of Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, ; New India Assurance Co. Ltd. Vs. Kiran Singh and Others, , in

which it was observed as under (paras 5 and 6):

It is contended that the multiplier of 43 applied by the Tribunal is erroneous. In this connection, the learned counsel for the appellant had referred

to the decision of this Court in *U.P. State Road Trans. Corporation v. Trilok Chandra* (supra), wherein this Court has held that the multiplier

should not be more than 18. The Tribunal while applying the multiplier of 43 had considered the age of the deceased being 27 years and if he had

not died in the accident he would have lived up to the age of 70 years and one day he would have been promoted to the post of Chief Engineer.

Keeping the aforesaid background in view, the High Court was of the view, that if the multiplier is reduced and multiplicand is enhanced not much

difference would be caused to the amount fixed by the Tribunal. Even otherwise it is a trite law that insurance company is not capable to challenge

the quantum of compensation.

Insurance is a covenant of good faith, where both parties are covenanted to abide by the terms and conditions of the policy. In the premises

aforesaid, it is clear that the company has made a deliberate attempt to escape the liability by introducing a copy of the policy other than the one

issued to the insured. Often, the terms and conditions are being respected more in breach than observance. Insurance company must bear in mind

that they are the trustee of the public. Keeper of the public coffer. Often, even genuine claims are being hotly contested in a routine manner by

dragging the parties to courts, wasting enormous time and money for the claimants to get their claims settled. The Act like Motor Vehicles Act

being a beneficial legislation aimed at quick redressal of the victims of accidents arising out of the use of motor vehicles, the attitude routinely

adopted by insurance company would render the object of the Act frustrated. If such instances are brought to the court, the court would be

obliged to dismiss the appeal with heavy costs, apart from deprecating such practices.

16. A careful reading of the above decisions of the Supreme Court would reveal that besides the age of the victim, the age of the claimants also

may be taken into consideration to select the multiplier to reach a just and fair compensation, based on the facts and circumstances of each case.

17. Further, the Apex Court in its decision in the case of *New India Assurance Co.*

Ltd. Vs. Charlie and Another, , has observed as under (paras 20 and 21):

In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , the multiplier appears to have been adopted taking note of the prevalent banking rate of interest.

In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , it was noted that the normal rate of interest was about 10 per cent and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16, the multiplier of 18 as was adopted in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , appears to be appropriate. In fact, in Trilok Chandra's case after reference to the Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide; but cannot be said to be an invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts earning independently and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age.

18. In the above decision of the Apex Court where the victim was a married person, aged 37 years, deriving income from agriculture, the multiplier that was applied was 18. In the instant case, the deceased is a person aged 39 years and as per Second Schedule to Section 163-A of Motor Vehicles Act, the proper multiplier is only 16. The aspects that the wife of the deceased was aged 25 years at the time of accident and his minor children, brother and sisters were also of young age have been taken into account while selecting the multiplier, as indicated by the Apex Court in

U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and accordingly, Claims Tribunal has applied the multiplier of

19. But, in my view, even while taking into account the age of the claimants, as per the rulings of Supreme Court cited supra, the multiplier over and above 18 should not be selected. Therefore, I am of the opinion, the Tribunal

has gone wrong in selecting the multiplier of 19 and it ought to have applied only the multiplier of 18 and thus, the pecuniary damages is arrived at Rs. 5,05,440 (Rs. 3,510 x $\frac{2}{3}$ x 12 x 18).

19. Further, the learned counsel for the respondents in C.M.A. No. 307 of 1995 has argued that in case of fatal accidents, as per the rulings of the Supreme Court, a certain sum has to be awarded under the heads of loss of consortium and loss of love and affection which has not been done by the Tribunal. I find some force on this point argued by the counsel. In such a view of the matter, I am inclined to award a sum of Rs. 15,000 towards loss of consortium since the wife of the deceased has lost her husband at her young age and Rs. 15,000 towards loss of love and affection experienced by the parents, brother, sisters and children of the deceased. While doing so, the amount of Rs. 6,480 granted towards funeral expenses is reduced to Rs. 4,560 and thus, the total amount of compensation of Rs. 5,40,000 fixed by Tribunal remains unaltered. It is also made clear that the apportionment of compensation amount made by the Tribunal between the claimants in the two M.C.O.Ps. and the rate of interest fixed by it shall stand unaltered.

In the result, the appeals are ordered in the above terms with no order as to costs.