

(1999) 06 MAD CK 0051

In the Madras High Court

Case No : C.M.A. No. 901 of 1994

Managing Director, Thanthai Periyar Transport Corporation

APPELLANT

Vs

Sundaramurthy and Another

RESPONDENT

Date of Decision : 21-06-1999

Acts Referred:

Citation : (2001) ACJ 1101 : (2000) 1 LW 338 : (1999) 3 MLJ 530

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : G. Munirathnam, for the Appellant; Mithila, for T.R. Rajaraman, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—The award directing the Thanthai Periyar Transport Corporation, the appellant herein, to pay the compensation of Rs. 1,20,000 towards the death of the deceased boy, aged about 8 years, to the petitioners, respondents herein, is being challenged in this appeal.

2. On 13.5.1990, at about 7.00 a.m., the deceased Dakshnamurthy, son of the claimants was sitting as a pillion rider in the cycle driven by one Karunanidhi, PW 2, to go to Veterinary Hospital at Orlean-pet, in order to give treatment to the hen carried by him. At about 7.15 a.m., when they reached Maraimalai Adigal Salai, near Mullai Nagar U curve, both of them got down from the cycle and went to the barricade, at the centre of the said road. While they were about to reach the barricade, the bus belonging to the appellant Corporation came at a high speed, in a rash and negligent manner, and dashed against the deceased boy and the front wheel of the said bus ran over his body. Due to the impact, the said Dakshnamurthy died on the spot itself.

3. Claimants, the parents, filed a petition before the Tribunal claiming a compensation of Rs. 2,00,000 for the death of the deceased boy in accident occurred due. to negligent driving of the driver of the bus belonging to appellant

Corporation.

4. According to the Corporation, the driver was not negligent and when the driver started the bus, after setting out the passengers at Nellithope stop, suddenly the deceased boy running fast crossed the road from left to right in front of the bus and during the said process, he dashed against the iron grill put up in the middle of the road and fell in front of the right side wheel of the bus and thereby he died and as such, the driver was not negligent and the Corporation was not liable to pay any compensation.

5. The Tribunal, having scrutinised the materials placed by the parties, has concluded that the driver of the bus was negligent and the parents of the deceased boy would be entitled to the compensation of Rs. 96,000 towards the loss of income and Rs. 24,000 towards the loss of happiness and companionship due to the death of the deceased. Thus, the total compensation awarded by learned Tribunal works out to Rs. 1,20,000 as against the total compensation of Rs. 2,00,000 claimed.

6. Mainly, on being aggrieved over the quantum the appellant Corporation has filed this appeal.

7. Mr. Munirathnam, learned counsel appearing for the appellant, would contend that the quantum was excessive and at any rate, the Tribunal ought to have fixed the contributory negligence on the part of the deceased also. In order to show that the award of Rs. 1,20,000 for the death of the deceased boy of eight years, is on the higher side, he would cite two authorities, viz., *Bimla Devi v. National Insurance Co. Ltd.* 1988 ACJ 981 , a decision of Full Bench of High Court of Punjab & Haryana at Chandigarh and *United India Insurance Co. Ltd. Vs. Bankarappa Naicker and Others*, , a decision of the Division Bench of this court.

8. Arguing contra, Ms. Mithila, learned counsel appearing for the respondents, would cite an authority *The Managing Director, Dheeran Chinnamalai Transport Corporation Vs. Thangaraju and Another*, , and contend that the amount of compensation fixed by the Tribunal for the death of the boy, payable to the parents is just and reasonable.

9. I have carefully considered the rival contentions and gone through the records.

10. Regarding negligence, there is no serious challenge made before me. Even on going through the materials, it cannot be said that the finding of the Tribunal with regard to negligence on the part of the bus driver is wrong.

11. The principles, with regard to the assessment of compensation for the young children are settled and the same have been decided by this court, other courts and the Apex Court on various occasions.

12. The paramount consideration in the assessment of compensation is only to protect the interests of the claimants so that the amount awarded to them by way of compensation serves the purpose and object of compensating them for

the loss of boy occasioned by the tragic accident.

13. In the case of death of children in the accident, the right calculation cannot be reached by applying the statistical or mathematical test. The thing to be valued is not the prospects of the length of days but the prospects of the predominantly happy life. No doubt, it is true that the decision cited by the learned counsel for the appellant would give the tabular column referring to the various decisions of the Supreme Court, giving the figures of compensation awarded to the children of different ages. But, those things cannot be taken to be hard and fast rules for deciding the quantum in this case. The age of the individual may be a relevant factor in some cases, but in assessing damages for shortening of life, such damages should not be calculated solely on the basis of the length of the life which is lost. In assessing the amount of damages to be awarded in respect of loss of expectation of life of the child, regard must be had in depreciation to the value of money as well.

14. In the instant case, the deceased boy was aged about 8 years at the time of his death, he was studying in third standard. According to PW 1 the father, he had two children, the first boy died when he was ten years old. The second child is the deceased boy of 8 years. It is the case of the claimants, which has been established, that, even before the death of the first child, the claimant No. 2, the mother of the deceased, had undergone family planning operation without knowing that she would lose the lives of both the children.

15. Oral and documentary evidence, adduced before the Tribunal, would clearly show that the deceased boy was studying in a school and he was a healthy boy of eight years old. At the time of his death, age of PW 1, the father, was 40 and the age of the mother was 30. How the boy would have turned out in his life later, would only be a guesswork. But at the same time, the reasonable expectation of the pecuniary benefits in the future cannot be totally ruled out. There is a reasonable probability of his becoming a successful man in life.

16. The Apex Court would observe in *C.K. Subramonia Iyer v. T. Kunhi Kuttan Nair* 1970 ACJ 110 , as follows:

In assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though-conjecture to some extent is inevitable. As a general rule, parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition, they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority.

17. One special feature and peculiarity in the instant case is that the claimants/parents cannot have any more children as the wife had already undergone tubectomy operation. In those special and peculiar circumstances, the courts held as held in *Pushpinder Kaur Sekhon v. Corporal Sharma* 1986 ACJ 591 , that the award of higher compensation is justified. In the case of children of tender age, the compensation to be awarded is only for the loss of expectation of future

happy life which forms a conventional figure.

18. As a general rule, the parents are entitled to recover the present cash value of the prospective future of the deceased minor child. In addition, they may receive compensation for the loss of pecuniary benefits reasonably expected after the child attains majority. The assessment of the quantum of the pecuniary benefits would certainly vary from case to case depending upon the family environment, members of the family, health and age of the victim, his outlook in life, the interests which the parents were taking in the boy and the totality of the circumstances tending to show whether the victim would have a predominantly happy life. When it depends upon very many uncertain factors, the Tribunal has to take an overall picture and form its estimate.

19. In the decision in United India Insurance Co. Ltd. Vs. Bankarappa Naicker and Others, cited by the counsel for appellant the Division Bench held that for the death of the deceased boy aged 14 years, the claimants were entitled to get compensation of Rs. 37,000.

20. In the decision cited by the learned counsel for the respondents in The Managing Director, Dheeran Chinnamalai Transport Corporation Vs. Thangaraju and Another, , this court held that the claimants of the deceased of three years old are entitled to the compensation of Rs. 75,000. These figures have been arrived at only on the basis of the facts and circumstances of those cases. The figures arrived at in other cases, cannot be taken as a guiding factor for arriving at a figure in the instant case, though in both the cases, deceased happen to be the children.

21. As indicated earlier, in the instant case, the parents cannot have any more child now, since the mother of the boy underwent family planning operation even before the first son died. Therefore, there is no possibility of getting any more child. Under these circumstances, the assessment over the quantum has to be made.

22. The Tribunal fixed the future contribution of the deceased son as Rs. 400 per month and applied 20 years of multiplier and arrived at the total figure of Rs. 96,000. In addition to that, Rs. 24,000 was added towards other heads.

23. In my considered view, in the absence of any material, we cannot fix the future income, though it can be done to a certain extent on speculation. But, it could be seen from the evidence that the young boy of eight years was put in the school and was studying in third standard at the time of his death. This would show that the boy would be given proper education which would ensure bright future prospects. Therefore, instead of adopting the multiplier theory, under the accident case, it could be held that the entire compensation of Rs. 1,20,000 would be fixed as a consolidated amount, inclusive of the conventional charges. As such, I am not inclined to disturb the figure arrived at by the Tribunal.

24. In the result, the appeal is dismissed. No costs.