

(1999) 06 MAD CK 0001
In the Madras High Court
Case No : C.M.A. No. 1134 of 1993

Maragatham and Others

APPELLANT

Vs

Managing Director, Thiruvalluvar Transport Corporation and
Another

RESPONDENT

Date of Decision : 16-06-1999

Acts Referred:

Citation : (2000) ACJ 1216 : (1999) 3 LW 179 : (1999) 3 MLJ 165

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : A. Sriram, for M.B. Gopalan, for the Appellant; Arul Murugan, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—Being dissatisfied with the quantum of compensation, the claimants-appellants herein have filed this appeal

seeking for enhancement. On 17.3.1991 one Purshothaman was riding his cycle at the extreme left side of the road. At that point of time, the bus

belonging to the respondent Corporation proceeding from Madras to Trichy, being driven at excessive speed in rash and negligent manner came

towards the left side and hit the cyclist from behind. As a result of the impact, he was thrown out from the cycle. He sustained head injury and

multiple injuries and died on the spot.

2. The claimants being the wife, minor children and the mother of the deceased respectively, filed a claim petition in O.P. No. 411 of 1991 on the

file of the Motor Accidents Claims Tribunal, Principal Sub-Judge, Chingleput claiming a total compensation of Rs. 5,00,000 on the ground that the

death of the deceased was due to the negligent driving of the driver of the bus

belonging to the respondent Corporation. On behalf of the claimants

two witnesses were examined. PW 1 is the wife and PW 2 is the eyewitness. On behalf of the respondent Corporation RW 1, the driver was examined.

3. The Tribunal on careful scrutiny of the materials placed before it concluded that RW 1, the driver of the bus, was negligent and consequently the claimants would be entitled to a compensation of Rs. 96,000.

4. Aggrieved over the same, in regard to quantum the claimants filed this appeal. Mr. Sriram, counsel appearing for the appellants would contend that the monthly contribution of the deceased assessed at Rs. 400 was without any basis, as it has been established by the claimants that the income for every month would be about Rs. 1,425. He would also point out that the factor that the claimant No. 1 was given a job in the

department in which the deceased worked cannot be the basis of computing the amount of compensation. In support of this submission, learned

counsel for the petitioner cited the decisions in the cases of Tata Engineering and Locomotive Co. Ltd. and Another Vs. Vasanthi alias Anantha

Lakshmi and Others, and Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . On the other hand, Mr. Arul Murugan, the counsel

appearing for the respondents, in justification of the order of the Tribunal, submitted that the assessment made by the Tribunal on the basis of the

monthly income, though adopted the multiplier of 20 years, is correct and it cannot be contended that the quantum is on the lower side.

5. I have given careful consideration to the submissions made by the counsel on either side. As regards negligence, I need not go into the factual

aspects, as there is no appeal against the order of the Tribunal by the Corporation. However, it shall be noticed that the driver of the bus, who took

a contradictory stand while deposing evidence before the court, which is not in consonance with the counter filed on his behalf that he caused the

impact by hitting on the cyclist who was proceeding in front of the vehicle and dragged him to a considerable length of 30 feet. The deceased died

on the spot. There is no dispute with regard to the fact that the deceased was aged about 31 years and the age of the claimant No. 1 was 26

years. They have got two children. One other dependant is the mother of the deceased. On the basis of Exhs. P-3 and P-4, PW 1 would state that

the deceased used to get Rs. 1,600 per month and that he would spend towards family expenses about Rs. 1,200. However, as per Exh. P-4, it is stated that the take home pay is only Rs. 720. Exh. P-4 is the salary certificate. It is also noticed that PW 1 in the cross-examination would admit that the deceased would get Rs. 720 after deductions per month. In the light of all these materials, the Tribunal came to the conclusion that the monthly dependency could be fixed at Rs. 400. The Tribunal applying the multiplier of 20 years concluded that she would be entitled to the compensation of Rs. 96,000. After calculating this amount, the Tribunal has deducted Rs. 25,000 towards uncertainty of life. While computing this calculation it is seen that the Tribunal has taken into consideration that the claimant No. 1 was given a job as mazdoor in the same department. Furthermore, there is no apportionment of the amount towards all the other important heads like loss of consortium, loss of love and affection and loss of expectancy of life, etc.

6. This court, in Tata Engineering and Locomotive Co. Ltd. and Another Vs. Vasanthi alias Anantha Lakshmi and Others, , while dealing with similar situation would hold that merely because one of the claimants was given job subsequently by the department concerned, that cannot be taken as a guiding factor for computing the compensation. In the instant case, no doubt, it is true PW 1 would admit in her chief-examination that she was employed as mazdoor and she was getting about Rs. 700 as salary. Though she would admit that employment was given on compassionate grounds, it cannot be definitely said that it was given towards compensation. It all depends upon the qualification of the person concerned. The deceased was working as a telegraphic man. PW 1 would say at that time the deceased who has passed S.S.L.C. examination was preparing for the departmental examinations. These details would show that there are some future prospects for the deceased getting promotion and higher emoluments. Merely because the claimant No. 1 is getting monthly salary as indicated earlier, the said amount cannot form part of the compensation to be given to the claimants. It is also to be noted in this context that the Corporation did not admit its liability to pay compensation and it is not as if the employment is given by the department concerned to the claimant No. 1 as a matter of compensation for the

death of her husband. Therefore, getting employment and receiving salary by the claimant No. I cannot be said to be a guiding factor in assessing

the damages to be given to the claimants. In the light of the above principles, as enunciated by this court in the decision cited supra, we have to see

the materials available on record to assess the quantum towards the compensation. No doubt, it is true that the take home salary as per Exh. P-4 is

Rs. 720 and PW I's evidence also would show that he was getting only Rs. 720 per month after deductions. But in my view that alone cannot be

taken into consideration for assessing monthly dependency. The Supreme Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, ,

held that the gross income as well as the future prospects of life have to be taken into consideration for computing the monthly dependency.

Admittedly, the deceased was the only breadwinner of his family. He died in the accident in his prime period of life at the age of 31. Exh. P-3

would show that he has put in service as telegraphic man for eight years. So definitely he has got a long service as a telegraphic man. He may even

get promotions in the same department in the light of the above factors and keeping in view that Exh. P-4 would show that the gross salary of the

deceased was about Rs. 2,500 and other future promotion chances, I am of the view that the monthly dependency could be fixed at Rs. 900. As

per the Schedule and the annuity Table, the maximum multiplier for the age of the deceased is 18, the proper multiplier for the deceased who was

aged about 31 years would be 18. Adoption of 20 years multiplier by the Tribunal may not be appropriate as the Apex Court would hold that the

longevity theory would not be proper assessment. However, 18 years being the maximum multiplier, in my view, would be appropriate. If the

monthly dependency of Rs. 900 x 12 x 18 is adopted, it works out to Rs. 1,94,400. It is also noticed in the Tribunal's order that though the

compensation is assessed at Rs. 96,000 on the basis of the monthly dependency of Rs. 400, Rs. 25,000 towards uncertainty of life was deducted.

In my opinion, when the multiplier theory is adopted, the question of deduction towards uncertainty of life does not arise, since already out of the

gross salary towards personal expenses of the deceased, considerable amount has been deducted and the monthly dependency was assessed on

that basis as Rs. 900. As indicated earlier, there is no amount provided towards other heads. In the light of the above situation, I feel that the order

of the Tribunal could be suitably modified in the following manner:

Towards loss of income,

Rs. monthly dependency

Rs. 900 x 12 x 18 ... 1,94,400

Loss of consortium ... 10,000

Loss of love and affection ... 10,000

Loss of expectancy of life ... 10,000

Funeral expenses ... 600

Total 2,25,000

7. In the result, the appeal is allowed with the above modification.