

(2002) 11 MAD CK 0003

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 325 of 1988

Mrs. Rajamani, Balasubramanian, Elan Cheliyan and Chandru **APPELLANT**

Vs

A. Ramar, New India Assurance Company Ltd. and **RESPONDENT**
Nacharammal

Date of Decision : 07-11-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (2003) 1 ACC 265 : (2003) ACJ 1058

Hon'ble Judges : P. Sathasivam, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Tiruchy R. Thiagarajan, for the Appellant; Kala Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Claimants in M.C.O.P. No. 485 of 1986 on the file of the Motor Accidents Claims Tribunal (II Additional District

Judge), Tiruchirapalli are the appellants in the above appeal. In respect of death of one Manickam in a motor vehicle accident on 21-5-86, his

wife, minor children have prayed for a compensation of Rs.3 lakhs. The Tribunal on the basis of the materials placed and after holding that the

accident was caused due to the negligence of the driver of the private bus, passed an award for Rs.47,900/- with interest at 12 per cent from the

date of petition. Against the disallowed claim, the claimants have preferred the above appeal.

2. Heard the learned counsel for the appellants as well as learned counsel for the contesting second respondent-Insurance Company.

3. Mr. R. Thiagarajan, learned counsel for the appellants, after taking us through

the oral and documentary evidence, has pleaded for higher compensation as claimed. On the other hand, Mrs. Kala Remech, learned counsel for the second respondent-Insurance Company, would contend that in the light of the fact that the owner of the vehicle in question, first respondent in this appeal, died long back and that his legal representatives were not brought on record till date, there cannot be any order for enhancement of compensation. She also contended that in view of Section 95 (2) (b) of the Motor Vehicles Act, 1939, their liability is limited to an extent of Rs.,5000/- per passenger, and that even in the absence of cross objection, in the light of Order 41 Rule 33 of the Code of Civil Procedure, the award in so far as the Insurance Company is concerned may be restricted to Rs.5000/-.

4. We have carefully considered the rival contentions.

5. In so far as the claim for higher compensation, it is the evidence of P.W.1, wife of the deceased that her husband was doing agricultural work as well as business by selling coconut and plantain. To show that her husband was having land, she has produced Exs. P-2 and P-3 kist receipts. In

order to show that he was doing business by selling coconut and plantain, Exs. P-4, P-5 and P-6 receipts have been marked. The Village

Administrative Officer was examined as P.W.3 and he deposed that the deceased was having agricultural land. He also issued Ex.P-10 certificate

to that effect. P.W.1 has deposed that he (deceased) was getting Rs.5000/- per year from his land and Rs.12,100/- from doing business,

altogether he was earning Rs.17,100/- per year. As rightly observed by the Tribunal, even after the death of the deceased Manickam, the land has

been yielding income. Exs. P-4 to P-6 show that he was getting meager income from the said business. Taking note of the position that prevailed in

1986, the Tribunal has found that the deceased would have earned Rs.1,200/- per annum towards his business and the family had put to a loss of

Rs.1000/- per annum from agriculture. After holding that pecuniary loss comes to the extent of Rs.2,200/- per year, taking note of the fact that the

deceased was aged about 42 years, by applying longevity theory, the Tribunal multiplied the same for 26 years and arrived a figure of Rs.57,200/-.

From and out of the said amount, it deducted 1/4th towards lumpsum payment and uncertainty of life and fixed the pecuniary loss at Rs.47,900/-

with interest at 12 per cent from the date of petition. We have carefully perused the oral evidence of P.W.1, P.W.3 as well as documentary evidence-Exs. P-4, P-5 and P-6 and we are satisfied with the amount determined by the Tribunal. It should not be lost sight of the fact that the accident had happened in the year 1986 and in such a situation, the income and other particulars have to be considered with reference to the materials available on the date of the accident. It is true that the amount of Rs.5,000/- towards loss of consortium to the first claimant is too low and she is entitled to a further sum of Rs.5,000/-. Likewise, no amount has been granted towards loss of love and affection for the 3 minor children and the aged mother. Though certain amounts have to be granted for the above claim, we are not inclined to accept the same for the following reasons. The first respondent in this appeal namely A. Ramar, owner of the vehicle in question died on 1-3-97 leaving behind his son as his heir and legal representative. Though the claimants have filed C.M.P. Nos. 13772 and 13773/97 to set aside the abatement caused by the death of the first respondent and to bring on record his son R. Kannan as the legal representative of the deceased, by order dated 20-11-97, a learned single Judge of this Court, after recording the absence of the counsel for the petitioner, directed the counsel to serve the notice on the respondent or their counsel within a period of four weeks. In the very same order, the learned Judge has made it clear that failing compliance, the petition shall stand dismissed. Admittedly, the then counsel did not comply the said order and as per the order of the learned Judge dated 20-11-97, these petitions stood dismissed automatically for non-compliance of the order. Accordingly, as rightly contended by the learned counsel for the Insurance company, as on date the owner is not before this Court to pay enhanced compensation even if any amount is granted in this appeal. Till this time, no petition has been filed to set aside the order of the learned single Judge dated 20-11-97. Hence, we have no other option except to confirm the award of the Tribunal and reject the claim for higher compensation.

6. Coming to the request made by the learned counsel appearing for the second respondent-Insurance company namely that in the light of limited liability provided u/s 95 (2) (b) of the Motor vehicles Act, 1939, the award may be restricted to Rs.5,000/-, it is not clear whether such objection

was taken in the counter statement filed before the Tribunal. Further, even before the Tribunal neither any one was examined nor any document

was placed in support of their claim regarding limited liability. Even copies of the counter statement and the policy of insurance were not placed

before us. Further, though the second respondent was served, even in the year 1986, they have not chosen to file cross objection in the appeal

filed by the claimants, nor filed independent appeal highlighting their defence. Though Order 41, Rule 33 C.P.C. enables the aggrieved party to

agitate their grievance even without filing a formal appeal, we are not inclined to invoke such provision since it is not the case of the Insurance

Company that they were not aware of such defence in filing independent appeal or cross objection in this appeal from 1988 onwards. The

Insurance company cannot be treated as an ordinary illiterate litigant or a person sponsored through the legal aid, hence we reject the request of

the learned counsel appearing for the Insurance company.

7. In the light of what is stated above, we dismiss the appeal. However, there shall be no order as to costs.