**(2013) 09 MAD CK 0346**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Appeal No''s. 3729 of 2010 and 1798 of 2011

Mythili Priya and Others APPELLANT

Vs

Saminathan and Others <BR>Managing Director, Tamil Nadu State Transport Corporation Ltd. Vs Mythili Priya and Others <BR>M/s. New India Assurance Co. Ltd. Vs Mythili Priya and Others RESPONDENT

**Date of Decision :** 16-09-2013

**Acts Referred:**

**Citation :** (2013) 8 MLJ 385

**Hon'ble Judges :** R. Subbiah, J;R. Banumathi, J

**Bench :** Division Bench

**Advocate :** Ma.P. Thangavel for in CMA. 3729/2010, Mr. S.S. Swaminathan in CMA. 1798/2011 and Mr. R. Sivakumar for in CMA. 3205/2011, for the Appellant; Ma.P. Thangavel for Respondents 1 to 5 in CMA. Nos. 1798 and 3205/2011, Mr. S.S. Swaminathan for Respondent No. 2 in CMA. 3729/2010 and 7th Respondent in CMA. 3205/2011 and Mr. R. Sivakumar for Respondent No. 5 in CMA. 3729/2010 and Respondent No. 9 in CMA. 1798/2011, for the Respondent

## Judgement

R. Banumathi, J.—Being dissatisfied with the quantum of compensation of Rs. 30,53,800/- for the death of Ravi in a road traffic accident on 01.5.2007, the Claimants have preferred C.M.A. No. 3927 of 2010 for enhancement.

Being aggrieved by 50% negligence and liability fastened upon the bus bearing registration No. TN-33 N 1951 and 50% negligence and liability upon the Maruthi Omni van bearing registration No. TN-09 H 4088 and the quantum of compensation, Tamil Nadu State Transport Corporation Limited and New India Assurance Company Limited have preferred C.M.A. Nos. 1798 of 2011 and 3205 of 2011 respectively. Since, all three appeals arise out of the same Award, the parties are referred as per their array in C.M.A. No. 3279 of 2010 filed by the Claimants.

Brief facts are that on 01.5.2007, deceased Ravi was travelling in the Maruthi

 

Omni van bearing registration No. TN-09 H 4088, belonging to the 4th Respondent and insured with 5th Respondent-Insurance Company on Palladam-Dharapuram Road. At about 4.45 A.M., when the Maruthi Omni van was nearing Kallipalayam G.K. Nagar, the bus bearing registration No. TN-33 N 1951, belonging to the 2nd Respondent-Transport Corporation driven by its driver (1st Respondent) in a rash and negligence manner and collided with Maruthi Omni van. Due to the impact, Ravi, who was travelling in Maruthi Omni van and 3rd Respondent, driver of Maruthi Omni van sustained injuries and died on the spot itself. Regarding the accident, a criminal case was registered against the driver of Maruthi Omni van in Crime No. 292/2007 under Sections 279, 304(A) of I.P.C. of Palladam Police Station. At the time of accident, deceased Ravi was working as Sub Inspector of Police and was earning Rs. 16,000/- per month. Alleging that the accident was due to composite negligence, the Claimants who are wife, daughter, son and parents of the deceased have filed Claim Petition claiming compensation of Rs. 40,00,000/-.

2. Resisting the Claim Petition, 2nd Respondent-Transport Corporation has filed counter contending that on 1.5.2007, the driver of the bus drove the same in a normal speed by observing the traffic rules and regulations. At about 4.45 A.M. when the bus was nearing Kallipalayam G.K. Nagar, the driver of the bus noticed Maruthi Omni van coming on the opposite direction with heavy speed. On seeing this, the driver of the bus hooted horn and slowed down the bus at the extreme left side of the road, even then the driver of Maruthi Omni van lost his control and went to the extreme right side and hit the front side of the bus. It is averred that the accident occurred only due to the negligence of the Maruthi Omni van driver and that 2nd Respondent-Transport Corporation is not liable to pay any compensation to the Claimants. 2nd Respondent-Transport Corporation has also denied age, occupation, monthly income of the deceased and that the compensation claimed is excessive.

3. Denying the manner of accident, 5th Respondent-Insurance Company has filed the counter contending that the accident occurred purely on the negligence of 2nd Respondent-Transport Corporation bus driver and that the 5th Respondent-Insurance Company is not liable to pay compensation to the Claimants. 5th Respondent-Insurance Company has also denied age, occupation, monthly income of the deceased and that the compensation claimed is excessive.

4. Before the Tribunal, 1st Claimant Mythili Priya examined herself as P.W. 1. Eye-witness Mansur was examined as P.W. 2. One Shyamala, the then Junior Assistant working in the Office of Superintendent of Police, Coimbatore was examined as P.W. 3. Exs. A1 to A6 were marked on the side of the Claimants. On the side of Respondents, 1st Respondent-Saminathan (driver of the bus) was examined as R.W. 1. No document was marked on the side of Respondents.

5. Upon consideration of oral and documentary evidence, Tribunal held that the accident was due to collision of both the vehicles and that both the bus and the Maruthi Omni van and fastened the liability at the ratio 50%:50% on both the

 

vehicles. Insofar as quantum of compensation, Tribunal had taken the monthly income of the deceased at Rs. 19,600/- per month. Deducting one-fourth for personal expenses and adopting multiplier "17", Tribunal has calculated the "loss of dependency" at Rs. 29,98,800/-. Adding conventional damages, Tribunal awarded total compensation of Rs. 30,53,800/-. Tribunal apportioned the liability and compensation payable at 50: 50 between both the vehicles.

6. Mr. S.S. Swaminathan, learned counsel for 2nd Respondent-Transport Corporation submitted that Tribunal erred in fixing the negligence and liability equally on the driver of the bus and the Maruthi Omni van on assumption that the accident was head on collision. It was submitted that Tribunal failed to consider the evidence of P.W. 2-eye witness, who had spoken about the negligent driving of the Maruthi Omni van driver and Tribunal ought to have held that the driver of the Maruthi Omni van alone was responsible for the accident. The learned counsel submitted that Tribunal erred in fixing the monthly income of the deceased at Rs. 19,600/- based on the proposed VI Pay Commission revision and that Tribunal ought to have fixed the income at Rs. 15,040/- per month, which was the last drawn salary of the deceased and that the quantum of compensation awarded by the Tribunal is excessive and prayed for reduction.

7. Mr. R. Sivakumar, learned counsel for 5th Respondent-Insurance Company submitted that Tribunal erred in coming to the conclusion that the accident occurred due to rash and negligent driving of the driver of Maruthi Omni van and the bus and apportioned the negligence at 50: 50. It was submitted that the accident occurred due to the negligence on the part of the driver of the bus and that 5th Respondent-Insurance Company is not liable to pay compensation. Regarding quantum of compensation, learned counsel for 5th Respondent-Insurance Company submitted that Tribunal failed to take into account the last drawn salary of the deceased i.e. Rs. 15,040/- per month and the compensation awarded by the Tribunal is excessive and prayed for reduction.

8. Per contra, taking us through the award of Tribunal, Mr. Ma.P. Thangavel, learned counsel for Claimants submitted that based on the consistent evidence adduced by the Claimants, Tribunal has rightly held that the accident was due to the negligence of the driver of both the bus and the Maruthi Omni van. Learned counsel submitted that Tribunal while fixing the monthly income of the deceased at Rs. 19,600/- per month, ought to have given increase towards future prospects and that the quantum of compensation awarded by the Tribunal is very low and seek for enhancement.

9. To prove the accident, Claimants have examined eye-witness P.W. 2-Mansur. In his evidence P.W. 2 has stated that on the date of accident, he was travelling in 2nd Respondent-Transport Corporation bus bearing registration No. TN-33 N 1951 and when the bus was nearing Kallipalayam Javulikaran thottam, Palladam-Dharapuram Road, the Maruthi Omni van bearing registration No. TN-09 H 4088 driven by its driver in a rash and negligent manner dashed against the bus and that the accident occurred due to negligence of both the driver of bus and the

 

Maruthi Omni van. P.W. 2 further stated that in the accident, Ravi and the driver of the Maruthi Omni van died on the spot itself.

10. The driver of the bus (1st Respondent) was examined as R.W. 1. In his evidence R.W. 1 has stated that on seeing the Maruthi Omni van coming at high speed in a rash and negligent manner, he stopped the bus on his left side and inspite of it, the Maruthi Omni van came and dashed against the bus R.W. 1 further stated that the accident was solely due to the negligence of the Maruthi Omni van driver. Even though, R.W. 1 has stated that the driver of the Maruthi Omni van drove the van in a rash and negligent manner and dashed against the bus, in his cross examination he admitted that in his complaint (Ex. A1), he had not stated that he stopped the bus on seeing the van on his left side of the road. Per contra, the eye-witness (P.W. 2) has stated that he saw the accident and the accident occurred due to the collision of both the vehicles and the accident occurred in the middle of the road.

11. To rebut the evidence of P.W. 2 that the accident occurred due to the negligence of both the vehicles, Respondents have not produced any documentary proof. Even though, Ex. A1-FIR was registered against the bus driver (deceased), by perusal of the evidence of eye witness (P.W. 2), it is seen that the accident occurred due to head on collision of both the vehicles. Upon consideration of oral and documentary evidence, Tribunal has rightly held that the accident was due to head of collision of both the vehicles and that 2nd Respondent-Transport Corporation and 5th Respondent-Insurance Company, insurer of the Maruthi Omni van are liable to pay compensation in the ratio of 50%:50% to the Claimants. We are of the view that the finding of the Tribunal in respect of negligence and liability fastened upon the bus and the Maruthi Omni van at 50: 50 is confirmed warranting no interference.

12. Insofar as quantum of compensation In her evidence, P.W. I has stated that at the time of accident her husband was working as Sub-Inspector of Police and was earning Rs. 15,000/- per month. P.W. I further stated that due to the death of the sole breadwinner, she is unable to run the family. To prove the monthly income of the deceased, Claimants have examined P.W. 3-Shyamala, the then Junior Assistant in the Office of the Superintendent of Police Office, Coimbatore. In her evidence, P.W. 3 has stated that at the time of accident deceased Ravi was working as Sub Inspector of Police and his last drawn salary was Rs. 15,040/- per month. In her evidence, P.W. 3 has further stated that as per VI Pay Commission, the revised pay of the deceased would be Rs. 17,400/-. Ex. A5 is the salary certificate issued by the Office of the Superintendent of Police, Coimbatore District. Ex. A6 is the Service Register of the deceased Ravi.

13. Referring to Ex. A6-Service Register and pay particulars of the deceased that the revised duty pay of the deceased was at Rs. 17,400/- per month, apart from Dearness Allowance ? Rs. 1044/- as on 01.5.2007 and Rs. 1000/- for I-I-R.A., Rs. 100/- for Medical Allowance, Tribunal has taken the monthly income of the deceased at Rs. 19,600/- per month. Learned counsel for 2nd Respondent-

 

Transport Corporation and the 5th Respondent-Insurance Company contended that Tribunal erred in taking the proposed pay and that Tribunal ought to have taken into account only the last drawn salary i.e. Rs. 15,040/- and that the monthly income taken by the Tribunal at Rs. 19,600/- is excessive and on the higher side.

14. As pointed out earlier, the accident took place on 01.5.2007. It is pertinent to note that benefit of VI Pay Commission was given only subsequently. Therefore, it is clear that at the time of accident i.e. on 1.5.2007, the deceased was not paid salary as per VI Pay Commission. In her evidence, P.W. 3 has clearly stated that the last drawn salary of the deceased was Rs. 15,040/-. Having regard to the evidence of P.W. 3 and Exs. A5-pay certificate, the monthly salary of the deceased is fixed at Rs. 15,040/-.

15. Future Prospects Contention of Claimants is that Tribunal has not taken into account the future prospects of the deceased and that 50% of monthly salary is to be added as future prospects. In support of his contention, the learned counsel for Claimants placed reliance upon Rajesh and Others Vs. Rajbir Singh and Others, .

16. As per the decision in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for future prospects, addition to be made to the actual salary of the income of the deceased. In the instant case, deceased Ravi was working as Sub Inspector of Police at the time of accident and was getting monthly salary of Rs. 15,040/-. Had he been alive, he would have got further promotions. Applying the ratio of Sarla Verma''s case, it would be appropriate to give 50% addition to the actual salary drawn by the deceased. Taking the monthly income of the deceased at Rs. 15,040/-, giving 50% increase, Rs. 7,520/- is added for future prospects and the income of the deceased is taken as Rs. 22,560/- per month and the annual income is calculated at Rs. 2,70,720/-.

17. Placing reliance upon Shyamwati Sharma and Others Vs. Karam Singh and Others, , learned counsel for 2nd Respondent-Transport Corporation and the 5th Respondent-Insurance Company contended that Tribunal erred in deducting the amount towards income tax and 30% deduction to be made towards income tax. Where the annual income is in the taxable range, appropriate deduction has to be made towards income tax and the rate of income tax is a varying figure with reference to taxable income after permissible deductions and the year of assessment. Income of the deceased fixed at Rs. 22,560/- after giving standard deduction, the income of the deceased would not have fallen under the slab of deducting 30%. In the facts and circumstances of the case, it is appropriate to deduct 20% towards income tax i.e. Rs. 54,144/- from Rs. 2,70,720/-. Deducting 20% towards income tax, the annual income is calculated at Rs. 2,16,576/-, rounded off to Rs. 2,16,600/- (Rs. 2,70,720-Rs. 54,144).

18. Deduction towards personal expenses-Tribunal has deducted one-fourth towards personal expenses. By perusal of the Claim Petition, it is seen that the

 

family members of the deceased being five in numbers and as per the decision of Sarla Verma case, the Tribunal has deducted one-fourth towards personal expenses and the same is maintained. Deducting one-fourth towards personal expenses i.e. Rs. 54,150/-, the annual contribution to the family is calculated at Rs. 1,62,450/- (Rs. 2,16,600 Rs. 54,150).

19. In the Claim Petition, the age of the deceased was mentioned as 35 years. By perusal of Ex. A2-post mortem certificate, it is seen that the age of the deceased was mentioned as 35 years. Learned counsel for 2nd Respondent-Transport Corporation and the 5th Respondent-Insurance Company submitted that the proper multiplier to the adopted in this case is "16" and the Tribunal erred in adopting multiplier "17". Per contra, learned counsel for Claimants contended that Tribunal has rightly adopted multiplier "17" and that the same has to be maintained. As per Second Schedule to M.V. Act for the age group 30-35, the proper multiplier to be adopted is "17" which the Tribunal has rightly adopted and the same is maintained. Taking the annual income of the deceased at Rs. 1,62,450/- and adopting multiplier "17", the "loss of dependency" is calculated at Rs. 27,61,650/- (Rs. 1,62,450 x 17=Rs. 27,61,650), rounded off to Rs. 27,62,000/-.

20. Insofar as conventional damages, Tribunal has awarded Rs. 10,000/- towards "loss of consortium" and "love and affection". At the time of accident, the 1st Claimant was aged 28 years. Considering the fact that 1st Claimant has lost her husband at her young age, Rs. 10,000/- awarded for "loss of consortium" is enhanced to Rs. 50,000/-. Tribunal awarded Rs. 40,000/- towards "loss of love and affection" to Claimants 2 to 5. Considering the fact that Minor Claimants 2 and 3 have lost their father at their young age of 5 and 6 years respectively and also the fact that Claimants 4 and 5 have lost their son at their old age, Rs. 40,000/- awarded for "loss of love and affection" is enhanced to Rs. 1,00,000/-. Tribunal awarded Rs. 5,000/- for "funeral expenses" and the same is enhanced to Rs. 10,000/-. Thus the compensation of Rs. 30,53,800/-awarded by the Tribunal is reduced to Rs. 29.22.000/- as follows:-

The reduced compensation of Rs. 29,22,000/- is to be apportioned between the 2nd Respondent-Transport Corporation and 5th Respondent-Insurance Company in the ratio of 50%: 50%. The 2nd Transport Corporation is liable to pay Rs. 14,61,000/-along with accrued interest and 5th Respondent-Insurance Company is liable to pay Rs. 14,61,000/- along with accrued interest.

21. In so far as interest, Tribunal has awarded interest at the rate of 7.5% p.a. from the date of filing of Claim Petition and the same is maintained. The reduced compensation of Rs. 29,22,000/- is to be apportioned amongst the Claimants as follows:-(i) 1st Claimant is entitled to Rs. 15,22,000/- (ii) Minor Claimants 2 and 3 are entitled to Rs. 5,00,000/- each and (iii) Claimants 4 and 5 are entitled to Rs. 2,00,000/- each. In the result, while confirming the apportionment of negligence and liability upon the 2nd Respondent-Transport Corporation and 5th Respondent-Insurance Company in the ratio of 50%: 50% fixed by the Tribunal

in M. CO. P. No. 726 of 2007 (22.9.2010) on the file of Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court IV), Coimbatore at Tirupur, the compensation of Rs. 30,53,000/- awarded by the Tribunal is reduced to Rs. 29,22,000/- and the appeals preferred by the 2nd Respondent-Transport Corporation and the 5th Respondent-Insurance Company (C.M.A. Nos. 1798 and 3205 of 2011) are partly allowed. Consequently, the appeal preferred by the Claimants (C.M.A. No. 3279 of 2010) is dismissed.

It was stated before us that 5th Respondent-Insurance Company has deposited entire compensation awarded by the Tribunal in the ratio of 50%:50%. Claimants 1, 4 and 5 are permitted to withdraw their respective share along with proportionate accrued interest lying in court deposit so deposited by the 5th Respondent-Insurance Company, immediately after the receipt of copy of this judgment. The 2nd Respondent-Transport Corporation shall deposit 50% of the modified compensation amount along with accrued interest to the credit of M.C.O. P. No. 726 of 2007 on the file of Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court IV) within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit also, Claimants 1, 4 and 5 are permitted to withdraw their respective share along with proportionate accrued interest. The share in respect of minor Claimants 2 and 3 is ordered to be invested in anyone of the nationalised bank till they attain majority. 1st Claimant is permitted to withdraw the accrued interest once in three months directly from the Bank. The excess amount, if any deposited by respondent No. 2 Transport Corporation and Respondent No. 5 Insurance Company is ordered to be refunded to them.

Consequently, connected M.P. is closed. No costs.

 