
(2016) 11 MAD CK 0025
In the Madras High Court
Case No : C.M.A. No. 65 of 2014

N. Kandasamy

APPELLANT

Vs

G.R. Sampath

RESPONDENT

Date of Decision : 04-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, Section 166, Section 173

Citation : (2017) 1 AnWR 5

Hon'ble Judges : Mr. T. Raja, J.

Bench : Single Bench

Advocate : Mr. R. Nalliyappan, Advocate, for the Appellant; Mr. T. Ravichandran, Advocate, for the Respondent No. 3; Ex parte, for the Respondent Nos. 1 and 2

Final Decision : Allowed

Judgement

Mr. T. Raja, J. - Aggrieved by the award dated 19.02.2013, made in MCOP. No. 353 of 2009, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Erode, the appellants/claimants have preferred the present appeal seeking for enhancement of the compensation.

2. On 16.02.2009 at about 8.45 a.m., while the deceased Tamilamuthan was riding the motorcycle bearing Registration No.TN-33-AL-5014 along with one pillion rider Palanisamy, near Kallankadu, a bus bearing Registration No.TN-37-S-9192 belonging to the second respondent and insured with the third respondent, driven by the first respondent-driver in a rash and negligent manner dashed against the deceased and as a result, the deceased and the pillion rider were fell down and while on the way to the hospital, the deceased Tamilamuthan died on the spot. Subsequently, the claimants, being the father, mother and sister of the deceased, have filed a claim petition claiming a sum of Rs.15,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal, by holding that the accident had occurred only due to the rash and negligent driving of the

driver of the second respondent, awarded a sum of Rs.8,42,500/- as compensation to the claimants with interest at 7.5% per annum from the date of petition. Aggrieved by that award, the claimants have filed the present appeal for enhancement.

4. Learned counsel appearing for the appellants/claimants submitted that the deceased was a brilliant student and he was studying B.E. in Electrical and Electronics Engineering in Nandha College of Engineering, Erode, therefore, learned Tribunal ought to have fixed Rs.10000/- as his notional monthly income instead of Rs.7500/- in view of the judgment of this Court in United India Insurance Co. Ltd. v. Velumyil and others [2013 (2) TNMAC 846]. It is also his further submission that while following the multiplier method for arriving loss of dependency, the Tribunal has wrongly fixed multiplier "13" by taking note of the age of the mother, instead of fixing the multiplier "18" by considering the age of the deceased as he was only 18 years at the time of death as per the judgment of the Hon'ble Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another Reported In (2009) 4 MLJ 997. It is further contended that the Tribunal has also further awarded a meagre sum of Rs.50,000/- towards loss of love and affection, Rs.5000/- towards transport charges, Rs.5000/- towards funeral expenses and Rs.2500/- towards estate, therefore, he prayed for enhancement of the compensation on these heads also. With these submissions, he prayed for enhancement of the compensation awarded by the Tribunal.

5. Learned counsel appearing for the third respondent/Insurance Company submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available before this Court.

7. It is an admitted fact that the deceased Tamilamuthan was pursuing his first year B.E., in Electrical and Electronics Engineering at Nanadha College of Technology, Erode, and he was 18 years old at the time of death. Immediately after the accident on the fateful day, an FIR, marked as Ex.P1, was registered against the first respondent, driver of the second respondent, in Cr.No.155 of 2009 under Sections 279, 337 and 304(A) IPC on the file of the Perundurai Police Station. Ex.P1-FIR clearly depicts that driver of the bus/first respondent drove the bus in a rash and negligent manner, which ultimately resulted in fatal accident, as the driver drove the bus very close to the two-wheeler of the deceased and dashed against the said two wheeler. P.W.2-Mr. S. Kandasamy, pillion rider, has deposed before the Tribunal that only the bus hit against the said two-wheeler from behind and as a result, the said two-wheeler was dragged for some distance and fell on the right side of the road. P.W.3-T. Sivasamy, eye-witness, who has also deposed before the Tribunal, corroborated such deposition of P.W.2. Therefore, by taking note of all the above said aspects, the Tribunal, by

holding that the driver of the second respondent was responsible for the fateful accident, has rightly fixed the liability on the insurer/third respondent herein of the vehicle in question, therefore, this Court also hereby confirms the said findings of the Tribunal.

8. As regards the quantum of compensation, it is not in dispute that the deceased was aged about 18 years and he was studying first year B.E. in Electrical and Electronics Engineering in Nandha College of Technology, Erode. He was also brilliant student as he scored 438 marks out of 500 marks in SSCL as could be seen from the Ex.P6-SSLC Mark Sheet. In a similar and identical circumstances, this Court in Velumyil's case (cited supra) has fixed Rs.10000/- as the monthly income of the deceased therein, as he was also a first year student studying B.E. in Electrical and Electronics Engineering. For better appreciation, relevant portions of the said judgment are extracted below:

"6. It is an admitted fact that the deceased Balaji was studying in first year B.E. Course which is proved by Ex.P.10 Transfer Certificate and oral evidence of P.W.3. At the time of accident, he was aged about 19 years. His date of birth is 30.05.1984 as per Ex.P.10. For an injured B.E. Computer Science student in the accident occurred during 2000, the Division Bench of this Court in National Insurance Company Limited v. T.A. Nickolas and two others reported in 2009 1 TNMAC 373 determined the monthly income at Rs.10,000/-. Similarly, in C.M.A. No. 2619 of 2009 in the case of Oriental Insurance Company Limited v. Arun Kumar and three others, a first year B.E. Student was injured in the accident occurred on 03.10.2001 and the monthly income was determined by this Court at Rs.10,000/-.

7. Considering the occurrence of the accident on 26.04.2002, this Court determines Rs.10,000/- as monthly income. As per the judgment of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (6) SCC 121, 50% of the income needs to be added towards future prospects. Therefore, 50% needs to be added towards future prospects. The monthly income determined by this Court = Rs.10,000/- 50% of the income towards future prospects = Rs.5,000/-. The monthly income totally determined = Rs.15,000/-

8. As rightly pointed out by the learned counsel for the appellant 50% is required to be deducted towards personal expenses as the deceased was a bachelor. The Hon'ble Supreme Court in Sarala Verma Case adopted deduction of 50% towards personal expenses in respect of a bachelor. Therefore, 50% is being deducted towards personal expenses.

Rs.15,000/- (-) 50/100 = Rs.7,500/-

The monthly income after deduction is Rs.7,500/-"

9. In view of the above, as in the present case also the deceased was 18 years old and was studying first year B.E. in Electrical and Electronics Engineering, this

Court hereby fixes Rs.10,000/- as the monthly notional income of the deceased, instead of Rs.7500/- fixed by the Tribunal. While adopting multiplier method, the Tribunal has committed yet another mistake, as it has wrongly taken into consideration the age of the mother of the deceased, instead of the deceased as he was only 18 years old at the time of accident as per the judgment of the Hon"ble Apex Court in Sarla Varma's case (cited supra). Thus, by following the said judgment, this Court hereby adopts multiplier "18", instead of multiplier "13" adopted by the Tribunal. Accordingly, this Court arrives at the compensation towards loss of dependency by considering the income of the deceased at Rs.10000/- per month as stated below:

Salary of the deceased

= Rs.10000/- p.m.

50% of the salary to be added as future prospects

= Rs.10000+5000

= Rs.15000/- p.m.

50% of Rs.15000/- deducted as personal expenses

= Rs.7500/- p.m.

Loss of dependency after multiplier of 17 is applied (Rs.7500 x 12 x 18)

= Rs.16,20,000/-

10. The Tribunal has further awarded a sum of Rs.50000/- towards loss of love and affection, Rs.5000/- towards transport charges and Rs.5000/- towards funeral expenses, which are, in my view, very meagre amount, therefore, this Court by following the judgment of the Hon"ble Apex in Rajesh and others v. Rajbir Singh and others (2013 (3) CTC 883 (SC), hereby awards a sum of Rs.50,000/- each to the claimants towards loss of love and affection, Rs.25000/- towards funeral expenses and Rs.10000/- towards transport charges, instead of the above said compensation awarded by the Tribunal on these heads. Again, Rs.2500/- awarded by the Tribunal towards loss of estate is also hereby confirmed. In total, this Court hereby awards a sum of Rs.18,07,500/- as total compensation to the claimants, though claim petition was filed claiming a sum of Rs.15,00,000/- as compensation, by following the principles of just and reasonable compensation in the light of the ratio laid down by the Hon"ble Apex Court in Ibrahim v. Raju and others reported in 2011 ACJ 2845. For better appreciation, paragraph 21 of the said judgment is extracted below:

"21. We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs.3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for

that reason this Court are duty bound to award just compensation, we deem it proper to enhance the compensation from Rs.1,89,440/- to Rs.6 lacs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh (2006) 2 SCC 274. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire 1987 ACJ 311 (Bombay), Orissa High Court in Mulla Mod. Abdul Wahid v. Abdul Rahim 1994 ACJ 348 (Orissa) and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana 1995 ACJ 1288 (P&H) and observed:

"For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

From the above said ratio of the Hon"ble Apex Court, it is clear that the Tribunal/ High Courts can award more compensation than the amount claimed by the claimants in the claim petition filed before the Tribunal, therefore, by following such ratio laid down by the Hon"ble Apex Court, this Court hereby awards a sum of Rs.18,07,500/- as total compensation to the claimants.

11. In fine, the third respondent Insurance Company is directed to deposit the entire award amount of Rs.18,07,500/-, along with interest as ordered by the Court below, less of the amount already deposited if any, to the credit of M.C.O.P. No. 353 of 2009, on the file of the Principal District Judge, Erode, Motor Accidents Claims Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants/appellants herein are permitted to withdraw their respective shares as apportioned by the Tribunal along with the accrued interest therein lying in the said credit by moving appropriate application on payment of additional court fee. Accordingly, the Civil Miscellaneous Application is allowed. No Costs.