
(2014) 02 MAD CK 0190

In the Madras High Court

Case No : C.M.A. No. 1531 of 2010 and M.P. No's. 1 and 2 of 2010

National Insurance Co. Ltd.

APPELLANT

Vs

Balasubramanian (Died) and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 02 MAD CK 0190

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : K. Suryanarayanan, for the Appellant; T.M. Ramalingam for R2, for the Respondent

Final Decision : Allowed

Judgement

R. Mahadevan, J.—This appeal is filed against the award of the Motor Accident Claims Tribunal, (I Additional District Court) Salem in M.C.O.P. No 389/2000 dated 10.11.2009 challenging the quantum of compensation awarded and negligence attributed to the driver of the vehicle belonging to the third respondent. The claim petition was filed by the parents of Ms. B. Sharada who died in the fatal accident that took place on 11/02/2006. The claimants claimed that the deceased was an Engineer by profession earning Rs. 10,000/- per month with a permanent job at FAL Industries Ltd.. The Tribunal, after considering the oral as well as documentary evidence, awarded a sum of Rs. 14,77,628/- with costs and interest @7.5% p.a. as against the claim of Rs. 25,00,000/-. Aggrieved, the present appeal has been filed.

2. The 4th to 6th respondents were impleaded by the orders of this Hon'ble Court dated 22/06/2011 after the demise of the 1st respondent.

3. Learned counsel for the appellant, assailing the judgment of the Tribunal, contended that the rider of the Two Wheeler, in which the deceased was a pillion rider, was responsible for the accident, that the Tribunal erred in adopting the multiplier of 18 without considering that the deceased was unmarried at the time

of accident, that even though the salary of the deceased at the time of accident was only Rs. 9043/- as per Ex. P10 and 13, the Tribunal adopted a wrong method and without considering the judgments of the Apex Court, reported in Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, has passed the award and therefore, sought for setting aside of the judgment of the Tribunal.

4. Per contra, learned counsel appearing for the respondents argued that there is nothing perverse in the judgment of the Tribunal below. The learned counsel further contended that the award has been passed by the Tribunal based on various decisions of the Apex Court including the Judgment in Sarala Verma's case 2009(2) TNMAC 1 and therefore, sought for the dismissal of the appeal.

5. Heard the counsel for the Appellant and the counsel for the 2nd and 4th to 6th respondents.

6. With regard to ground of negligence raised by the appellant, upon perusal of the award, it is clearly evident that the accident occurred due to the rash and negligent driving of the driver of the bus. The evidence of the eyewitness corroborated with Exs. P1, P3 and P14. Therefore, the Tribunal has rightly fixed the negligence on the driver of the school bus.

7. With regard to the quantum of compensation, the Tribunal, after considering the income of the deceased as Rs. 9043/- p.m., added 50% towards future prospects and adopted the multiplier of 18 considering the age of the deceased. The monthly income of the deceased has been arrived at after considering the educational qualification, the average of the last drawn 4 months salary as evident from the oral as well as documentary evidence.

8. The learned counsel for the appellant has contended that the Apex Court in Sarala Verma's case had applied the multiplier of 18 only because the deceased therein was married and therefore, the same analogy cannot be adopted in the present case. The learned counsel further contended that as per the Judgment reported in Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , no compensation can be awarded towards future prospects.

9. The contention of the appellant is not correct. Upon perusal of the award, the Tribunal, following the ratio laid down by the Apex Court in Sarala Verma's case (Supra), has rightly adopted the multiplier of 18 considering that the age of the deceased was only 23 at the time of accident. The consideration of multiplier is based on the age and not on marital status according to the Apex Court. Further, the issue of marital status becomes relevant only for considering the dependants. There is no finding in both the cases that an unmarried person is not entitled to compensation on account of loss in future prospects. The concept of awarding compensation towards future prospects is not based on marital status. It is to award a Just Compensation by considering the earning capacity of the deceased as if she had not met with the accident. In a case for compensation, the marital

status is material only for the purpose of considering the number of dependants. As per the ratio laid down by the Apex Court in both the cases, more the dependants, lesser the amount is deducted towards personal expenses. For the purpose of awarding future prospects, what is to be seen is whether there is scope for the deceased to earn more had he not met with the accident.

10. The Hon'ble Apex Court in the Judgment reported in Santosh Devi Vs. National Insurance Company Ltd. and Others, has varied slightly from the findings in Sarala Verma's case with regard to future prospects and held as follows:-

14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while

making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

15. It is also not possible to approve the view taken by the Tribunal which has been reiterated by the High Court albeit without assigning reasons that the deceased would have spent 1/3rd of his total earning, i.e., Rs. 500/-, towards personal expenses. It seems that the Presiding Officer of the Tribunal and the learned Single Judge of the High Court were totally oblivious of the hard realities of the life. It will be impossible for a person whose monthly income is Rs. 1,500/- to spend 1/3rd on himself leaving 2/3rd for the family consisting of five persons. Ordinarily, such a person would, at best, spend 1/10th of his income on himself or use that amount as personal expenses and leave the rest for his family.

16. The Tribunal's observation that the two sons of the appellant cannot be treated dependant on their father because they were not minor is neither here nor there. In the cross-examination of the appellant, no question was put to her about the source of sustenance of her two sons. Therefore, there was no reason for the Tribunal to assume that the sons who had become major can no longer be regarded dependant on the deceased.

17. In the result, the appeal is allowed, the impugned judgment as also the award of the Tribunal are set aside and it is declared that the claimants shall be entitled to compensation of Rs. 2,94,840 [Rs. 1,500 + 30% of Rs. 1,500 = Rs. 1,950 less 1/10th towards personal expenses = Rs. 1,755 x 12 x 14 = Rs. 2,94,840]. The claimants shall also be entitled to Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- in lieu of loss of consortium. Thus, the total amount payable to the claimants will be Rs. 3,19,840/-. The enhanced amount of compensation i.e. Rs. 1,42,340/- (Rs. 3,19,840- Rs. 1,77,500) shall carry interest of 7 per cent from the date of application till realisation.

18. Respondent No. 1 Insurance Company is directed to pay to the appellant the total amount of compensation within a period of three months by getting prepared a demand draft in her name which shall be delivered to her at the address given in the claim petition filed before the Tribunal. While doing so, respondent No. 1 shall be free to deduct the amount already paid to the appellant.

11. Therefore, the dependents of a deceased person, irrespective of the fact whether the deceased was self-employed or was paid fixed wages, are also entitled to future prospects. In the instant case, factually it has been proven that the deceased had scored well in education at every stage and also was steadily

progressing in her career. Therefore, the Tribunal had rightly considered 50% of the last drawn salary towards future prospects.

12. The Tribunal, also followed the judgments reported in 2009(1) TNMAC 118 and 2009(2) TNMAC 1, wherein 50% of the income has been deducted towards personal expenses. The Hon'ble Apex Court in both the cases has held that 50% of the income must be deducted from the income towards personnel expenses in case the deceased was a bachelor. In this case, the deceased was unmarried and therefore, applying the same analogy, the Tribunal has rightly deducted 50% towards expenses. Therefore, I do not find any irregularity in the award of the Tribunal. Hence the appeal is dismissed. No costs. The connected miscellaneous petitions are also dismissed. The Tribunal had apportioned the award amount of Rs. 14,77,628/= between claimants 1 and 2 as Rs. 5,77,628/= and Rs. 9,00,000/= . Pending appeal, the first claimant/first respondent died and his legal representatives, viz., two daughters and one son, were brought on record as respondents 2 to 4. Hence, the share of the award amount viz., Rs. 5,77,628/= allotted to him by the Tribunal is apportioned and the second respondent herein will be entitled to a sum of Rs. 1,97,628 and respondents 3 and 4 are entitled to a sum of Rs. 1,90,000/= each.