

(2007) 04 MAD CK 0057

In the Madras High Court

Case No : C.M.A. (MD) No. 1575 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Mahadevan, Buvanadevi, Venkatesh and Parameswaran

RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:

Citation : (2009) ACJ 1373

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S. Srinivasa Raghavan, for the Appellant; M. Ajmal Khan, for Respondents 1 to 3, for the Respondent

Judgement

S. Manikumar, J.—The Insurance Company, who suffered a decree for compensation of Rs. 3,65,000/- with interest at the rate of 7.5%

per annum from the date of claim, has preferred this appeal.

2. Brief facts leading to the appeal are as follows;

On 15.07.2003 about 4.30 pm., when the deceased Murugeswari and Selvarani were standing in the bus stop on Dindigul-Trichy main road, a

lorry owned by the fourth respondent and insured with the appellant-Insurance Company came in a rash and negligent manner, dashed against

them and both of them died on the spot. Two separate claim petitions were filed by the legal representatives of the deceased. As the claim petitions

arose out of the same accident, both the petitions were taken up together, common evidence was let in and documents marked. As far as the

claimants in the present appeal are concerned, the Tribunal awarded Rs. 3,65,000/- with interest at the rate of 7.5% per annum from the date of

claim.

3. Heard Mr. Srinivasa Raghavan, learned Counsel for the appellant and Mr. Ajmal Khan, learned Counsel for the respondents.

4. Mr. Srinivasa Raghavan, learned Counsel for the appellant submitted that in the absence of proof of avocation, the Tribunal ought to have

considered that the deceased was only a house wife and should have fixed the notional income of Rs. 15,000/- for the purpose of computing

dependancy compensation. He further submitted that in the absence of any proof of income, the Tribunal has to take note of multifarious services

rendered by the house wife and ought to have followed the dictum laid down by the Hon'ble Supreme court in Lata Wadhwa and Others Vs. State

of Bihar and Others, . He further submitted that the application of multiplier "17" for arriving at the dependancy compensation is excessive.

5. On the other hand, Mr. Ajmal Khan, learned Counsel for the respondent submitted that the deceased was a tailor at the time of accident and

was contributing Rs. 3,000/- per month. He further submitted that the first respondent, husband of the deceased and his minor children have lost

the services rendered by the deceased and the first respondent has to engage another person for doing domestic work. The contribution from

tailoring work was supplementary to the family, which is now required from other source and therefore, the said factor has to be considered for

awarding compensation. He further submitted that the compensation of Rs. 20,000/- awarded for loss of love and affection is inadequate and the

Tribunal has failed to award adequate compensation for transportation expenses. He submitted that the Tribunal ought to have awarded reasonable

compensation to the first respondent, who has lost his wife at the age of 33 years.

6. Before dealing with the facts and the decisions of Indian Courts on the determination of quantum of compensation, guidance is taken from the

judgment of the Supreme Court, which has extracted a portion of the Queen's Bench decision of England, as to what would be the basis for

qualifying for compensation for loss of services rendered by house wives. In Regan v. Williamson 1977 ACJ 331 (QBD, England), it was noted

that the present law is that dependents are to be compensated only for the value of the services lost to them by the death of a wife and mother. A

wife's companionship is to be ignored, likewise the grief and misery caused by her departure and, so too, a mother's love, guidance and influence

in bringing up children"". Reference was made to causes in which there was strict disregard to those features of the life of a woman beyond her so-

called services, to keep house, cook food, buy clothes, wash them, etc. Though the learned Judge found himself bound by the law, yet he

expressed the view that the work "services" has been too narrowly construed. The observations of the Learned Judge is as follows:

It should, at least, include an acknowledgment that a wife and mother does not work to set hours and, still less, to rule. She is in constant

attendance, save for those hours when she is, if that is the fact, at work. During some of those hours she may well give the children instruction on

essential matters to do with their upbringing and, possibly, with such things as their homework. This sort of attention seems to be as much of a

service, and probably more valuable to them, than the other kinds of service conventionally so regarded.

7. In *Metmet v. Perry* 1978 ACJ 112 (QBD, England), the pecuniary value of a wife's services were assessed and granted under three heads:

(a) Loss to the family of the wife's housekeeping services.

(b) Loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her.

(c) Loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.

Some of the decisions dealing with the estimation of the services rendered by the house wives are briefly dealt with

8. The Andra Pradesh High Court in *A. Rajam v. M. Manikya Reddy* 1989 ACJ 542, held, inter alia, as follows:

The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of

"services" to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be

remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted

services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the

family would have otherwise been spending for the deceased housewife.

While estimating the "services" of the housewife, a narrow meaning should not

be given to the meaning of the word "services" but it should be construed broadly and one has to take into account the loss of "personal care and attention" by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services.

9. The Apex Court in *Lata Wadhwa and Others Vs. State of Bihar and Others*, , has laid down certain principles for assessment of services

rendered by the deceased-house wives, who were not earning any income. In that case, a devastating fire engulfed the VIP Pandal, causing the

death of number of persons including children and women. Former Chief Justice of India, Hon"ble Mr. Justice Y.V. Chandrachud looked into the

matter and formulated certain principles for assessment of compensation to the legal representatives of the deceased as well as compensation

payable to the injured person. On the basis of the report submitted by the Hon"ble Judge, the Apex Court awarded compensation to the victims,

who had lost their kith and kin and to those who sustained bodily injuries. The Supreme Court was pleased to award reasonable compensation to

the Legal Representatives of the deceased. While dealing with the compensation payable to the legal representatives of the wives, who died in the

accident, in Paragraph 10 of the judgment, the Supreme Court held that,

But even in the absence of such data and taking into consideration the multifarious services rendered by the housewife's for managing the entire

family, even on a modest estimation, should be Rs. 3,000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives

between the age group of 34 and 59 and as such who were active in life. The compensation awarded, therefore, should be re-calculated, taking

the value of the services rendered per annum to be Rs. 36,000/- and thereafter applying the multiplier, as has been applied already and so far as

the conventional amount is concerned, the same should be Rs. 50,000 instead of Rs. 25,000 given under the report. So far as the elderly ladies are

concerned in the age group of 62 to 72, the value of the services rendered has been taken at Rs. 10,000/- per annum and the multiplier applied is

eight.

10. In a decision in *Bontu Venkata Rao and Another Vs. Kalla Venkataramana*

and Another, , the Andra Pradesh High Court considered the value of domestic services of the deceased in awarding compensation to the legal representatives. In Paragraph 7 of the judgment the court held as follows:

the services have been rendered by the deceased to the family shall have to be quantified. It is in the evidence that the workplace where the deceased used to work has been closed for the last eight months preceding the date of accident and the death of the deceased. If the claimant was expected to have engaged a domestic servant; for rendering services he would have definitely paid wages to the servant at the rate of Rs. 30 per day. The deceased in this case died at an age of 30 years. Her assistance to the family would be only for a particular period beyond which it cannot be expected of. But her assistance to the husband would be continued as long as both of them are alive. In that view of the matter it is a loss to claimant throughout his life. He having been aged 35 years at the appropriate time would have received the assistance of the deceased for another period of 35 years having regard to the longevity that has been fixed in this country on an average basis. As years pass on it would be reduced at a latter part of the life it is nothing but a mere companionship than assistance. In that view of the matter the compensation can be granted in a lumpsum for the loss of services to be rendered by the deceased to the family and services towards the domestic chores at Rs. 25,000/-.

11. In Amar Singh Thukral, Sushma, Jyotsana, Archana, Daughters of Shri Amar Singh Thukral and Ravi Kumar Vs. Sandeep Chhatwal, A.P.

Verma and National Insurance Co. Ltd., , the Delhi High Court after considering the principles laid down in Lata Wadwa's case, held that,

The "services" rendered by a housewife to her household should be given a broad interpretation and an expansive meaning.

The Court further held that,

Since there is no scientific method of assessing the contribution of a housewife to her household, in cases such as the present, resort should be had

to the wages of a skilled worker as per the minimum rates of wages in Delhi. Although this may sound uncharitable, if not demeaning to the

housewife, there is hardly any other option available in the absence of any

statutory guidelines.

In the above reported case, the deceased-housewife was aged about 36 years old.

12. The Karnataka High Court in *H.V. Rangaraju Vs. Muqbulpasha and Another*, , considered the loss of services of the deceased, who aged

about 28 years and quantified the compensation of Rs. 1,50,000/- on the basis of domestic work for number of years.

13. In *Oriental Insurance Co. Ltd. Vs. Shamsher Singh and Others*, , the Jammu and Kashmir, following the decision in *Lata Wadwa*, considered

the services rendered by the deceased house-wife, who was aged about 24 years at the time of accident and enhanced the compensation. In

Paragraph 6 of the said judgment, the Court held that,

In *Kemp and Kemp on Quantum of Damages*, Vol.1, various heads of pecuniary loss for the husband on the death of his wife have been listed out.

Included there is loss of the wife's contribution to the household from her earnings, the additional expenses incurred or likely to be incurred by

having the household run by a house-keeper or servant, instead of the wife, the expenses by buying clothes for the children instead of having them

made by the wife, and similarly having his own clothes mended or stitched elsewhere than by his wife, and the loss of that element of security

provided to the husband where his employment was insecure or his health was bad and where the wife could go out and work for a living.

14. In a decision in *Captan Singh and Others Vs. Oriental Insurance Co. Ltd. and Others*, , the Delhi High Court following the decision in *Lata*

Wadwa's case, evaluated the multifarious services of the deceased as housewife on the date of accident and determined the annual income of the

deceased.

15. In a decision in *The New India Assurance Co. Ltd. and Others Vs. Vishwa Bhandhu and Others*, , the deceased was aged about 28 years at

the time of accident. The Punjab & Haryana High Court determined the value of services of the deceased housewife as Rs. 1,000/- per month.

16. In a decision in *T.C. Bhatia Vs. Oriental Insurance Co. Ltd. and Others*, , the Himachal Pradesh High Court considered the loss of services to

the family and awarded compensation of Rs. 1,00,000/- under that head. In the above said case, the deceased was aged about 50 years at the time

of accident.

17. In *United India Insurance Co. Ltd. Vs. Banshidhar Gupta and Others*, the Allahabad High Court has considered the annual loss to the family

due to the death of housewife, aged about 29 years and fixed Rs. 12,000/- per annum under that head.

18. It is difficult to measure the loss of services of housewives in terms of money, as there is no prescribed norms in the statute. The factors for

quantifying the loss of services are to be culled out from the judgements of various courts and the broad guidelines given in English Laws.

19. Courts in India have recognised the invaluable contribution of the housewife to the house which is more than the pecuniary value. The

gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be

equated with the services rendered by others. An housekeeper or maidservant can do the household work, such as cooking food, washing clothes

and utensils, keeping the house clean etc., but she can never be a substitute for a wife who would render selfless service to her husband and

children. However, the loss of service to the household is estimated on the expenses incurred for the abovesaid multifarious services rendered by

the wife. The claimants who have lost the gratuitous service rendered by the deceased are entitled to adequate compensation.

20. The notional income for non-earning member was fixed in the year 1994. Quantifying the pecuniary loss at the same rate or amount even after

13 years after the amendment, ignoring the escalation in the cost of living and the inflation, may not be justifiable. Considering the importance of loss

of services and the age of the minors, it would be reasonable to fix the annual contribution of the deceased at Rs. 20,000/- and compute the

dependency compensation.

21. In the present case, the deceased was aged about 27 years at the time of accident, leaving behind two minor children aged about 12 and 2

years respectively. The first respondent was aged about 35 years. Though the respondents have claimed that the deceased was a tailor, they have

failed to produce any document to that effect. Two minor children have lost their love and affection of their mother at the tender age and the first

respondent-husband has lost her valuable services and for that purpose he would

have engaged some other person to look after his children and do other domestic work.

22. Following the decision of the Supreme Court in Divisional Manager, K.S.R.T.C., v. Mahadeva Shetty reported in 2003 AIR SCW 3797, the

multiplier applicable to the age of the claimants is "15". Applying the said multiplier to the annual contribution of Rs. 20,000/-, the dependancy

compensation works out to Rs. 3,00,000/-. The compensation of Rs. 20,000/- awarded for loss of love and affection to the children aged about

12 and 2 respectively, is not disputed. The Tribunal has failed to award compensation for loss of consortium to the husband. A sum of Rs.

10,000/- is awarded for loss of consortium.

23. In the result, the respondents/claimants are entitled to Rs. 3,35,000/- with 7.5% per annum from the date of claim. The award amount is

apportioned hereunder:

Dependancy compensation : Rs. 3,00,000/-

Loss of love and affection : Rs. 20,000/-

Loss of consortium : Rs. 10,000/-

Funeral expenses : Rs. 5,000/-

Rs. 3,35,000/-

If the amount has already been deposited, the Tribunal is directed to refund the balance amount with proportionate accrued interest to the appellant

Insurance Company within a period of two months from the date of receipt of a copy of this order.

24. In the result, Civil Miscellaneous Appeal is partly allowed. No costs.