
(2010) 02 MAD CK 0183
In the Madras High Court
Case No : C.M.A. No. 2320 of 2007

New India Assurance Co. Ltd.

APPELLANT

Vs

Kayalvizhi and 5 Others

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Citation : (2010) 1 CTC 823

Hon'ble Judges : R. Banumathi, J; M.M. Sundresh, J

Bench : Division Bench

Advocate : C. Ramesh Babu, for the Appellant; P. Valliappan, for the Respondent

Judgement

R. Banumathi, J.—Being aggrieved by the award of compensation of Rs. 31,89,000/- to the dependents of Sriram, Appellant-National Insurance Co., has preferred this Appeal. Brief facts are that on 10.9.2004, deceased Sriram was riding his Motorcycle bearing registration No. TN-36-F-3006 from his native place Karatadipalayam to Tiruppur. When deceased Sriram was proceeding at Ayyampalayam on Perumanallur to Tiruppur road, the Bajaj Tempo Trax bearing registration No. TN-39-Z-6890 driven by its driver [1st Respondent] in a rash and negligent manner hit against deceased Sriram. Due to the accident, deceased Sriram sustained injuries over chest, abdomen, fracture in hands and multiple injuries all over the body. After the accident, deceased Sriram was admitted in Mayur Hospital, Perumanallur and succumbed to the injuries. Regarding the accident, Criminal case was registered in Crime No. 372/2004 of Perumanallur Police Station. Alleging that the accident was due to rash and negligent driving of Bajaj Tempo Trax driven by the driver, dependents of Sriram [Wife, daughter, mother and father] have filed Claim Petition claiming compensation of Rs. 50,00,000/-.

2. Before the Tribunal, 1st Claimant herself was examined as PW1 and one Saravanamurthy was examined as PW2 and one Arangaraj was examined as PW3 and one Ramasamy was examined as PW4. Exs. P1 to P44 were marked on the side of Claimants. On the side of Appellant-Insurance Company, one

Pushpanathan, working as Administrative Officer was examined as RW1. No documents were marked.

3. Upon analysis of evidence, Tribunal held that accident was due to rash and negligent driving of Bajaj Tempo Trax driver. Deceased Sriram was an agriculturist and was also running apparels shop, Tribunal has taken monthly income of deceased at Rs. 25,000/- to Rs. 30,000/- and after giving personal expenses, Tribunal has fixed the contribution to the family at Rs. 14,000/- and adopted multiplier 18, Tribunal awarded compensation of Rs. 31,89,000/- as under:

4. Learned counsel for Appellant-Insurance Company has submitted that even after the death of deceased Sriram, agricultural lands continues to remain with the family. Learned counsel for Appellant further submitted that normal rule of deprivation of income to the family is not applicable in case of death of agriculturists. It was further submitted that Tribunal has not given mandatory deduction for personal expenses and absolutely there is no basis for fixing the monthly contribution at Rs. 14,000/- and the quantum of total compensation of Rs. 31,89,000/- awarded is exorbitant.

5. Taking us through the documents and order of Tribunal, learned counsel for Respondents 1 to 4 submitted that deceased Sriram owned vast extent of lands and also running business and Tribunal has rightly fixed the monthly contribution to the family at Rs. 14,000/- and adopted multiplier 18 and the quantum of compensation is very much reasonable warranting no interference.

6. It is not necessary for us to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and Insurance Policy coverage and who is liable to pay compensation. It is for the reason that these things are recorded in favour of Claimants and secondly, none of the findings are under challenge. Only quantum of compensation is in dispute.

7. In her evidence, PW1-Kayalvizhi [1st Claimant] has stated that deceased was an agriculturist cultivating 20 acres of lands. Deceased was also running apparels shop under the name and style "Glossy Apparels" and Exs. P18 to P32 were produced. Tribunal has taken the monthly income at Rs. 25,000/- to Rs. 30,000/- and calculated the loss of income at Rs. 30,24,000/-. President of Gopi Primary Co-operative Society was examined as PW3. In his evidence, PW3 has stated that deceased and his family were owning 10 acres of lands in S. Nos. 289/1 & 2 and 290/1 & 2 in Sengalaraikarai village and four acres of Dry lands. In his evidence, PW3 has further stated that deceased was also owning six acres of Wet lands in Lakkampatti village.

8. Exs. P18 and P19 are the joint Pattas from which it is seen that S. Nos. 289/1 & 2 and 290/1 & 2 to an extent of 5.84.5 Hec. stands in the name of Vengidusamy and Karuppusamy [father of deceased]. Exs. P20 and P21 are the "A" Register showing that Vengidusamy and Karuppusamy owned 5.84.5 Hec. of lands in S. Nos. 289/1 & 2 and 290/1 & 2 of Sengalaraikarai village. Ex. P23 is

the joint Patta for S. No. 46/3 - 0.22.5 Hec. standing in the name of Vengidusamy and Karuppusamy [father of deceased]. Ex. P24 is the joint Patta for S. No. 42 - 1.60.5 Hec. Ex. P25 is the "A" Register showing that S. No. 46/3 stands in the name of Vengidusamy and Karuppusamy [father of deceased]. From Exs. P18 to P25, it is seen that family was owning vast extent of wet lands and also dry lands.

9. PWs.1 and 3 have stated that deceased Sriram was managing the agriculture and that he was earning huge income from the agriculture. In so far as, income from agricultural lands, it has to be determined that the lands possessed by the deceased still remains with the Claimants as legal heirs. Observing that in the case of death of agriculturists, normal rule about deprivation of income is not strictly applicable to cases fixing monthly income of Rs. 3,000/-, in State of Haryana and Another Vs. Jasbir Kaur and Others, the Supreme Court held as under:

8. It is clear on a bare reading of the Tribunal's decision as affirmed by the High Court that no material was placed before the former to prove as to what was the income. As rightly contended by learned counsel for the appellants, there was not even any material adduced to show type of land which the deceased possessed. The matter can be approached from a different angle. The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered.

10. Normal rule about the deprivation of income is not directly applicable to cases where agricultural income is the source of deceased's or insured's income. In that case, other circumstances have to be considered.

11. Deceased Sriram and his family were owning vast extent of lands. Though deceased died, lands possessed by him continues to remain with the family. However, deceased being an educated person, he would have developed the marketing for agricultural products and would have improved the agriculture which has to be taken into account for taking the monthly income. From Ex. P34- Marriage Invitation, deceased has studied MBA. In her evidence, PW1 has stated that deceased was running apparels shop under the name and style "Glossy Apparels". Ex. P32 is the Bank statement of said Glossy Apparels of Karnataka Bank. Even though, Bank statement of the said Firm was produced, no document has been produced showing the income derived from the business. Claimants have not produced any Commercial Tax or Income Tax return. However, having regard to the facts and circumstances that deceased studied MBA, he would have taken initiative to do good business.

12. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise

mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by the use of the expression "which appears to it to be just", a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness.

13. Tribunal has made an observation that from agricultural and from business, deceased would have earned the income of Rs. 25,000/- to Rs. 30,000/- per month. Upon analysis of evidence, Tribunal has not chosen to fix the monthly income nor has given any deduction for personal expenses. Having regard to the age of the deceased [28 years] and income from agricultural lands and from business, monthly income of the deceased is fixed at Rs. 18,000/- per month. After deducting 1/3rd for personal expenses, monthly contribution to the family is fixed at Rs. 12,000/- per month.

14. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case, deceased was aged 28 years and was having family of his wife, daughter and parents. Having regard to the size of family and facts of the case, 1/3rd deduction has to be made for personal expenses. The contribution to the family is fixed at Rs. 12,000/- per month.

15. At the time of death, deceased was aged 28 years and Tribunal has rightly adopted multiplier 18. Taking multiplier 18, total loss of dependency is calculated at Rs. 25,92,000/- [Rs. 12,000/- x 12 x 18 = Rs. 25,92,000/-]. In so far as conventional damages, Tribunal has awarded Rs. 1,50,000/- for loss of Love and Affection. Learned counsel for Appellant-Insurance Company has submitted that compensation awarded for loss of love and affection is very much on the higher side and absolutely, there is no basis for fixing such higher compensation. Though the quantum of compensation awarded for loss of love and affection appears to be slightly on the higher side, it is pertinent to note that Tribunal has not awarded any damages for loss of consortium. If we take Rs. 50,000/- for Loss of Consortium, balance amount of Rs. 1,00,000/- could be taken for loss of love and affection which would be very reasonable. In so far as compensation for Medical Expenses, Tribunal has awarded Rs. 10,000/- and Tribunal has also awarded Rs. 5,000/- towards Funeral Expenses being reasonable, we confirm the amounts awarded towards Medical Expenses and Funeral Expenses. In modification, the compensation awarded by the Tribunal is reduced to Rs. 27,60,000/- as under:

The above compensation amount has to be apportioned amongst the Claimants on pro rata basis in the same rate of apportioned as ordered by the Tribunal.

16. In so far as interest, Tribunal has awarded interest at 9% p.a. from the date of filing of Claim Petition and the rate of interest awarded by Tribunal is on higher side. As held by the Supreme Court in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, : Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, and other decisions, interest is reduced to 7.5% p.a. from the date of filing of Petition. In the result, the compensation amount awarded in M.C.O.P. No. 8/2005 dated 29.9.2005 on the file of Motor Accident Claims Tribunal [Principal Subordinate Judge], Gopichettipalayam is reduced to Rs. 27,60,000/- and this Civil Miscellaneous Appeal is partly allowed. No costs.

Earlier by order dated 21.09.2007 in C.M.P. No. 2/2007, Bench has granted interim stay on condition to deposit the entire amount. By order dated 10.11.2009 in C.M.P. No. 3/2007, 1st Claimant was permitted to withdraw Rs. 7,65,000/- [Rs. 6,00,000/- plus Rs. 1,65,000/-] along with accrued interest. Likewise, Claimants 3 and 4 were permitted to withdraw Rs. 1,50,000/- each along with accrued interest.

Claimants 1, 3 and 4 are permitted to withdraw the entire amount of the modified compensation along with accrued interest. The share of compensation amount of modified compensation payable to 2nd Claimant along with accrued interest shall be invested in a nationalized Bank on reinvestment plan till 2nd Claimant attains majority. 1st Claimant/mother is permitted to withdraw the accrued interest on the fixed deposit of minor 2nd Claimant once in six months directly from the Bank, till the minor 2nd Claimant attains majority. Appellant-Insurance Company is permitted to withdraw the excess amount if any deposited before the Tribunal.