

(2008) 02 MAD CK 0229

In the Madras High Court

Case No : C.M.A. No. 1447 of 2002 and Cross Objection No. 17 of 2003

P. Baggiam, P. Anandakannan, P. Senthilkumar and P.
Srinivasan

APPELLANT

Vs

V. Viswanathan and The Oriental Insurance Company Limited

The Oriental Insurance Company Limited Vs P. Baggiam
and Others

RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2008) 02 MAD CK 0229

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : P. Mathivanan, for the Appellant; J. Chandran, for R-2, for the
Respondent

Judgement

R. Banumathi, J.—Being dissatisfied with the award of compensation for the death of Pulliappan, wife and sons of the deceased Pulliappan have filed this Appeal seeking for enhancement of compensation. Insurance Company has filed cross objection seeking reduction of the compensation awarded to the claimants.

2. Brief facts which are necessary for disposal of this Appeal are as follows:- On 24.9.1999 - 1.00 A.M. The deceased Pulliappan was driving his jeep bearing registration No. TMF 1192 from Villupuram to go to his lands at Pillur along with one Sabapathy. Parking the jeep on the left extreme of Chennai-Trichy Highway near Ramakrishna Ashramam, the said Sabapathy had gone aside of the road to call one Kuppusamy. At that time, lorry bearing registration No. TN-47-F 7476 driven by its driver in a rash and negligent manner came from Trichy towards Ulundurpet and while overtaking another lorry coming in the front, dashed against the jeep and caused instant death of the said Pulliappan. The jeep was totally damaged. Regarding the accident, criminal case was registered against the lorry driver in Cr. No. 700/1999 of Ulundurpet police station. The deceased Pulliappan was owning agricultural lands for nearly 10 acres and he was also

owning tractor and trailer and he used to hire the same for other agricultural work. Alleging that the accident was due to rash and negligent driving of the lorry driver, Claimants have filed Petition u/s 166 of M.V. Act claiming compensation of Rs. 10,00,000/-.

3. Opposing the claim, Insurance Co. has filed counter denying the accident. The Insurance Co. has alleged that the owner and insurer of the jeep bearing registration No. TMF 1192 are to be added as Respondents, since there is collision between two vehicles and the Claim Petition is liable to be dismissed for non-joinder of necessary parties. The Insurance Co. has also disputed the age, income of the deceased and loss of dependency of the Claimants.

4. Before the Tribunal, the First Claimant examined herself as P.W.1. Exs.P.1 to P.10 were marked. No evidence was adduced on the side of the Respondents. On the basis of oral and documentary evidence, Tribunal held that the accident was due to rash and negligent driving of the lorry driver. Tribunal has adopted unit method and taken monthly income as Rs. 1500/- per month and calculated the monthly contribution to the family at Rs. 1,100/- per month. Adopting multiplier of 11, Tribunal has awarded compensation of Rs. 1,45,200/- for loss of dependency; Rs. 5000/- for loss of consortium and Rs. 2000/- for funeral expenses. Tribunal awarded total compensation of Rs. 1,52,200/-.

5. Challenging the quantum of compensation, the learned Counsel for the Appellants/claimants submitted that the Tribunal failed to take into consideration that the deceased was owning tractor and trailer and he used to hire the same for agricultural work and apart from that, the deceased was also dealing in cattle feeds and agricultural products and the deceased was earning not less than Rs. 1000 p.m. The learned Counsel for the Appellants/claimants further submitted that the Tribunal has erroneously taken the monthly income at Rs. 1,500/-, without keeping in view the prospects of the deceased to earn more income. Laying emphasis upon Ex.P-8, Pass Book and Ex.P-10 Driving Licence, the learned Counsel for the Appellants submitted that Ex.P-8 would indicate that the deceased was having good income and while so, the Tribunal erred in brushing aside the oral and documentary evidence.

6. Supporting the findings of the Tribunal and the quantum of compensation awarded by the Tribunal, the learned Counsel for the second respondent Insurance Company has submitted that the quantum of compensation awarded is on the higher side and the same is to be reduced.

7. Insofar as the quantum, the Tribunal has taken the monthly income at Rs. 1,500/-. On the basis of members of family and adopting unit method, the Tribunal has held that the deceased would have contributed Rs. 1,100/- p.m. to the family and calculated the annual loss of dependency at Rs. 13,200/-. Adopting multiplier 11, the Tribunal has awarded Rs. 1,45,200/- for loss of dependency.

8. In her evidence, PW-1 has stated that her husband owned ten acres of land in

Ulundurpet and that they raised sugarcane crops and that her husband was earning Rs. 2 lakhs to Rs. 3 lakhs from agriculture. PW-1 has also stated that her husband was owning tractor and trailer and that he was letting it on hire and he earned income from the tractor also. Claimants have not produced patta, or other revenue documents to show that the deceased owned ten acres of lands. From Ex.A-6 - receipts, it is seen that the deceased had raised sugarcane crops and used to supply sugarcane to Cooperative Sugar Mill at Periyasevalai. During the year 1998-99, value of sugarcane supplied was Rs. 54,118.15. From the said amount of Rs. 54,118.15, the expenses for raising sugarcane crops, sugarcane seedlings, fertilizers and insecticide charges and other incidental expenses for raising sugarcane are to be deducted. That apart, the agricultural lands continue to remain with the family and therefore, agricultural income cannot be said to be lost in entirety. The loss is to be calculated in terms of what could be for farm supervision and management.

9. Observing that the normal rule about deprivation of income is not strictly computable to cases where agricultural income is the source, in *State of Haryana and Another Vs. Jasbir Kaur and Others*, , Supreme Court has 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 the 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. The same principle was reiterated in *New India Assurance Co. Ltd. Vs. Charlie and Another*, wherein the Supreme Court has held as under:

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

11. Admittedly, the deceased was owning a tractor and trailer and he was letting it for hire. The deceased himself had driving licence, as is seen from Ex.A-10. By letting out tractor and trailer for hire, the deceased would have earned income. Clubbing agricultural income and the income from hiring tractor and trailer, the deceased would have earned considerable income. This is also strengthened by the entries in Ex.A-8 - Pass Book of the Savings Bank Account, which the deceased was operating. By perusal of Ex.A-8, it appears that the deceased had been periodically depositing considerable amount which would show he was earning considerable income. Ignoring the evidence of PW-1 and clinching documentary evidence, the Tribunal appears to have taken a very low income of

Rs. 1,500/-.

It is the duty of Courts and Tribunals to ensure that the compensation awarded are just and reasonable compensation. Grant of just compensation would depend upon the facts and circumstances of the case. Actual pecuniary loss of different individual is to be ascertained by taking into consideration various factors. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , it is held that multiplier method is the accepted method of ensuring a "just" compensation which will make for uniformity and certainty of the awards, departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

12. It is well settled that while applying multiplier method, future prospects of advancement of life should also be taken into account to argument the multiplicand and award just compensation. Having regard to the evidence of PW-1 and Exs.A-6, A-8 and A-9 and other materials on record, in my considered view, the monthly income of Rs. 1,500/- taken by the Tribunal is very much on the lower side. Keeping in view the facts and circumstances of the case, the monthly income of deceased could be taken as Rs. 4,200/- p.m. Deducting 1/3rd for personal expenses, i.e. Rs. 1,400/-, the deceased would have contributed Rs. 2,800/- p.m. to the family. The annual loss of dependency would be Rs. 30,000/-.

13. At the time of accident, deceased was aged 55 years. Applying multiplier, as per the Second Schedule for the age group of 55 to 60 years, multiplier 11 would be appropriate. The annual loss of dependency is calculated at Rs. 3,69,600/- [Rs. 2800 x 12 x 11]. At the time of accident, the first claimant was aged 45 years. She has lost the love and affection and comforts of her husband. But the Tribunal has not chosen to award any amount for loss of consortium. Having regard to the age of the first claimant, for loss of consortium, Rs. 10,000/- is awarded. For funeral expenses, the amount of Rs. 2,000/- is enhanced to Rs. 5,000/-. For loss of love and affection to the claimants, Rs. 20,000/- [Rs. 5,000/- each] is awarded.

14. The compensation of Rs. 1,52,200/- is enhanced to Rs. 4,04,600/- as under:

Compensation awarded for	Amount in Rupees
Loss of Dependency	3,69,600
Loss of consortium	10,000
Funeral expenses	5,000
Loss of love and affection	20,000
-----	4,04,600
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15. The first claimant is entitled to Rs. 3,44,600/-. Claimants 2 to 4 are each entitled to Rs. 20,000/- each.

16. In the result,

The compensation amount of Rs. 1,52,200/- is enhanced to Rs. 4,04,600/- and this C.M.A. No. 1447/2002 is partly allowed. No costs;

Enhanced compensation of Rs. 2,52,400/- is payable with interest @ 7.5.% from the date of Petition;

The compensation amount of Rs. 1,52,200/- awarded by the Tribunal is payable with interest @ 9% from the date of Petition;

The enhanced amount shall be deposited within a period of three months from the date of receipt of copy of this order;

The amount of compensation shall be apportioned amongst the claimants as stated in paragraph 15.

On such deposit, the claimants are entitled to withdraw the entire compensation amount payable to them.

Cross Objection No. 17/2003 is dismissed.