

(1997) 01 MAD CK 0011

In the Madras High Court

Case No : Appeal Against Order No. 289 of 94

P. Madheswaran and another

APPELLANT

Vs

Rani and 3 others

RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 171, 173
Penal Code, 1860 (IPC) — Section 304A

Citation : (1997) 01 MAD CK 0011

Hon'ble Judges : S.M. Ali Mohamed, J;S. Marimuthu, J

Bench : Division Bench

Advocate : K.S. Narasimhan, for the Appellant; V.K. Muthusamy, for the Respondent

Final Decision : Allowed

Judgement

S.M. Ali Mohamed, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 is preferred against the Judgment and award of the Motor

Accidents Claims Tribunal (Subordinate Judge) at Tirupur in M.C.O.P. No. 569 of 1992 dated. 12/9/1993 granting a compensation of Rs.

6,90,000/- to the respondents herein. The first appellant is the owner of the goods carrier and the second appellant is the insurance company. On

16/8/1992 at 2:30 P.M. when Anandan. husband of the first respondent and father of the respondents - 2 and 3, was proceeding in his moped at

Tirupur - Tharapuram Road near Pudhur towards North to South, a goods-carrier bearing registration No. T.N.S. 5139 owner by the first

appellant which was coming in the same direction in a rash and negligent manner, hit the moped driven by Anandan and as a result of the accident.

Anandan sustained severe fracture injuries and subsequently died while he was undergoing treatment in the hospital. The Claims Tribunal held that

the accident took place because of rash and negligent driving of the driver of the goods carrier owned by the first appellant herein and awarded a

compensation of Rs. 6,90,000/- as detailed below -

Loss of earning : Rs. 6,30,000/-

Loss of love and affection and loss of consortium : Rs. 50,000/-

Unexpected loss of life : Rs. 10.000/-

Total : 6,90,000/-

2. In view of the clear finding of the Claims Tribunal that the accident took place due to the rash and negligent act on the part of the driver of the

first appellant and in as much as the driver of the goods-carrier was convicted u/s 304-A I.P.C. and was imposed a fine of Rs. 4,500/. the learned

counsel for the appellants confined his contentions with regard to the quantum of compensation and the rate of interest awarded by the Claims

Tribunal. The learned counsel for the appellants contended that the quantum of compensation awarded by the Claims Tribunal is not in accordance

with the latest ruling of me Supreme Court in U.P. State Road Transport Corporation and Others v. Trilok Chandra and others (1996-2-

L.W.266) and further contended mat the interest awarded by the Claims Tribunal at the rate of 15% per annum from the date of application is

excessive. In this connection, the learned counsel for the appellants contended that the monthly income of the deceased Anandan is excessive. It is

contended that the said Anandan was not employed in Arafaat Garments and was not earning a monthly salary of Rs. 3,000/- and the addition of

Rs. 500/- claimed by the respondents as income from running a vulcanizing shop should also be excluded. The learned counsel further contended

that the Claims Tribunal has taken 30 as the multiplier which is far in excess and as per the ruling of the Supreme Court in 1996-2-L.W. 226 cited

supra. He further submitted that the award of interest at 15% from the date of application is excessive. In this connection, the learned counsel for

the appellants referred to Section 171 of the Motor Vehicles Act, 1998 which says that in addition to the amount of compensation, simple interest

shall also be paid at such rate and from such date not earlier than the date of making the claim as it may be specified in this behalf. In this

connection, the learned counsel cited a ruling of the Supreme Court in Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and

another, wherein the Supreme Court upon the facts and circumstances of the case enhanced the rate of interest from 6% awarded by the Tribunal

to 12 % per annum and observed as follows:

The Tribunal has awarded interest at 6% per annum from the date of filing of the application before the Tribunal till the date of realization. In Smt.

Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, this Court awarded interest at 12% per annum from the date of the

application. Similarly in v. General Manager, Punjab Roadways, Jasbir Singh 1987 ACC CJ C 15:9A.I.R. 1987 SC 70), this Court enhanced the

interest from 6% p.a. to 12 % p.a. We, therefore, hold that apart from the damages the appellants are entitled to claim interest at 12% P.A.

instead of 6% awarded by the Tribunal.

3. On the other hand, the learned counsel for the respondents contended that there are no infirmities in the impugned order of the Claims Tribunal

and the quantum of compensation awarded by the Claims Tribunal is not excessive and does not require any reduction or modification by this

Court.

4. We have considered the contentions of the learned counsel for the appellants and the respondents. Upon the peculiar facts of the case, it is

admitted that the fatal accident took place on 16.8.1992 at 2:30 P.M., while the deceased Anandan was proceeding in his moped at Tirupur-

Tharapuram Road near Pudur towards North to South, a goods-carrier bearing Registration No. T.N.S. 5139 owned by the first appellant which

was coming in the same direction in a rash and negligent manner, hit the moped driven by Anandan and as result of the accident, Anandan

sustained severe fracture injuries and subsequently died while he was undergoing treatment in the hospital. The point for consideration is whether

the compensation granted by the Claims Tribunal is just and in accordance with law. The Claims Tribunal has taken the monthly income of the

deceased Anandan as Rs. 3,500/- which comprises of his salary of Rs. 3,000/- per month from Arafaat Garments for working as Manager and the

earning of Rs. 500/- per month from a vulcanizing shop. The learned counsel for the appellants contended that the Claims Tribunal erred in

calculating the monthly income of the deceased Anandan at Rs. 3,500/- per month which comprises of Rs. 3,000/- per month as salary from

Arafaat Garments, Tirupur and a sum of Rs. 500/- per month as income from the vulcanizing shop. We are unable to accept the contention of the

learned counsel for the appellants. The contention of the learned counsel for the appellants that the deceased Anandan did not work as Manager in

Arafaat Garments is not sustainable in view of the evidence of P. W. 3, the owner of the said Arafaat Garments who has deposed that the

deceased was working as Manager and was receiving a salary of Rs. 3,000/- per month as per Ex.A.5. In view of the above, the contention of the

learned counsel for the appellants is unsustainable. The learned counsel for the appellants contended that the Claims Tribunal erred in including a

sum of Rs. 500/- per month as income from vulcanizing shop and the said sum of Rs. 500/- should be excluded. There is no force in the contention

of the learned counsel for the appellants since in the counter-statement filed by the second appellant before the Claims Tribunal which was adopted

by the other appellants, it is stated as follows:

The fact is that the petitioner was owning a small vulcanizing shop. His monthly income was Rs. 500/-.

Therefore, we reject the said contention of the learned counsel for the appellants, and we are of the view that there is no infirmity in the finding of

the Claims Tribunal that the monthly income of the deceased Anandan was Rs. 3,500/-. With regard to the quantum of compensation, the Claims

Tribunal has applied the multiplier of 30 taking into the age of the account victim of the fatal accident and taking into consideration the average

expectation of life at 65 and arrived at the multiplier of 30 and has calculated the compensation as follows:-

Monthly income of the deceased : Rs. 3,500/-

Yearly income of the deceased : Rs. 3,500 X 12= Rs. 42,000/-

Loss of earning to the family : Rs. 42,000 X 30= Rs. 12,60,000/-

Out of that, the Claims Tribunal deducted 50% towards personal expenses and for the uncertainty of life and has arrived at the compensation of

Rs. 6,30,000/-. The contention of the appellant is that the multiplier is excessive. Applying the principles laid down in the latest Supreme Court

decision, the compensation will work out as follows:-

Upon the facts and circumstances of the instant case, the monthly income of the deceased is ascertained as Rs. 3,500/-. By breaking up the family

into units, taking two units for an adult and one unit for a minor, the deceased gets 2 units, his widow gets 2 units and the minor children gets one

unit each, totalling to 6 units. Thus the share per unit works out to Rs. $3,500/6 =$ Rs. 583, per month .The deceased two unites will come to Rs.

1,166/-. It can thus be assumed that Rs. 1,166/- was spent on the deceased and after deducting Rs. 1,166/- from the monthly salary of Rs.

3,500/-, the balance amount of Rs. 2,334/- can be taken as the monthly loss to the dependents of the deceased. The annual dependency comes to

Rs. $2,334 \times 12 =$ Rs. 28,008/-. This annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation

under the head of loss to the dependents. Taking the appropriate multiplier to be 18. the dependents" compensation comes to Rs. $28,008/- \times 18 =$

Rs. 5,04,144/-. To this, we add a conventional amount by way of loss of expectation of life, at Rs. 10,000/-. Thus the total comes to Rs.

5,14,144/-. Accordingly, we reduce the amount of compensation under this head from Rs. 6,30,000/- to a sum of Rs. 5,14,144/-. With regard to

the consortium to the wife of the deceased and loss of fatherly love and affection to the children aged 12 and 6, we feel that the amount fixed by

the Tribunal at Rs. 50,000/- is reasonable.

5. With regard to the rate of interest, we are unable to accept the contention of the learned counsel for the appellants that the rate of interest in

excessive. Sec.171 of the Motor Vehicles Act reads as follows:-

171. AWARD OF INTEREST WHERE ANY CLAIM IS ALLOWED :-

Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of

compensation simple interest shall also be paid at such date not earlier than the date of making the claim as it may specify in this behalf.

The term "Simple Interest" is not defined in the Motor Vehicles Act, 1988. In Dr. A.R. Biswas Law Dictionary", under the caption "interest", it is

stated as follows:-

"interest" means rate of interest and includes the return to the made over and above what was actually lent. whether the same is charged or

sought to be recovered specifically by way of interest of otherwise. "Interest is of two kinds, simple and compound. A simple interest is that which

is payable at a certain rate. When interest for a certain period is added to the

principal the interest on the total amount of principal and interest is called compound interest. Interest in a wide sense is the return or compensation for the use or retention of another's money. In its narrow sense, the word means the amount which one has contracted to pay for the use of borrowed money. Interest in this sense, may be of three categories.

The first category is interest fixed by the parties to the bargain or contract, that is interest ex contract. The second category is conventional interest determined by the accepted usage, prevalent in a trade or mercantile community, called ex more. The third category consists of legal interest allowed by law or by Court empowered to grant interest, called ex lege.

The simple interest mentioned in Sec.171 of the Motor Vehicles Act will come under the third category consisting of legal interest allowed by law or by Court empowered to grant interest, called ex lege. It is clear from a reading of the Sec.171 that the term used in the said section is simple interest as opposed to compound interest and the rate of simple interest is left to the discretion of the Claims Tribunal. Upon the facts and circumstances of the case, the grant of 15% interest is not excessive. The ruling of the Supreme Court cited by the counsel for the appellant with regard to interest at 12% per annum was based upon the peculiar facts of the case before the Supreme Court. The Claims Tribunal has exercised its discretion under Sec. 171 of the Motor Vehicles Act by granting simple interest at a rate of 15% per annum which is reasonable and it is in accordance with law. Accordingly, we partly allow the appeal by reducing the amount of compensation awarded under the head, "Loss of earning to the family" from Rs. 6,30,000/- to a sum of Rs. 5,04,144/- and confirm the compensation on other heads and also rate of interest at 15% per annum from the date of filing of the application before the Claims Tribunal till the date of realization. No costs.