
(1987) 07 MAD CK 0039
In the Madras High Court

Pallavan Transport Corporation Ltd.

APPELLANT

Vs

Panchalai and Others

RESPONDENT

Date of Decision : 10-07-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1987) 2 MLJ 292

Hon'ble Judges : S. Swamikkannu, J; S. Swamikannu, J

Bench : Division Bench

Judgement

S. Swamikkannu, J.—Pallavan transport Corporation Limited represented by its Managing Director is the appellant herein. This appeal has

been filed against an award dated 28.6.1978 in O.P. No. 33 of 1976 on the file of the Additional Motor Accident Claims Tribunal, Madras. The

Tribunal held on an application u/s 110-A of the Motor Vehicles Act that the petitioners/respondents 1 to 3 herein are entitled to a compensation

of Rs. 32,000 and passed an award for a sum of Rs. 32,400/- against the appellant herein and in favour of respondents 1 to 3 herein and also

passed an award for a sum of Rs. 5,400/- against the appellant herein and in favour of the second respondent/fourth respondent herein. The award

amounts would carry interest at 6% per annum from the date of award. Respondents 1 to 3 would share the award amount equally. Respondent 2

and 3 herein being minors, their share amounts would be invested in Canara Bank, Perambur Barracks Road Branch until the time the minors attain

majority and their mother and next friend would be entitled to receive the interest that would accrue on the deposited amounts for their benefits.

2. The case of the petitioners/respondents 1 to 3 herein before the Tribunal was that the deceased had met with an accident on 29.11.1975 at

6,45 p.m., at Gollawar Agraharam Road, near Rainy Hospital, Tondiarpet, while proceeding along the road, dragging his hand-cart. Their case is

that the PTC bus TMN. 238 which came in the opposite direction had knocked down the deceased person and caused him fatal injuries as a

result of which he died after a week in the hospital. Their further case is that the deceased was aged about 30 years and was daily earning Rs. 20/-

. Therefore, they claimed a total compensation of Rs. 50,000/- impleading the father of the deceased as the second respondent/fourth respondent

herein.

3. The appellant herein in its counter before the Tribunal contended that the accident never took place due to rash and negligent driving of its driver

and therefore it is not liable to pay any compensation.

4. The second respondent/fourth respondent herein in its counter before the Tribunal contended that the accident took place due to negligent

driving of the PTC bus by its driver and that his son was giving him Rs. 3/- daily for his expenses apart from food. He prayed that the petition may

be allowed protecting the interest of the two minor children of the deceased person.

5. On the above pleadings, the following points were framed for determination by the Tribunal:

(1) Whether the accident was due to the negligence of the driver of the PTC bus, and

(2) To what amount of compensation the petitioner and the second respondent are entitled?

On behalf of the petitioners/respondents 1 to 3 herein, P.W. 1 Panchalai Animal, P.W. 2 Dr. Krishnamurthi, P.W. 3 Dr. Udhayashankar, P.W. 4

Dhanavelu, P.W. 5 Shanmuga Nadar and P.W. 6 Mani were examined and Ex. P1 copy of accident register, Ex. P2 postmortem certificate, Ex.

P3 statement of P.W. 6 and Ex. P4 sketch were filed. On behalf of the first respondent/appellant herein, R.W. 1 Selvaraj-driver of the bus was

examined. On consideration of the above evidence available on record, the Tribunal came to the above conclusion. Aggrieved by the above

conclusion, the first respondent Pallavan Transport Corporation has come forward with this appeal before this Court.

6. Mr. Balasubramaniam, learned Counsel for the appellant herein, mainly

contended that in view of the lump sum amount that had been directed to be paid to the respondents herein, the Tribunal had not taken care to deduct an appreciable sum due to lump sum payment that was arrived at by the Tribunal and this is a serious infirmity which had been overlooked by the Tribunal.

7. This Court has carefully gone through, the evidence available on record and finds that the conclusion arrived at by the Tribunal that due to rash

and negligent driving of the PTC bus by R.W. 1 the accident took place. The deceased died in the hospital on account of the injuries sustained by

him in the accident. That the bus in question was driven in a rash and negligent manner by R.W. 1 is borne out by the oral evidence available on

record together with the documentary evidence, such as Ex. P1, Ex. P2 and Ex. P4. It is seen that the accident did not take place due to any latent

defect in the vehicle. On the other hand, the evidence available on record clearly shows that R.W. 1 had now appeared in Court setting out a story

to oblige the appellant herein from paying any amount to the claimants. If really the driver was innocent and was not negligent, he would have

reported the matter to the police and would have made them record a statement from him touching the Incident. But he had not cared to do so.

There was no evidence of a loaded cart being dragged by the handcart puller at that time. Only an empty handcart was dragged by the deceased,

and P.W. 6 clearly proved negligence on the part of the driver alone. If really the bus was stopped before the impact, there is no possibility of the

rear wheel of the bus running over the right leg of the handcart puller. Therefore, the Tribunal is correct in having believed the evidence of P.W. 6

and came to the conclusion that the driver of the PTC bus alone was rash and negligent in the driving of the PTC bus. This Court does not find any

infirmity in the conclusion arrived at by the Tribunal and hence the finding of the Tribunal regarding rashness and negligence of the driver of the

P.T.C. bus is hereby confirmed.

8. So far as the quantum of compensation that had been awarded to the claimants is concerned, we find that the Tribunal had taken into

consideration all the aspects placed before it before coming to the conclusion and fixed the compensation at Rs. 37,800/- (Rs. 2520/- $\times \frac{1}{2}$ 15 =

Rs. 37,800) in other words, multiplier has been used in the instant case by the

Tribunal for the reason that there is the possibility of the young widow getting married also. The deceased was found to be a man aged 30 years at the time of the accident. He had died only as a result of the accident. One can expect this young man to live for more than 30 years. But the uncertainties of life of a person is always there to be reckoned with. Therefore, the Tribunal adopted fifteen years to estimate the dependency of the family. The fourth respondent herein was also a dependant on his son getting Rs. 3/- per day. In such event, the annual dependency of the fourth respondent herein amounts to Rs. 1,080/-. The age of the fourth respondent herein was not mentioned either in the petition or in his counter. He was also not examined and, therefore, one has to make guess work of his age taking note of the age of his son. One can presume that this man would at least be aged 55 years. If that be the case, he may have a few years of life and that can be reasonably estimated to run a period of five years, and in that case, his loss of expectation of life would amount to Rs. 5,400/- (Rs.1080 $\times$ $\frac{1}{2}$ 5 = Rs. 5,400/-). Therefore the Tribunal has correctly come to the conclusion that respondents 1 to 3 herein would be entitled to a compensation of Rs. 32,400 while the fourth respondent herein would be entitled to a compensation of Rs. 5,400. The said finding of the Tribunal is hereby confirmed.

9. The appellant herein contended that in view of the lump sum payment of compensation, a reasonable percentage ought to have been deducted from that lump sum amount so as to justify the award. In the instant case, we are unable to uphold the contention raised on behalf of the appellant herein.

10. The deduction for lump sum payment though based on sound principle is not a rule universally applicable and has to be applied in the context of such counter balancing factor as may be present in a particular case. Such deduction would not be justified in such cases as:

- i) if the compensation is determined on the basis of the income at the time of the accident without taking into calculation any future increase therein;
- ii) if no interest from the date of accident to the date of realisation of compensation awarded is allowed;
- iii) the time lag between the death and the award as well as between the award and actual payment; the lapse of time would be taken as set off;

- iv) if amount of compensation has not been enhanced on account of rising prices;
- v) inflation and fall in the value of the rupee; and
- vi). if claimants entitled to more than what they have claimed, no deduction for lump sum payment need be made from the amount awarded;

11. In *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, , the Supreme Court held that the delay in the final

disposal of motor accident compensation cases, as in all other classes of litigation, takes the sting out of the laws of compensation because, an

infant child who seeks compensation as a dependant of his deceased father has often to await the attainment of majority in order to see the colour,

of the money. Add to that the monstrous inflation and the consequent fall in the value of the rupee: Compensation demanded say, ten years ago, is

less than quarter of its value when it is received to-day.

12. In *Seityawati Patbak v. Hari Ra*, 1983 A.C.J. 424, it was held that deduction on account of lump sum payment and uncertainties of life was

not made account of steep fall in money value. In *Dyer Meaking Breweries Ltd. v. Bimla Gupta* AIR 1985 Ail. 147, the Allhabad High Court has

consistently allowed a deduction between 25 per cent and 33 per cent. The higher the amount, the higher the rate of deduction appears to have

been the underlying principle. A Division Bench of this High Court considered the decisions of various High Courts in which deductions were made

at lesser percentage and the cases in which no deduction at lesser percentage and the cases in which no deduction were made on account of lump

sum payment and uncertainties of life and held,

The reasons given in these Judgments may be taken into consideration while determining compensation but the same cannot justify refusal of

deduction. We feel that in a judicial decision reason should prevail over sentiments. We are of the opinion that these decisions cannot be

considered good law a& the same do not follow the law laid down by the Supreme Court in *M.P. State Road Transport Corporation v. Sudhakar*

1977 A.C.J. 290. We respectfully agree with the consistent view of the various Division Benches of this Court and hold that a deduction has to be

made for lump sum payment and uncertainties of life. In the circumstances of this case, the Tribunal should have allowed a deduction of 25 per

cent. Vide *Dyer Meakin Breweries Ltd. and Another Vs. Smt. Bimla Gupta and*

Others, .

13. Once the years' purchase is taken as the basis and multiplier is adopted for computing the loss of dependency, there is no question of any

deduction being made for lump sum payment. It is only when the pecuniary loss is determined on the basis of the longevity of the deceased then

any deduction is possible for lump sum payment Vide *Dewan Hari Chand v. Municipal Committee of Delhi* AIR 1981 Del. 71 : 1981 A.C.J. 131 :

(1981) 83 P.L.R. 24.

14. A Division Bench of Andhra Pradesh High Court held in *Polavarapu Somarajyam v. A.P. Road Trans. Corporation* 1984 A.C.J.18:

We have reconsidered the entire case law and in view of the law laid down in this country and in England; we reiterate and hold that no deduction

need be made for lump sum amount and that the loss of value of money and long delay in realisation of the compensation in the interim and

application of the principle of multiplier will be "set off" for the deduction.

15. In the instant case before us, it is seen that the amount of compensation has not been enhanced on account of rising prices. This will justify the

reduction of the compensation awarded by the Tribunal. There need not be any deduction from the amount arrived at as compensation payable by

the appellant herein.

16. There is no infirmity in the award of the Tribunal under appeal. Hence the findings of the Tribunal, both as regards the negligence and quantum

of compensation payable are hereby confirmed. The award and decree of the Tribunal are hereby confirmed.

17. There is no merit in the appeal. Hence the appeal is dismissed. Under the circumstances, there is no order as to costs.