
(2015) 03 MAD CK 0386
In the Madras High Court
Case No : C.M.A. No. 2452 of 2013

Parvathi Devi N. Hemagiri and Others	APPELLANT
Vs	
B. Palani and Others	RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) ACJ 2821

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Advocate : G. Balaji Prasad, for the Appellant

Final Decision : Partly Allowed

Judgement

G. Chockalingam, J.—Being dissatisfied with the quantum of compensation awarded by the Tribunal in M.C.O.P. No. 1664 of 2010 for the death of the deceased viz., Shiddesh Kumar N. Hemagiri in the road accident which occurred on 02.02.2010, the appellants have filed the present appeal seeking enhancement of compensation. The first appellant is the mother of the deceased and the second appellant is the father of the deceased viz., Shiddesh Kumar N. Hemagiri. During the pendency of the appeal, since the second appellant/father of the deceased died, his legal representatives were brought on record as respondents 3 to 5. Third and fourth appellants are the daughters of the second appellant and the fifth appellant is the son of the second appellant.

2. It was the case of the claimants before the Tribunal that on 02.02.2010 at about 11.40 hours, while the deceased viz., Shiddesh Kumar N. Hemagiri was riding his motorcycle bearing Registration No. TN-05-W-0201 and proceeding from North to South in the 200 feet road, near D.R. Super Market, Kolathur, Chennai, the first respondent's Lorry bearing Registration No. TN-23-F-6699 came in a rash and negligent manner and dashed against the motorcycle. As a result of which, the deceased sustained grievous injuries and died on the way to hospital. Alleging that the driver of the Lorry is responsible for the accident, the

claimants have filed a Claim Petition before the Tribunal seeking a sum of Rs. 40,00,000/- as compensation.

3. The first respondent, who is the driver of the Lorry, remained ex-parte before the Tribunal.

4. Resisting the claim petition and also raising objection as to the avocation, age and income of the deceased, the second respondent-Insurance Company has filed a counter stating that the accident was not due to the rash and negligent driving of the driver of their Lorry. Also alleging that the claim made by the claimants is very excessive, the second respondent-Insurance Company sought dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimants, the father of the deceased was examined as P.W.1 and one Deivasikamani was examined as P.W.2 and one Sarathy was examined as P.W.3 and as many as 20 documents were marked as Exs.P.1 to P.20. On the side of the respondents, no witness was examined and no document was marked.

6. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident was due to the rash and negligent driving of the driver of the Lorry and that the first respondent herein, being the owner, and the second respondent herein, being the insurer of the said vehicle, were jointly and severally liable to pay compensation to the claimants and awarded a sum of Rs. 16,40,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of compensation. Break-up details of the award are as under:

7. The learned counsel for the appellants/claimants would contend that there is no dispute regarding the age of the deceased, negligence and liability of the second respondent-Insurance Company to pay the amount to the appellants herein. Further, there is no dispute in the finding of the Tribunal regarding the fixation of negligence and the coverage of the insurance policy to the accident is also not disputed on the side of the second respondent-Insurance Company. The finding of the Tribunal in fixing the income of the deceased is not disputed. Further, the learned counsel for the appellants/claimants would contend that in this case, the Tribunal has taken into consideration the age of the dependents for calculating the damage caused to the appellants/claimants which is contrary to the judgment of the Hon"ble Supreme Court in Sarala Verma's case reported in 2009 (2) TNMAC page 1 (SC) . In this case, the Tribunal, after fixing the income of the deceased, deducted 50% of the monthly income towards personal expenses of the deceased. The learned counsel for the appellants/claimants further contended that the Tribunal ought to have applied the multiplier of 17 on the basis of the age of the deceased, who was aged 30 years at the time of accident, as per the Division Bench decision of the Hon"ble Supreme Court reported in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, (2012) ACJ 2002 : (2012) 6 JT 301 : (2012) 4 RCR(Civil) 343 : (2012)

11 SCC 738 . But the Tribunal is erred in applying the multiplier of 9 on the basis of the average age of the parents and came to a wrong conclusion and calculated the damage far below the claim of the claimants. Under the said circumstances, the learned counsel prayed that the judgment and decree passed by the Tribunal has to be enhanced in accordance with law.

8. Per contra, the learned counsel for the second respondent-Insurance Company would contend that the Tribunal, after considering the evidence both oral and documentary, has correctly awarded compensation and therefore, there is no necessity to enhance the compensation awarded by the Tribunal. The learned counsel for the second respondent-Insurance Company relied on a Division Bench judgment of the Hon"ble Supreme Court reported in Kanhsingh Vs. Tukaram(2015) ACJ 594 : (2015) 1 RCR(Civil) 613 : (2015) 1 SCALE 366 : (2015) 2 SCJ 308 , delivered on 13.01.2015. The learned counsel for the second respondent/Insurance Company further contended that the Tribunal, after considering the age of the deceased and the age of the parents of the deceased, has correctly awarded just and reasonable compensation. Hence, the judgment of the Tribunal does not warrant any interference by this Court.

9. We have given careful consideration to the submissions made by the learned counsel on either side and perused the materials available on record.

10. After hearing the elaborate arguments made on either side, the followings points arise for consideration in this appeal:-

1. Whether the Tribunal has correctly adopted the multiplier for awarding the compensation or not?; and

2. What other reliefs that the claimants are entitled to?

11. In this case, the only dependents are the father and mother aged 61 and 49 years respectively. The main argument of the learned counsel for the appellants is that the parents are depending upon the income of their son viz., the deceased Shiddesh Kumar N. Hemagiri and therefore, the second respondent-Insurance Company is liable to pay compensation to the claimants for the death of their son. Now the main question that has to be decided in this appeal is what is the proper multiplier for calculating the compensation.

12. In paragraph Nos. 4, 17 and 18 of the decision of the Hon"ble Supreme Court reported in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, (2012) ACJ 2002 : (2012) 6 JT 301 : (2012) 4 RCR(Civil) 343 : (2012) 11 SCC 738 (cited supra) , it is held as follows:-

"4. Deceased Ritesh Bhanu Shali, son of the appellant Nos. 1 and 2, was going to Thanod on 20.7.2008 by Maruti Swift Car bearing Registration No. CG 04-HA 6905 from Naharpara in Raipur, Chhattisgarh. While he was coming back at about 4.30 p.m. near Thanod, one Scorpio car bearing Registration No. CG 04-HA 5372 coming rashly and negligently from Abhanpur dashed against Maruti Swift car. Due to the said accident, Ritesh Bhanu Shali and one Jaspreet died on

the spot and another Shivam received injuries. The appellant No. 1, Amrit Bhanu Shali, is the father, appellant No. 2, Sarlaben, is the mother and appellant No. 3, Mamta Bhanu Shali, is the sister of the deceased. Claiming to be dependent on the deceased they filed Motor Accident Claim Case No. 80 of 2008 before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") for award of compensation to the tune of Rs. 25,50,000.

17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

18. In the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , this Court held that multiplier to be used should be as mentioned in column (4) of the Table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of death was 26 years, multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13."

13. In the above mentioned decision, there are three dependents viz., father, mother and sister of the deceased. But in this case, there are two dependents i.e., father and mother alone. Hence, the facts of the said case are not similar to the facts of the present case and therefore, the said judgment cited by the learned counsel for the appellants is not applicable to the facts of the present case.

14. In the decision of the Hon"ble Supreme Court reported in Kanhsingh Vs. Tukaram(2015) ACJ 594 : (2015) 1 RCR(Civil) 613 : (2015) 1 SCALE 366 : (2015) 2 SCJ 308 , delivered on 13.01.2015 [cited supra], the Hon"ble Supreme Court has held as follows:-

We have heard the learned counsel for the parties. In our considered view, the courts below have erred in taking the monthly income of the deceased at Rs. 11,146/- p.m. From the facts, circumstances and evidence on record, it is clear that the deceased was 27 years of age, working with HDFC as the Manager earning Rs. 1,81,860/- per annum (i.e. Rs. 15,155/- p.m.) and there were definite chances of his further promotion and consequent increase in salary by way of periodical revision of the salary on the basis of cost of living Index prevalent in the area if he would alive and worked in the bank. Therefore, adding 50% under the head of future prospects to the annual income of the deceased according to the principle laid down in the case of Vimal Kanwar and Ors. (supra), the total loss of income comes to Rs. 2,72,790/- per annum [Rs. 1,81,860 + (1/2 * Rs. 1,81,860)].

Deducting 10% tax (Rs. 27,279/-), net annual income comes to Rs. 2,45,511/-.

Deducting 1/3rd [Rs. 81,837] towards personal expenses since the claimants are the parents of the deceased, loss of dependency comes to Rs. 1,63,674 X 11 (appropriate multiplier as per the age of the parent) Rs. 18,00,414/-.

The Tribunal and the High Court have further erred in law in awarding only Rs. 2,000/- towards funeral expenses instead of Rs. 25,000/- according to the principles laid down by this Court in *Rajesh and Others Vs. Rajbir Singh and Others*, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 . Hence, we award Rs. 25,000/- towards the same.

Further, the Tribunal and the High Court have erred in not following the principles laid down by this Court in *M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another*, (2014) 1 ABR 232 : (2013) 4 ACC 45 : (2013) ACJ 2849 : (2013) 13 JT 427 : (2014) 173 PLR 628 : (2013) 4 RCR(Civil) 729 : (2013) 12 SCALE 324 in awarding a meagre sum of just Rs. 30,000/- under the heads of loss of love and affection. Accordingly, we award Rs. 1,00,000/- to the appellants towards the same.

Further, we award Rs. 5,00,190/- towards medical expenses incurred towards medical treatment.

In the result, the appellants shall be entitled to compensation under the following heads:

15. On a careful consideration of the above decision of the Hon'ble Supreme Court reported in *Kanh Singh Vs. Tukaram* (2015) ACJ 594 : (2015) 1 RCR(Civil) 613 : (2015) 1 SCALE 366 : (2015) 2 SCJ 308 , we are of the considered view that whenever there are one or more dependents and the age of the all the dependents is more than the age of the deceased, the age of the dependents alone has to be taken into consideration for calculating the damages. Per contra, whenever there are one or more dependents, if any any one of the dependents age is less than the age of the deceased, the age of the deceased alone has to be taken into consideration for calculating the damages. When the age of the dependents is more than the age of the deceased, the damages have to be calculated on the basis of the least age of the dependent and it has to be apportioned according to the facts and circumstances of each of the case. In this case, the age of the parents viz., father and mother, according to the appellants, is 61 and 49 years respectively. In this case, if the mother alone is the dependent, the proper multiplier will be fixed in the age of the mother. But in this case, to share the compensation there is another dependent i.e., father. Hence, calculating the average multiplier for the age of both father and mother is not a correct one and the age of the least has to be considered for calculating the compensation will be the correct one. Therefore, in the facts and circumstances of this case, the damage has to be calculated on the basis of the age of the

mother i.e., 49 and the compensation amount has to be apportioned between the father and mother. There is no dispute regarding the income etc., and there is no appeal filed on the side of the second respondent-Insurance Company.

16. According to the principles of law laid down by the Hon'ble Apex Court in *Sarla Verma and others v. Delhi Transport Corporation and another*, 2009(2) TN MAC 1 (SC), for the age group 46 to 50, the correct multiplier to be adopted is 13. But, the Tribunal has wrongly applied multiplier of 9. Hence, we are of the considered view that correct multiplier to be adopted in this case is only 13. The Tribunal has fixed the monthly income of the deceased as Rs. 28,143/- after the inclusion of future prospects and deducted 50% of the amount towards personal expenses of the deceased. Regarding the above finding, the second respondent-Insurance Company has not preferred any appeal or cross-appeal in this case.

17. Hence, we are of the considered view that when fixing the age of the deceased as 30, age of the mother as 49 and age of the father as 61, the age of the mother has to be taken and after adopting the appropriate multiplier of 13, the monthly income, after the inclusion of 50% future prospects, is fixed as Rs. 28,143/-. The monthly income of the deceased is fixed as Rs. 18,762/- and after giving 50% increase for future prospects, the future dependency is calculated as Rs. 28,143/- and the loss of future dependency is calculated as $(Rs. 28,143/- \times 1/2 \times 12 \times 13 = Rs. 21,95,154/-)$ Rs. 21,95,154/-. Further, even though a sum of Rs. 10,000/- was claimed by the claimants towards clothing articles, no amount was awarded by the Tribunal under the said head. Hence, we are of the considered view that it would be appropriate to award a sum of Rs. 5,000/- under the head of damage to clothes. Further, regarding the transportation of body from Chennai to Karnataka, the claim of the appellants/claimants was restricted to Rs. 10,000/-. Since the body was transported from Chennai to a different State viz., Karnataka, we are of the considered view that it would be appropriate to award a sum of Rs. 30,000/- as prayed for under the head of transportation charges and funeral expenses. Further, the Tribunal has not awarded any amount under the head of loss of estate. Hence, we are of the considered view that it would be appropriate to award a sum of Rs. 20,000/- towards loss of estate. The Tribunal has awarded a sum of Rs. 10,000/- towards funeral expenses and also awarded a sum of Rs. 1,00,000/- against the claim of Rs. 1,50,000/- towards loss of love and affection. Therefore, there is no necessity to modify the amount awarded by the Tribunal under the said head.

18. Thus, in the above said circumstances, the compensation has to be re-assessed as follows:-

19. In the result, the Civil Miscellaneous Appeal is allowed in part and the compensation of Rs. 16,40,000/- awarded by the Tribunal in M.C.O.P. No. 1664 of 2010 is enhanced to Rs. 23,61,000.00. The enhanced compensation is payable with interest at 7.5% per annum. No costs in this appeal.

20. The second respondent/Insurance Company is directed to deposit the

enhanced compensation amount along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. On such deposit, the first appellant/first claimant is permitted to withdraw a sum of Rs. 15,00,000/- along with accrued interest and the balance amount shall be shared equally by the legal heirs of the deceased second appellant/second claimant viz., the respondents 3 to 5 along with accrued interest.