

(2009) 04 MAD CK 0013
In the Madras High Court
Case No : S.A. No. 1528 of 2008

Pushpa and others

APPELLANT

Vs

The Superintending Engineer, Tamil Nadu Electricity Board,
Chengalpattu District, Electricity Distribution Circle,
Chengalpattu and The District Collector, Thiruvallur district,
Thiruvallur

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Citation : (2009) 04 MAD CK 0013

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : G. Karthikeyan, for the Appellant; N. Muthusamy for R1, for the Respondent

Judgement

G. Rajasuria, J.—This second appeal has been filed by the plaintiffs, animadverting upon the judgement and decree dated 29.4.2008 passed

by the learned Principal District Judge, Thiruvallur, in A.S. No. 47 of 2007, partly allowing the judgement and decree dated 5.10.2005 passed by

the learned Subordinate Judge, Thiruvallur, in O.S. No. 69 of 2004. For convenience sake, the parties are referred to here under according to

their litigative status before the trial Court. A summation and summarisation of the relevant facts, which are absolutely necessary and germane for

the disposal of this second appeal, would run thus:

(a) The appellants/plaintiffs filed the suit O.S. No. 69 of 2004 claiming a compensation of Rs. 4,00,000/- for the death of the husband of the first

plaintiff and father of the plaintiffs 2 to 5 one Subramani, in the electrocution accident, which took place on 14.6.2003, as against which, the first

defendant filed the written statement and resisted the suit.

(b) During enquiry, the trial Court framed the relevant issues. The first plaintiff examined herself as P.W. 1 along with one Elango as P.W. 2 and

Exs.A1 to A.3 were marked. One C. Elumalai was examined as D.W. 1 and Exs.B1 to B4 were marked.

(c) Ultimately the trial Court awarded a sum of Rs. 4,00,000/-, payable by the defendants to the plaintiffs, with interest at the rate of 7.5% per

annum, as against which, the first defendant filed the A.S. No. 47 of 2007. The first appellate Court modified the trial Court's judgement and

reduced the compensation to Rs. 3,25,000/- from Rs. 4,00,000/-.

(d) Being disconcerted and aggrieved by the judgement and decree passed by the first appellate Court in A.S. No. 47 of 2007, this second appeal

has been focussed by the plaintiffs on various grounds.

2. After hearing for some time the arguments on both sides, this Court felt that with the consent of both sides, this matter could be disposed of

finally by framing the following substantial question of law:

Whether the first appellate Court below correctly applied the law in assessing the compensation or whether such assessment is on the lower side?

3. A bare poring over and perusal of typed set of papers, including the judgements of both the Courts below, would reveal that one deceased

Subramani, at his age of 45, died due to electrocution. Both the Courts below gave a categorical finding that the occurrence took place due to the

negligence of the Electricity Board in maintaining the live wires. The question now involved is only relating to the quantum arrived at by the trial

Court and as modified by the first appellate Court.

4. The Learned Counsel for the plaintiffs would advance his argument to the effect that even though the trial Court quantified the compensation in a

sum of Rs. 4,25,000/-, nonetheless in view of the fact that the prayer was only for Rs. 4,00,000/-, it slashed it down to Rs. 4,00,000/- and

awarded the just compensation; On the other, without any rhyme or reason, the first appellate Court further slashed it down to Rs. 3,25,000/- by

wrongly choosing the lesser multiplier 13 and also choosing the multiplicand as Rs. 20,000/- per annum. Accordingly, the Learned Counsel for the

plaintiffs prayed for interference of this Court.

5. Whereas, the Learned Counsel appearing for the Electricity Board would submit that there is no perversity on the part of the first appellate

Court in reducing the compensation from Rs. 4,00,000/- to Rs. 3,25,000/- and as such, no interference by this Court is required.

6. It is a trite proposition of law that even in respect of electrocution cases, mutatis mutandis the formula applied for assessing the compensation in

accident cases, has to be applied. Accordingly if viewed, it is clear that the deceased died at the age about 45 and taking a cue from the second

Schedule appended to the Motor Vehicles Act 1988, the appropriate multiplier would be 13. As such, I am of the considered opinion that the

multiplier adopted by the first appellate Court warrants no interference.

7. The Apex Court in catena of decisions analysed the second schedule to the Motor Vehicles Act and laid down the law that in all cases the

multiplier found exemplified in the second schedule need not be taken as an absolute guideline and depending upon the facts and circumstances, the

multiplier may vary.

8. However, in this case, I am of the view that the multiplier 13 would be the most appropriate one for the reason that the deceased died, leaving

behind his wife aged about 39 and his four children aged about 21, 19, 17 and 10 respectively, and also his mother and unless the multiplier 13 is

chosen, the ultimate compensation arrived at would be very low.

9. The trial Court has chosen the monthly income of the deceased as Rs. 3000/-. However, unjustifiably the first appellate Court slashed it down to

Rs. 20,000/- per annum. I could see no sound reason involved in such assessment made by the first appellate Court.

10. Here, it is a singularly singular case wherein the deceased had the prospect of living at least for more than 20 years, but for his untimely death

and he could have certainly improved his income also. Hence, taking into consideration all these facts and the cost of living and also the fact that

from this compensation amount only the dependants have to protect themselves, it is just and necessary to take the income of the deceased as Rs.

3,200/- per month. Accordingly, if worked out, the following formula emerges:

Annual income Rs. 3200/- X 12 : Rs. 38,400/-

Deduct 1/3rd towards expenses, which the deceased would have incurred for maintaining himself had he been alive irrespective of the fact whether

he lead the life of a Bohemian or that of a Spartan : Rs. 12,800/-

Rs. 25,600/-

Loss of dependency (Rs. 25,600 X 13)

: Rs. 3,32,800

11. Both the Courts below committed serious error in awarding Rs. 60,000/- towards loss of love and affection, on a flat rate scale, so to say, at

the rate of Rs. 10,000/- each in favour of the six dependants. In my opinion it is not fortified by any precedents of our Court or the Hon'ble Apex

Court. Peculiarly, towards loss of consortium, no compensation at all was awarded. Hence, I would like to interfere with the said assessment.

12. Towards loss of consortium the first plaintiff is entitled to a sum of Rs. 15,000/-, as at the time of the death of her husband, she was only 39

years old. The other plaintiffs being dependants, are entitled to Rs. 5000/- each towards loss of love and affection and accordingly if worked out,

towards loss of love and affection P2 to P6 are entitled to a sum of Rs. 25,000/- in total. The sum of Rs. 5,000/- awarded towards funeral

expenses is reduced to Rs. 2000/-, as the deceased was only a coolie and in commensurate with his status, the plaintiffs were expected to spend

not more than Rs. 2000/- for funeral expenses. As such, the judgement passed by the first appellate Court is modified thus:

Compensation towards dependency : Rs. 3,32,800/-

Compensation towards Loss of consortium to the I plaintiff: Rs. 15,000/-

Compensation towards Loss of love and affection to P2 to P6 : Rs. 25,000/-

Towards funeral expenses : Rs. 2,000/-

Rs. 3,74,800/-

and it is rounded off to Rs. 3,75,000/- (Three lakhs seventy five thousand only)

the interest awarded by the Courts below at 7.5% is confirmed along with the cost awarded.

The second appeal is ordered accordingly with costs. Consequently, connected miscellaneous petition is closed.