
(2009) 08 MAD CK 0151
In the Madras High Court
Case No : C.M.A. No. 2721 of 2004

R. Chamundeeswari and Others	Vs	APPELLANT
Metropolitan Transport Corporation Ltd.		RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Citation : (2011) ACJ 1301 : (2009) 4 LW 856 : (2009) 6 MLJ 1056

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : S. Gangaram Prasad, for the Appellant; G. Munirathinam, for the Respondent

Judgement

S. Palanivelu, J.—The following have been stated in the claim petition:

On 25.9.2002 at about 1.00 p.m. when the deceased was walking from west to east on Perambur High Road (Opposite to Friends Bakery), the

driver of the respondent bus bearing Registration No. TN-01-N-3560 drove the same in a rash and negligent manner in the same direction,

knocked down the deceased, ran over him and he died on the spot. The bus further proceeded in a rash manner, hit a scooterist, ran over him and

he also died. A case in Cr. No. 231/P3/2002 was registered with G.3 Kilpauk Police Station. The deceased was aged about 52 years who was

employed as a driver in Metropolitan Transport Corporation, Perambur Depot and was earning Rs. 8,700/- per month including daily collection

batta and annual bonus. The said accident took place only due to the rash and negligent driving of respondent's bus driver. The first claimant is

wife, 2nd and 3rd claimants are their children and 4th and 5th claimants are parents of the deceased. The claimants prayed for Rs. 11,00,000/- as

compensation.

2. In the counter filed by the respondent corporation, the manner of accident is denied. The accident took place only due to the negligence on the

part of the deceased. The petitioners shall prove the income of the deceased. The compensation claimed by the petitioners is excessive. The

petitioners 1 to 3 are not the dependents on the income of the deceased. The petitioners shall prove that they are the legal heirs and legal

representatives of the deceased. The amount claimed is exorbitant. Hence the petition has to be dismissed.

3. After considering the evidence on record, the Tribunal concluded that the respondent's bus driver was negligent at the time of accident and he

was liable for the same.

4. Mr. S. Gangaram Prasad, learned Counsel for the appellant would submit that the quantum of compensation as fixed by the Tribunal is on the

lower side. The arguments of the learned Counsel are three pronged. (i) that the Tribunal has taken into consideration the net income of the

deceased which is not sustainable and the gross income should have been considered, (ii) that the lumpsum payment of Rs. 1,00,000/- sanctioned

by the Government to the family of the deceased employee has been deducted from the compensation amount which is not permissible and (iii) that

the Tribunal has adopted multiplier 6 alone instead of 11, as prescribed in the Schedule II of the Motor Vehicles Act. It is his further submission

that the Tribunal should have followed the principles laid down on the above said features and awarded more compensation to the claimants.

5. The first ground raised by the learned Counsel for the appellant is that the tribunal has considered only net income of the deceased for arriving at

the compensation. It is not at all sustainable in the eye of law and as per the settled preposition, the gross income of a salaried employee has to be

taken for consideration. In support of his contention, he placed much reliance upon the decision of the Hon"ble Supreme Court reported in

National Insurance Company Ltd. Vs. Indira Srivastava and Others,

wherein Their Lordships have referred earlier decision of the Court and other High Courts as well and held that the gross income minus statutory

deductions have to be taken for calculation to reach the loss of income of the deceased.

6. One of the unreported decisions of this High Court in C.M.A. No. 114 of 2006 decided on 29.01.2007, Manager, National Insurance Co. Ltd.

v. Padmavathy is also referred in the Supreme Court decision where it was held that income tax, professional tax which are deducted from the

salaried persons go to the coffers of the Government under specific head and there is no return, that whereas the general provident fund, special

provident fund and L.I.C. contribution are amounts paid under specific heads and the contribution is always repayable to an employee at the time

of voluntary retirement, death or for any other reason, that the Apex Court as well as the various High Courts have held that the compensation

payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Concluding, this High

Court has observed as follows, which has been extracted in the Supreme Court judgment.

In view of the view, the Tribunal can make only statutory deductions such as income tax and professional tax and any other contribution, which is

not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency

compensation. Any contribution made by the employee during his lifetime, form part of salary and they should be included in the monthly income,

while computing dependency compensation.

7. In the above said Indira Srivastava case, the following portions are also contained which show that gross income of the salaried employee minus

the statutory deductions have to be taken for consideration to assess the compensation.

What would be "just compensation" must be determined having regard to the facts and circumstances of each case. The basis for considering the

entire pay packet is what the dependants have lost due to death of the deceased. It is in the nature of compensation for future loss towards the

family income.

17. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation

of his monthly income as what would have been added to his monthly income by way of contribution to the family as contradistinguished to the

ones which were for his benefit. We may, however, hasten to add that from the

said amount of income, the statutory amount of tax payable thereupon must be deducted.

22. Yet again in *New India Assurance Co. Ltd. Vs. Charlie and Another*, the same view was reiterated. However, therein although the words

"net income" has been used but the same itself would ordinarily means gross income minus the statutory deductions. We must also notice that the

said decision has been followed in *The New India Assurance Company Limited Vs. Smt. Kalpana and Others*,

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8. Following the guidelines contained in the above said decisions of the Apex Court, it is to be held that the consideration of the Court should be

concentrated on the gross salary of a deceased salaried employee, but not on net income, ofcourse with statutory deductions.

9. The next limb of contention of the learned Counsel for the appellant is that the tribunal has deducted Rs. 1,00,000/- which was paid to the

claimants of the deceased on his death which cannot be sustained. For this possession of law, he draws attention of this Court to a decision

rendered by this Court in 1988 ACJ 196, *K. Vasantha v. Venugopal Achari*, wherein earlier Division Bench decision of this Court in CMA 21 of

1981 in *Pallavan Transport Corporation Ltd. (Metro) rep. By Mg. Director v. Visalakshmi* has been followed in which it is stated as follows:

On the question whether the Tribunal was right in deducting Rs. 10,000/- paid towards Family Benefit Scheme, *V. Ramaswami, J.*, speaking for

the Division Bench has ruled as follows:

The Court in arriving at the compensation has deducted a sum of Rs. 10,000/- which is payable to the legal representatives of the deceased under

the Family Benefit Scheme and this is one of the claims in the cross-objections. That amount should not have been deducted, because that is an ex

gratia payment made by the Government and should not be taken into account in calculating the compensation payable, which is on different

principles. Even if the deceased is a rich man, that could not deprive a person of the entitlement for compensation. The disallowance of that sum of

Rs. 10,000/- is, therefore, incorrect.

10. In view of the consistent opinion expressed by this Court, deduction of Rs. 1,00,000/- which was granted to the claimants by the Transport

Corporation on the death of the employee cannot be deducted in the compensation assessed under the provisions of Motor Vehicles Act.

11. Yet another leaf of contention of the learned Counsel for the appellant is that the tribunal has adopted multiplier 6 and 5 which are not

sustainable but multiplier 11 has to be adopted as per the decision of the Supreme Court. He garnered support from a decision of the Supreme

Court in 2008 ACJ 2032, Savitha Sharma v. Union of India/Chandigarh Administration wherein Their Lordships had an occasion to assess the

compensation of a deceased who was employed as Ayurvedic Doctor aged 53 years drawing Rs. 11,615/- per month holding that adopting

multiplier 12 would be appropriate. The tribunal had applied multiplier 11 and on appeal, the High Court reduced the same to 8 but the Apex

Court adopted multiplier 11 and restored the award passed by the tribunal. The above said decision squarely applies to the facts of the present

case. Here, the deceased was 52 years, working as driver in the Metropolitan Transport corporation. Hence, adopting multiplier 11 would be

more appropriate in this case.

12. Conversely, Mr. G. Munirathinam, the learned Counsel for the respondent would submit that the Tribunal has quantified the compensation in a

fair manner and the conclusion of the Tribunal with regard to the quantum is more reasonable.

13. Ex.P.22 is the service particulars of the deceased Rajaram, who was selection grade driver working in Metropolitan Transport Corporation

Ltd., Chennai, which shows that his gross salary is Rs. 7,961.80 and after recovery of Rs. 993, net salary paid to him was Rs. 6,968/-. The

Tribunal has also deducted Rs. 50/- towards professional tax and took consideration of Rs. 6,918/- per month. He was aged 52 years and was

having six more years of service and applied multiplier 6. The dependency has been assessed at Rs. 3,32,064/-.

14. The tribunal has also entered into another calculation by taking a decision that if the deceased was gainfully employed after retiring from his

service, he would be getting a minimum income of Rs. 4,500/- per month, after deducting 1/3rd, Rs. 1,500/-, the remaining amount is Rs. 3,000/-.

Adopting multiplier 5, it has reached Rs. 1,80,000/- and the total dependency for a period of 11 years at Rs. 3,32,064/- + Rs. 1,80,000/- = Rs.

5,12,064/- . Rs. 5,000/- each has been granted for loss of consortium, loss of love and affection, expectation of life and funeral expenses. It has

deducted Rs. 1,00,000/-, the family benefit fund paid on the death of the employee from the said amount and directed payment of Rs. 4,32,064/-

to the claimants.

15. In view of this Court, the above said calculation could not be countenanced in view of the decision of the Supreme Court. After deducting the

professional tax, the gross salary could be fixed at Rs. 7900/- per month. Annual loss of income is Rs. 93,600/- in which 1/3rd of Rs. 31,200/- is

deducted and the remaining amount is Rs. 62,400/-. If it is multiplied by 11, the dependency could be fixed at Rs. 6,86,400/-. The conventional

damages as fixed by the tribunal at Rs. 20,000/- shall also be added. In total, a sum of Rs. 7,06,400/- has to be made available to the claimants.

16. In fine, the Civil Miscellaneous Appeal is allowed in part enhancing the compensation to Rs. 7,06,400/- from Rs. 4,32,064/- and the enhanced

amount shall be taken by the first claimant, wife of the deceased. The enhanced compensation shall carry interest @ 7.5% per annum from the date

of filing of the petition till the date of deposit, which shall be deposited within a period of eight weeks from the date of receipt of copy of this order.

No costs.