

(2009) 10 MAD CK 0227

In the Madras High Court

Case No : C.M.A. No. 1114 of 2005

R. Harihara Moorthy and Poornima Minor rep. by father and
next friend R. Harihara Moorthy

APPELLANT

Vs

Himachal Futuristic Communication Limited, Hindustan Tele-
printers Compound and United India Insurance Company
Limited

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Citation : (2011) ACJ 937 : (2011) 7 RCR(Civil) 1296

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

**Advocate : S. Sarumathy, for the Appellant; Revathi Muralidharan, for R2 and
No appearance for R1, for the Respondent**

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—This civil miscellaneous appeal has been filed by the appellants/ petitioners against the decree and judgment passed by the Chief Small Causes Judge, Motor Accident Claims Tribunal, Chennai in MCOP No. 2739 of 2002 dated 21.02.2005 awarding a total compensation of Rs. 11,60,642/= with interest at the rate of 9% per annum from the date of the claim petition till date of payment of compensation.

2.The appeal has been filed by the appellants/claimants seeking additional compensation of Rs. 13,39,358/=.

3. The short facts of the case are as follows:

The petitioners are the legal heirs and legal representatives of the deceased Rajalakshmi, who died in a road accident. On 11.05.2002, at about 08.30 a.m. The deceased was the pillion rider in a Motor Cycle bearing registration No. TN-09-Y-9749, with her husband being the rider. While the said motor cycle was proceeding along the Jawaharlal 100 feet road and nearing the Nehru Statue, the

driver of the van bearing Registration No. TN-09-T-0848 drove the vehicle in a rash and negligent manner, at a terrific speed, behind the motor cycle and hit behind the motor cycle and caused the accident. The deceased sustained grievous multiple injuries and died. Regarding the accident, a case in Cr.No. 319 of 2002 was registered with B1, Punitha Thomayarmalai Police Station and investigated. The first respondent is the owner and the second respondent is the insurer of the van. The deceased was aged about 27 years and was employed as a Assistant Training Consultant in Trans Ed Software Education, Chennai-12, earning Rs. 21,140/- per month. Due to the death of the deceased, the petitioners suffered loss of pecuniary benefits, loss of love and affection, loss of expectation of life and also incurred funeral expenses. In total, the petitioners claimed a total compensation of Rs. 25,00,000/- for the death of the deceased.

4. The first respondent remained exparte. The second respondent/United India Insurance Company in its counter had denied all the claims made by the petitioners. Further, the petitioners should have impleaded the owner and insurer of the motorcycle as necessary parties. The age, occupation and income of the deceased were all denied. Further, it was pointed out by the second respondent that the claim was highly excessive. Further, in their additional counter, it was mentioned that the petitioners have furnished policy details in the petition as renewal of policy No. 31/12/2255/2000. The second respondent has contended that this shows very clearly that the policy has already expired. Further, the details regarding policy issuing office have not been furnished, and as such there was no insurance at the time of the accident, and on this Count, the petition may be dismissed.

5. The Motor accident claims Tribunal framed five issues namely;

- 1) Whether the accident occurred due to rash and negligent driving of the driver of the Motor Van bearing registration No. TN-09-T-0848?
- 2) Whether the Motor Van bearing registration No. TN-09-T-0848 was insured by the first respondent with the second respondent?
- 3) Whether the petition is affected for non-joinder of necessary parties?
- 4) Whether the petitioners are entitled for compensation as prayed for? and
- 5) To what relief?

6. The first petitioner and one Mr. Srinivasan were examined as PW.1 and PW.2, and Ex. P1 to P17, furnished by them, were marked. PW1, the first petitioner himself deposed that on 11.05.2002 at about 08.30 p.m. He was riding the motor cycle bearing registration No. TN-09-Y-9749 in the Jawaharlal 100 feet road near Kathipara Junction. He was riding the motor cycle on the left side of the road and at that time, the driver of the Motor vehicle i.e. Van bearing registration No. TN-09-T-0848 drove the van in a rash and negligent manner behind the motor cycle and dashed on the rear side of the Motor cycle and caused the accident. The pillion rider, the wife of PW1 fell down and sustained

injuries. She was admitted in Balaji Hospital and she was declared dead on the way to the hospital. As per his evidence, the accident occurred only due to the rash and negligent driving of the above Motor Van bearing registration No. TN-09-T-0848. Ex.P4 is the copy of the first information report. As per Ex.P4, it was registered on the report given by PW1 himself without any delay. Within one hour, from the time of the accident, the report was lodged with the police. In the first information report also, it is stated that due to the rash and negligent driving of the driver of the van bearing registration No. TN-09-T-0848, the accident occurred. As per Ex.P8, site plan, the above motor cycle was proceeding from south to north near Kathipara Junction on the left side of the road. At that time, the van also proceeded in the same direction and dashed on the rear side of the motor cycle and caused the accident. There is center median in the middle of the road. The road is sufficiently wide for vehicles to pass through and there is no acceptable reason on the part of the van driver to dash on the right side of the Motor cycle. The first respondent remained ex-parte. The van driver was not examined as witness by the second respondent. Ex.P9 charge sheet proves that after investigation, charge sheet was filed against the van driver in the criminal forum. There is no contra evidence. On considering the above evidence, this point has been answered in favour of the petitioners.

7. Secondly, the second respondent in his counter had merely denied the claim on insurance policy and disputed the policy, but has not taken any steps to issue notice to the first respondent to produce vehicular particulars and copy of policy and prove the same. As the claimants are third parties, the burden of proof is heavily on the respondents. The second respondent has not examined any officials from the office to establish that the above vehicle was not insured with the second respondent. In the absence of any positive evidence, the Court has to conclude in favour of the claimants.

8. In the claim application the rashness and negligence is pleaded only against the driver of the van. The documents filed by the claimants namely Ex.P4, Ex.P8 copy of plan, and Ex.P9 copy of charge sheet and also the oral evidence of PW1, the rider of the Motor cycle, proves the same. The compensation is also claimed against the insurer of the motorcycle. Under such circumstances, it is not required to implead the owner and insurer of the motor cycle bearing registration No. TN-09-Y-9749. Hence, it is answered that non-joinder of the above vehicle owner and insurer is not fatal to the claim application.

9. As per the evidence of PW1, the petitioners are the legal representatives of the deceased and it is proved by Ex.P1, legal heirship certificate. Ex.P2 is the postmortem certificate of the deceased. As per Ex.P3, the deceased was born on 14.09.1974 and this establishes the age of deceased at the time of death as 27 years. Further from the certificate of the deceased, the Tribunal has come to the conclusion that the deceased was technically qualified; that she was a B.Com., graduate and had also passed final examination held by institute of Cost and Works Accountants of India in March 1996. As per Ex.P10, the appointment order

dated 12.01.1999, the deceased was appointed as Assistant Training Consultant with Trans Ed Software Education, Chennai-12. Her monthly total salary was fixed as Rs. 14,500/- as per Ex.P12 and Ex.P13 salary certificates. She was paid a total salary of Rs. 21,640/-. But, the petitioners have not examined the employer to prove the gross salary and also the net salary. The compulsory deduction like income tax and professional tax are not mentioned in the salary certificate given by the employer. Similarly it has also not been mentioned whether the salary was paid by cash or remitted in the bank account of the deceased. However, there is no contra evidence on the side of the second respondent. As per Ex.P14, income tax return copy for the year 1999-2000, the income from the salary is mentioned as Rs. 1,06,550/-. The above income tax return was filed by the deceased herself before the date of accident. There is no contra evidence. Ex.P15 is the income tax return (Form 2D) which was filed for the year 2000-2001. The above return relates to the immediate previous period from the date of death. In Ex.P15, the total income of salary is mentioned as Rs. 2,15,455/- and the deceased has paid Rs. 29,098/- as income tax. The above income tax has to be deducted from the income of Rs. 2,15,455/-. The net annual income is arrived as Rs. 2,15,455 - Rs. 29,098 = Rs. 1,86,357/-. As per Ex.P17, the employer has given certificate that the deceased continued her employment till date of accident. In the above income, 1/3rd Rs. 62,119 is deducted for personal expenses and annual dependency is fixed as Rs. 1,86,357 - Rs. 62,119 = Rs. 1,24,338/-.

10. In the evidence of the first petitioner, it was admitted that he is employed as Manager in a Private concern and was earning Rs. 45,000/- per month. It proves that the petitioners were not totally dependant on the income of the deceased. The first petitioner was aged 33 years and the second petitioner, the minor daughter was aged one year on the date of accident. The Tribunal after considering the dependency, the total number of dependents and income of the deceased had applied the multiplier of 9 to arrive at dependency and fixed loss of annual dependency = Rs. 1,24,238 X 9 = Rs. 11,18,142/-. The first petitioner is entitled for Rs. 10,000/- for loss of consortium and the petitioners are entitled for Rs. 15,000/- for loss of love and affection, Rs. 10,000/- for loss of expectation of life and Rs. 7500 for funeral expenses. In total, the petitioners were granted Rs. 11,60,642/- for the death of the deceased. Further, the respondents were directed to deposit the amount with interest at 9% per annum and the first petitioner is entitled to get 25% and the second minor petitioner is entitled to get 75% in the award amount with accrued interest and costs. They further ruled that the entire share amount of the first petitioner shall be deposited in any one of the Nationalised Bank for a period of three years in fixed deposit and that the entire share amount of the second minor petitioner shall be deposited in any one of the nationalised Bank, till the minor attains majority, in fixed deposit. Court fee for the award amount Rs. 10,979. Excess Fees shall be refunded to the petitioners after the appeal time. Advocate fees is Rs. 18,606/-.

11. The learned Counsel for the appellants in their appeal against the above said

award passed by the Tribunal had contested its findings on the following factors;

- 1) The quantum of compensation was erroneously arrived at.
- 2) The learned Tribunal has erred in deducting income tax payable by the deceased from the annual income besides 1/3rd amount towards personal expenses.
- 3) The multiplier of 9 was arrived at erroneously by the Tribunal. Instead it should have 18 as per second schedule of the Act and it has to be noted that the deceased was 27 years of age at the time of accident as marked in Ex.P3.
- 4) Lesser sum have been granted under the heads of loss of consortium, loss of love and affection and loss of expectation, funeral rites etc.,

Hence, it was prayed in the appeal to enhance the award amount from Rs. 11,60,642 to Rs. 25,00,000/- with interest and costs.

12. The learned Counsel for the appellants furnished two citations namely 1) TN MAC 391 (SC), (Mohan Singh v. Kashi Bai and Ors.) 2) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

13. Both the learned Counsels argued for their respective parties.

14. For the foregoing reasons and after considering the facts and circumstances of the case, this Court opines that there is lacuna, in the evidence given on the petitioners' side. The employer, who is the appropriate person to give evidence regarding the employment of the deceased has not been examined. His evidence is necessary to confirm the employees' nature of work, payment details, mode of salary, working hours and whether the deceased is of a permanent or temporary nature, whether the concern where the deceased had worked was a private limited or public limited concern. Further proof has to be furnished as to whether the deceased was covered under the provident fund scheme?

15. Another issue to be considered is the permanency of her work i.e. whether the deceased can continue as an employee in the concern until her retirement.

16. Regarding this, the Tribunal had already pointed out that the net and gross salary of the deceased has not been established. As such, lacuna arises, for want of adequate evidence. In spite of this, the Tribunal, granted the award in favour of the appellants. If, the adjudication had been fully completed in the said M.C.O.P. Proceedings, taking into account all the above mentioned factors, only then the appellants can raise the question of multiplier arrive at, in the granting of the said award by the Tribunal. The purpose to compensate the dependents of the victim is that they may not be suddenly deprived of the source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. But, applying the multiplier blindly without taking into account other facts and circumstances and over compensating is also incorrect. Therefore, this Court is of the view that compensation of Rs. 11,60,642/= together with 9% per annum awarded by the

Tribunal is equitable and fair. Resultantly, the civil miscellaneous appeal is dismissed and the award passed by the Motor Accidents Claims Tribunal, The Chief Small Causes Court Judge, Chennai in MCOP No. 2739 of 2002 dated 21.02.2005 is confirmed. The parties are directed to bear their own cost in the appeal.