
(1995) 09 MAD CK 0089
In the Madras High Court

Rani Mangammal Transport Corpn. Ltd. APPELLANT
Vs
K. Ramasamy Thevar and Another RESPONDENT

Date of Decision : 07-09-1995

Acts Referred:

Citation : (1996) 1 ACC 465 : (1996) 1 LW 122

Hon'ble Judges : Srinivasan, J;A.R. Lakshmanan, J

Bench : Division Bench

Judgement

Srinivasan, J.—This appeal arises out of M.C.O.P. No. 88 of 1991. The original petition was disposed alongwith M.C.O.P. Nos. 87, 89 and 99 of 1991. All the claims related to the same accident. We have today disposed of C.M.A. Nos. 1150 of 1993 and 347 of 1995 arising out of M.C.O.P. Nos. 87 and 172 of 1991. We have considered the question of negligence in those a appeals and upheld the fi nding s of the Tribunal. It will not be necessary for us to consider the question once again in this appeal. We confirm the finding of the Tribunal on the question of negligence and hold that the accident occurred entirely due to the negligence of the appellant-Corporation bus.

2. In this case, the claimants are the respondents. The deceased is a boy aged about 15. He was studying in IX standard. The first claimant is a businessman. In the original petition, he has stated that the deceased was a student assisting the father in business. He has also stated in the petition that the deceased was an intelligent student, very active and dynamic in all activities and that the claimants had planned to build up the career of the deceased to the level of I.A.S. Officer, Doctor or Engineer with the help of grant of special quotas and preference granted to the petitioners" community. But, in the evidence as P.W. 1, the first claimant has not chosen to make any reference whatever to the said proposal or plan to bring up the son to the level of an I.A.S. Officer or Doctor or Engineer. Even in the chief-examination, P.W. 1 has merely stated that he wanted his son to get a good employment.

xxx xxx xxx xxx It is seen from the evidence that he has another son and two

daughters. His version is that by death of his son, he has lost an income of Rs. 1,000/- per month is wholly unacceptable. In short, there is no evidence whatever to prove the various factors referred to in the judgment of this Court in United India Insurance Co. Ltd. Vs. Bankarappa Naicker and Others, . In that judgment, the Division Bench has relied upon an earlier judgment of this Court as well as a judgment of the Kerala High Court. The Bench said as follows:

As a general rule, parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition, they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. How he would have turned out in life later is at best a guess. But there is a reasonable probability of the child becoming a successful man in life if he had been a bright boy in the school and his parents could afford him a good education. The thing to be valued is not merely the prospect of length of life, but the prospect of a predominantly happy life of the deceased. This undoubtedly would vary from case to case, depending upon the family environment, members of the family, health and age of the victim, his outlook in life, the interest which his parents were taking in the boy and the totality of circumstances tending to show whether the victim would have a predominantly happy life or life of misery or a life of despondence or an insipid life. Even though it depends upon very many uncertain factors, the Tribunal has to take an overall picture and form its estimate, though to some extent, it must be based upon speculation. A just and fair calculation of compensation would be what the beneficiaries would have received from the deceased as support for their maintenance had the deceased lived and earned.

3. There is no evidence in this case to apply the tests prescribed by the Division Bench in the aforesaid passage.

4. The Tribunal has awarded a sum of Rs. 25,000/- for loss of life, Rs. 5,000/- for loss of assistance, Rs. 20,000/- for loss of love and affection, Rs. 15,000/- for mental agony and suffering and Rs. 5,200/- for funeral expenses. The claim for funeral cannot be accepted as there is no evidence whatever on record in support thereof. P.W. 1 has not stated anything in the evidence about the funeral expenses.

5. It is also not possible to sustain the award for Rs. 5,000/- for loss of assistance. We have already found that the deceased was studying in IX standard. He could not have rendered any assistance to his father in the business at that time. The deceased was aged only 15 years. Hence, the claim that the deceased was rendering assistance in business cannot be accepted and the award of Rs. 5,000/- has to be set aside. As regards loss of life, it is not possible to evaluate the same as rightly pointed out by the Tribunal itself. If we take into account the facts mentioned in the judgment of the Division Bench cited earlier, we can fix a total compensation of Rs. 50,000/- in this case as payable to the claimants. In our opinion, any amount in excess thereof is unjustified.

6. In the result, the award passed by Tribunal is set aside and the appeal is allowed. There will be an award for Rs. 50,000/- in favour of the claimants with interest 12% per annum from 8.2.1991. The claimants will have proportionate costs in the original petition. There will be no order as to costs in this appeal.