
(2010) 01 MAD CK 0151

In the Madras High Court

Case No : C.M.A. No's. 3882 of 2004 and 2246 of 2005

S. Rhama and others

APPELLANT

Vs

Tamil Nadu State Trans. Corpn. Ltd.

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2011) ACJ 2509

Hon'ble Judges : R. Banumathi, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : M. Krishnamoorthy, for the Appellant; V. Mohan Chowdary, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi & M.M. Sundresh, JJ.—Being aggrieved by the award of compensation and also quantum of compensation, the State Transport Corporation has filed C.M.A. No. 2246 of 2005. Being dissatisfied with quantum of compensation, wife and minor daughters of deceased Sundara Rajan have filed C.M.A. No. 3882 of 2004. Since both the appeals arise out of same judgment, both the appeals were taken up together and shall stand disposed of by this common judgment.

2. The deceased aged 42 years was employed as General Manager in Deltatec Solutions Limited, Pycrofts Garden Road and he was drawing a monthly salary of Rs. 60,500. The accident happened on 22.12.2000 at about 5 a.m., when deceased was driving the motor car bearing registration No. TN 01-Q 6716 in GST Road, from north to south. When the car was proceeding near Karunguzhi checkpoint in Maduranthagam Taluk, the driver of the respondent transport Corporation bus bearing registration No. TN 49-N 1142 drove the bus in a rash and negligent manner from the opposite direction and proceeded to the extreme right side of the road and dashed against the car and caused the accident. The deceased sustained multiple injuries and subsequently died of injuries. Regarding

the accident, criminal case was registered in Cr. No. 1050/2000 in Maduranthagam Police Station. Alleging that the accident was due to rash and negligent driving of the bus driver of the transport Corporation, wife and minor daughters of deceased Sundara Rajan have filed the claim petition u/s 166 of the Motor Vehicles Act.

3. Denying the accident, respondent Corporation filed counter stating that car bearing registration No. TN 01-Q 6716 proceeding from the opposite direction in a rash and negligent manner in an uncontrollable speed dashed against the drums kept at the cheekpost and then dashed against the right side corner of the bus by proceeding to the wrong side of the road and caused the accident and the driver of the bus is not responsible for the alleged rash and negligent driving.

4. To prove rash and negligent driving of the bus driver, an eyewitness, auto driver, was examined as PW 4. To prove the income of the deceased, representative of the employer was examined as PW 3. Exhs. P1 to P27 were marked on claimants' side. On behalf of respondent Corporation, driver of the bus was examined as RW 1 and one Annadurai was examined as RW 2 and Exhs. R1 (series) and Exh. R2 (series) were marked.

5. Upon consideration of oral and documentary evidence and relying upon the evidence of eyewitness, PW 4, Tribunal held that the accident was due to rash and negligent driving of the bus driver. Insofar as defence plea of denial of accident, Tribunal held that drums were kept on the side of the road only to restrict the traffic and no negligence could be attributed to Sundara Rajan who was driving the car. Pointing out that the checkpost was at a distance of 20 ft from the site of the accident, the Tribunal faulted the respondent Corporation for not examining the police on duty at the checkpost. Pointing out filing of charge-sheet against the bus driver, Exh. P9, Tribunal held that the accident was due to rash and negligent driving of the bus driver. Taking Exh. P15, Form 16, submitted by the employer to the Income Tax Department and taking the "gross salary" at Rs. 2,79,674 per annum and adopting multiplier of 15, Tribunal has awarded total compensation of Rs. 26,32,100.

6. Respondent Corporation challenges the findings of Tribunal denying rash and negligent driving of bus driver. Denying the accident in the manner alleged by the claimants, learned counsel for respondent Corporation inter alia raised the following contentions:

Deceased was solely responsible for the accident as he was driving the car in an uncontrollable speed and in a rash and negligent manner. Tribunal overlooked the fact that car driver overtook PW 4's auto and after negotiating checkpoint barrels kept on the road hit against the bus and only car driver was solely responsible for the accident.

PW 4, eyewitness, had neither lodged any complaint to the police nor did he accompany the victim to the hospital and while so. Tribunal erred in placing reliance upon evidence of PW 4, auto driver, to hold that accident was due to

negligent driving of bus driver.

7. Auto driver who witnessed the accident was examined as PW 4. In his evidence PW 4 has stated that on 22.12.2000 at about 5 a.m., he was proceeding by the autorickshaw from Chingleput towards Maduranthagam in G.S.T. Road and near the checkpoint at Karunkuzhi the motor car overtook the above autorickshaw and at a distance of 50 ft, he saw the bus bearing registration No. TN 49-N 1142 coming in the opposite direction hit against the car. In his evidence PW 4 has stated that the accident was due to negligent driving of the bus driver.

8. PW 4 being an auto driver has explained his presence near the checkpoint at Karunkuzhi on the date of accident, i.e., 22.12.2000. It is pertinent to note that the checkpoint at Karunkuzhi is at a short distance of about 20 ft from the scene of accident. PW 4 being an auto driver cannot be expected to spend his time in taking the trouble of going to the police station and lodging the complaint. PW 4's evidence cannot be doubted on the ground that he has not lodged the complaint before the police. Perhaps PW 4 might have orally informed the police at the checkpoint about the accident and thereafter might have proceeded on his own way.

9. On the side of respondents, excepting bus driver on duty (RW 4) no other evidence was adduced. As pointed out by the Tribunal, no investigation was undertaken by the respondent Corporation or that the investigation report was not filed before Tribunal. If really the car was coming in an uncontrollable speed and after dashing against the drums hit against the bus, nothing prevented the respondent Corporation from adducing independent evidence. As pointed out by the Tribunal, the respondent Corporation has not chosen to examine the police officials or other eyewitnesses to substantiate their plea in the counter statement. It is relevant to note that the charge-sheet has been filed against the driver on wheels. Filing of charge-sheet in criminal case is a prima facie indication of rash and negligent driving of the bus driver. Upon analysis of evidence and the site plan, the Tribunal rightly held that bus was proceeding in the opposite direction and suddenly came on the wrong side and had head-on collision with the motor car and that the accident happened at a distance of 20 ft from the police checkpoint. The conclusion of Tribunal holding bus driver responsible for the accident is based upon evidence and materials on record and we do not find any reason to take a different view.

10. As seen from the Exh. P3, S.S.L.C. certificate, Sundara Rajan was born on 17.3.1958 and that he was aged 42 years on the date of the accident. The deceased Sundara Rajan was a graduate in Bachelor of Science and he was also a graduate in Bachelor of Technology in Electronics Engineering and he passed in first class during the year 1981. He was employed as a General Manager in Deltatec Solutions Limited, which is a sister concern of Indian Express Newspaper Limited and was getting monthly income of Rs. 60,500 and that the deceased would have been promoted to the higher post and his income would

have been increased in future.

11. Exh. P15 is the Form 16 submitted by the employer to Income Tax Department for the period April 2000 to December 2000, in which the gross salary has been mentioned as Rs. 2,79,674. Based upon Exh. P15, the Tribunal has taken the actual monthly salary as Rs. 20,492. The Tribunal has arrived at the future salary by fixing 10 per cent more income than existing net salary and fixed salary at Rs. 22,541 and thereafter, Tribunal has fixed the monthly salary at Rs. 21,517 by taking the average of present net salary and future income -Rs. 20,492 + Rs. 22,541 = Rs. 43,033 -f 2 = Rs. 21,516.50, rounded off to Rs. 21,517. By taking monthly income as Rs. 21,517, Tribunal adopted 1/3rd deduction for the personal expenses. Adopting multiplier 15, Tribunal has awarded total compensation of Rs. 26,32,100 as under:

Loss of dependency (Rs. 14,345 x 12 x 15)

Rs. 25,82,100

Loss of consortium

Rs. 15,000

Loss of expectation of life

Rs. 15,000

Loss of love and affection

Rs. 10,000

Funeral expenses

Rs. 10,000

Total

Rs. 26,32,100

12. The grievance of the claimants is that when Sundara Rajan was getting salary of Rs. 60,500 including all allowances, Tribunal was not justified in taking Exh. P15, Form 16, submitted by the employer to the Income Tax Department and fixing monthly salary at Rs. 21,517. Placing reliance upon *Sarla Verma v. Delhi Transport Corporation*, 2009 ACJ 1298 (SC), the learned counsel further contended that in the case of deceased aged 42-50 years, increase of 30 per cent is required for calculating the future salary but the Tribunal erred in giving only 10 per cent increase for calculating the future salary. The main grievance of the appellants is that Tribunal erred in not taking into account various allowances paid to Sundara Rajan, which were meant for benefit of the family members and appellants seek enhancement of compensation in C.M.A. No. 3882 of 2004.

13. The learned counsel for respondent Corporation submitted that compensation of Rs. 26,32,100 awarded is exorbitant. It was further submitted that the

conventional damages awarded were also very much on the higher side.

14. Expressing concern over the lack of uniformity and consistency in awarding the compensation in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Supreme Court has held as under:

Basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. The issues to be determined by the Tribunal to arrive at the loss of dependency are: (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) multiplier to be applied with reference to age of the deceased. If these determinants are standardised, there will be uniformity and consistency in the decisions.

15. Deceased was graduate in Bachelor of Technology in Electronics Engineering and he was employed as General Manager in Deltatec Solutions Limited, which is a sister concern of Indian Express Newspaper Limited. In his evidence PW 1 has stated that her husband Sundara Rajan was earning monthly income of Rs. 60,500 and he had further chances of promotion to the higher post and his income would have been increased in future. Regarding income of the deceased, representative of Deltatec Solutions Limited was examined as PW 3. In his evidence PW 3 has stated that the deceased has joined as Senior Manager (Communications) on 5.7.1995 and subsequently in August 1998, he was promoted as General Manager (Networks and System Integration). In his evidence PW 3 has stated that on the date of accident, the deceased was paid Rs. 60,502 as under:

Earnings

Amount

Deductions

Amount

Basic Pay

Rs. 21,000

Provident Fund

Rs. 2,520

House rent allowance

Rs. 8,400

Income tax

Rs. 5,500

Personal allowance

Rs. 2,475

Housing loan

Rs. 5,781

Transport allowance

Rs. 6,955

Professional tax

Rs. 100

Allowance for purchase of periodicals

Rs. 2,500

Other expenses

Rs. 1,000

Business development

Rs. 5,569

Maintenance of motor car

Rs. 2,000

Other allowances

Rs. 8,083

Employer's contribution towards PF

Rs. 2,520

Total

Rs. 60,502

Total

Rs. 13,901

16. Holding that income is not confined to pay packet only in National Insurance Company Ltd. Vs. Indira Srivastava and Others, Hon''ble Apex Court has held as under:

(9) The term "income" has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which were beneficial to the members of the entire family. Loss caused to the family on death of a near and dear one can

hardly be compensated on monetary terms.

(10) Section 168 of the Act uses the words "just compensation" which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme take recourse to payment of contributory provident fund, gratuity and other perks to attract the people who are efficient and hardworking. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.

(19) 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 that 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

17. Even though Sundara Rajan was getting monthly income of Rs. 60,500, as we pointed out earlier, based upon Exhs. P15 and P13, Tribunal has observed that the net salary of Rs. 17,972 was paid to the deceased. Adding provident fund contribution of the employer of Rs. 2,520 with the net salary, Tribunal has taken the monthly income at Rs. 20,492. After giving increase by 10 per cent for future increase in salary, Tribunal has fixed monthly income of the deceased at Rs. 21,517. The main point falling for consideration is whether Claims Tribunal was justified in not taking into account various allowances paid to Sundara Rajan.

18. It is fairly well settled that the compensation awarded by the Tribunals must be just compensation. To mitigate hardship that has been caused due to death of breadwinner of the family, legal representatives are entitled to receive just compensation.

19. Section 168 of the Act uses the words "just compensation" which should be ascertained in determining the income. Court cannot lose sight of various allowances/perks paid by private sector companies for the benefit of the entire family.

20. In their evidence, PWs 1 and 3 have stated that deceased Sundara Rajan was getting monthly salary of Rs. 60,500 including allowances. As seen from evidence of PW 3, salary and allowances of Sundara Rajan are as under:

Per Month

Basic

Rs. 21,000

HRA

Rs. 8,400

Personal allowance

Rs. 2,473

Sub-total

Rs. 31,873

Conveyance

Rs. 6,955

Books and periodicals

Rs. 2,500

Attire allowances

Rs. 1,000

Business promotion

Rs. 5,569

Vehicle maintenance

Rs. 2,000

Provident Fund (employer's contribution)

Rs. 2,520

Other allowances

Rs. 8,083

Sub-total

Rs. 28,627

Total

Rs. 60,500

21. For future prospects salary to be increased by 10-20 per cent. So increase in salary to be adjusted with the deduction of 10-20 per cent towards income tax and, therefore, there need not be any further increase towards salary. As Sundara Rajan was a General Manager (Works and System Integration) getting higher salary, he must have been paid 10-20 per cent increase in salary and deduction to be made to the extent of 10-20 per cent.

22. As for the allowances, conveyance allowance, vehicle maintenance, attire allowance and business promotion allowance are exclusively meant for deceased Sundara Rajan for his conveyance and for promoting business. There is no evidence to show the nature of other allowances of Rs. 8,083 paid under the caption "other allowances". Therefore, the allowances paid towards conveyance, attire, business promotion, vehicle maintenance and other allowances were meant only for the deceased employee and were not meant for benefit of the family and cannot be included in the salary.

23. Allowance of Rs. 2,500 paid for books and periodicals and contribution of employer for provident fund of Rs. 2,520 are to be added to the salary. The salary of Sundara Rajan is fixed at Rs. 37,000 per month as under:

Basic

Rs. 21,000

HRA

Rs. 8,400

Personal allowance

Rs. 2,473

Books & Periodicals Contribution by the employer towards

Rs. 2,500

Provident Fund

Rs. 2,520

Total

Rs. 36,893

Rounded off to

Rs. 37,000

24. Next question to be considered is choice of multiplier. Date of birth of deceased Sundara Rajan is 17.3.1958 and at the time of accident, he was aged 42 years. Going by Second Schedule, Tribunal has adopted multiplier 15. In Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, Supreme Court has adopted multiplier 12. In a number of decisions Supreme Court has adopted multiplier provided in the Second Schedule to the Act, where the actual loss of dependency was assessed below Rs. 40,000 and slightly a higher amount. Barring exceptional circumstances, where there is huge amount of multiplicand, the trend has been to adopt a lower multiplier.

25. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Supreme Court expressed concern for lack of uniformity and consistency in

awarding compensation. Referring to General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, vis-a-vis Second Schedule to the M.V. Act, the Supreme Court has laid down the principles in adopting multiplier. Holding that the multiplier to be used as mentioned in column 4 of the Table, Supreme Court has laid down the principles in adopting the multiplier as under:

Age of the deceased

Multiplier scale as envisaged in Susamma Thomas

Multiplier scale as adopted in Trilok Chandra

Multiplier scale in Trilok Chandra as clarified in Charlie

Multiplier specified in second column in the Table in Second Schedule to M.V. Act

Multiplier actually used in Second Schedule to M.V. Act (as seen from the quantum of compensation)

(1)

(2)

(3)

(4)

(5)

(6)

Up to 15 years

-

-

-

15

20

15 to 20 years

16

18

18

16

19

21 to 25 years

15

17

18

17

18

26 to 30 years

14

16

17

18

17

31 to 35 years

13

15

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17

16

36 to 40 years

12

14

15

16

15

41 to 45 years

11

13

14

15

14

46 to 50 years

10

12

13

13

12

51 to 55 years

9

11

11

11

10

56 to 60 years

8

10

9

8

8

61 to 65 years

6

8

7

5

6

Above 65 years

5

5

5

5

26. Both going by Second Schedule as well as the principles laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, in the present case multiplier 14 is to be adopted for deceased Sundara Rajan aged 42 years. For personal expenses 1/3rd deduction is adopted, i.e., approximately Rs. 12,000 (Rs. 37,000 -Rs. 25,000). Deducting Rs. 12,000 towards personal expenses, contribution of Sundara Rajan to the family is calculated at Rs. 25,000 per month. Loss of dependency per annum is calculated at Rs. 3,00,000 (Rs. 25,000 x 12). Adopting multiplier of 14, the loss of dependency is calculated at Rs. 25,000 x 12 x 14 - Rs. 42,00,000.

27. Insofar as conventional damages are concerned, Claims Tribunal has awarded Rs. 15,000 towards loss of consortium, Rs. 15,000 for loss of expectation of life and Rs. 10,000 towards loss of love and affection and Rs. 10,000 towards funeral expenses. In our considered opinion, the quantum of conventional damages awarded under various heads is reasonable warranting no interference. Total compensation payable to the claimants is calculated at Rs. 42,50,000 as under:

Loss of dependency (Rs. 25,000 x 12 x 14)

Rs. 42,00,000

Loss of consortium

Rs. 15,000

Loss of expectation of life

Rs. 15,000

Loss of love and affection

Rs. 10,000

Funeral expenses

Rs. 10,000

Total

Rs. 42,50,000

Claimants are entitled for apportionment at the same rate as awarded by the Tribunal, i.e., 50 per cent payable to claimant No. 1, wife of Sundara Rajan, and another 50 per cent to the claimant Nos. 2 and 3, daughters of Sundara Rajan.

28. Tribunal has awarded interest payable at the rate of 9 per cent per annum from the date of filing of petition. Following the consistent view taken by the Apex Court, the rate of interest is reduced from 9 per cent to 7.5 per cent per annum.

C.M.A. No. 3882 of 2004:

29. In the result, compensation amount awarded in M.A.C.T.O.P. No. 940 of 2001 on the file of the Motor Accidents Claims Tribunal is increased to Rs. 42,50,000 and the C.M.A. No. 3882 of 2004 preferred by claimants is partly allowed. Respondent Tamil Nadu State Transport Corporation is directed to deposit balance compensation within a period of 8 weeks from the date of receipt of a copy of this order. Interest of 9 per cent per annum ordered by the Tribunal is reduced to 7.5 per cent per annum. The claimants are entitled to the same rate as awarded by the Tribunal, i.e., 50 per cent payable to the claimant No. 1, wife of Sundara Rajan, and 50 per cent to claimant Nos. 2 and 3, daughters of Sundara Rajan.

30. Earlier by order dated 4.8.2005, the Bench has granted interim stay on condition of deposit of Rs. 10,00,000, out of which the claimant No. 1 was permitted to withdraw Rs. 5,00,000 and the remaining shares of the claimant Nos. 2 and 3 were ordered to be invested. Claimant No. 1 is permitted to withdraw the entire balance amount (50 per cent) of the modified compensation along with accrued interest. It appears that claimant No. 2 has already attained age of majority. After obtaining necessary orders declaring claimant No. 2 as major, the claimant No. 2 is also entitled to withdraw entire compensation amount, i.e., 25 per cent of modified compensation along with accrued interest. The share of compensation amount of modified compensation payable to claimant No. 3 along with accrued interest shall be invested in nationalised bank on reinvestment plan till claimant No. 3 attains majority.

C.M.A. No. 2246 of 2005:

31. In view of our conclusion of enhancing the compensation, the C.M.A. preferred by the Corporation is dismissed. In the circumstances of the case, there is no order as to costs in both the C.M.As.