

(1999) 07 MAD CK 0103
In the Madras High Court
Case No : C.M.A. No. 849 of 1992

S.P. Narayanaswamy and Another

APPELLANT

Vs

Kumaraiya Thevar and Others

RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (2000) ACJ 1570 : (1999) 3 MLJ 699

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : S. Uthirasamy, for the Appellant; P.N. Ganesh, for K. Raghunathan, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The appellants are the claimants, the parents of the deceased. For the death of the deceased due to the negligent driving of the driver of the lorry belonging to the respondent No. 2, insured with the respondent No. 3, the parents of the deceased filed a claim petition seeking for the compensation of Rs. 1,00,000.

2. The Tribunal after enquiry concluded that the claimants would be entitled to only Rs. 15,000 holding that the driver of the lorry was negligent.

3. This award is the subject-matter of challenge before this court in this appeal on the ground of inadequacy of the quantum.

4. The deceased in this case was aged about 14 years at the time of the accident. He was studying in VIII Std. in Sakthi Vidya Bhavan School at Erode. On 12.9.1987 at about 12.30 hours at Vasuki Street in Erode, the deceased boy was standing with his bicycle. At that point of time, the lorry belonging to the respondent No. 2, which was driven by the driver, respondent No. 1, came in a rash and negligent manner and dashed against the deceased boy and the front wheel of the lorry ran over the head of the boy and caused skull fracture and

other severe injuries all over his body and he died instantaneously.

5. With reference to the accident, a case was registered against the driver of the lorry for the offence u/s 304-A, Indian Penal Code. Exh. A-1 is the F.I.R. and Exh. A-6 is the charge-sheet copy.

6. Though the respondent No. 2 contested the claim by examining the respondent No. 1 driver stating that the driver of the lorry was not negligent, the Tribunal concluded that the driver of the lorry was negligent and as such, the owner of the lorry, the respondent No. 2 is liable to pay the compensation.

7. In this appeal there is no dispute about the negligence on the part of the driver of the lorry.

8. In regard to quantum, according to Mr. S. Uthirasamy, the learned counsel appearing for the appellants, the Tribunal committed a grave illegality by fixing the compensation at Rs. 15,000 which is quite meagre, merely on the basis that during the relevant time, the amount fixed for no fault liability in the Act is Rs. 15,000. He would also point out the various materials available on the record to show that the claimants-appellants would be entitled to more amount of compensation.

9. On the other hand, Mr. Ganesh, the learned counsel appearing for the respondent No. 3, insurance company, would contend, in support of the judgment impugned, that the finding of the Tribunal in regard to the quantum is correct.

10. On going through the records and the judgment impugned, I am of the view that the Tribunal has not taken into consideration the vital materials available on record in making the assessment for computing the damages in the proper perspective by following the guidelines given by this court as well as the Supreme Court.

11. According to the father of the deceased, PW 1, the deceased was aged about 14 years and he was hale and healthy. He was studying in VIII Std. in the school situated in Erode town. According to him, the deceased was a bright, shrewd and active student in his studies and in extra-curricular activities. In support of his statement, he also produced certificate obtained from the school Exh. A-7, which would reveal that he was a student in VIII Std. and he was a good boy.

12. According to him, the boy had a bright future and had he been alive and grown, he would have earned more and he would have supervised the lands and factory which are owned by his father, PW 1, and thereby he would have had good prospects in life. It is also stated by PW 1 that because of the accident, in which the boy aged about 14 years was crushed to death on the spot due to the negligent driving of the lorry driver, both the father and the mother had the mental shock and agony. On these factors, the claimants-appellants herein sought for the compensation of Rs. 1,00,000.

13. Without taking these factors into consideration the Tribunal simply fixed the compensation at Rs. 15,000, merely because the boy at that time was a non-earning school going student and even for no fault liability, the amount used to be fixed is Rs. 15,000.

14. This, in my view, is a totally erroneous approach. The question of no fault liability and fixing the amount on that ground does not at all arise in this case. In the present case, as already indicated, the Tribunal has come to the conclusion that there is a fault liability, since the accident took place owing to the negligence on the part of the driver of the lorry.

15. In view of what is stated above, I am of the view that the fixing the amount of Rs. 15,000 as compensation by the Tribunal is without any legal basis.

16. In this context, Mr. Uthirasamy, the learned counsel appearing for the appellants, cited the following decisions in support of his plea that the amount is inadequate:

(1) Rani Mangammal Trans. Corporation Ltd. v. K. Ramasamy Thevar (1996) 1 LW 122. (2) The Managing Director, Dheeran Chinnamalai Transport Corporation Vs. Thangaraju and Another, . (3) Shanti Bai and Others Vs. Charan Singh and Others, .

17. In The Managing Director, Dheeran Chinnamalai Transport Corporation Vs. Thangaraju and Another, , compensation of Rs. 75,000 awarded for the death of a boy aged about 3 years was confirmed by this court by taking into account the overall picture.

18. In Shanti Bai and Others Vs. Charan Singh and Others, , the award of Rs. 40,000 as against the total claim of compensation of Rs. 10,00,000, was enhanced to Rs. 1,50,000 for the death of the boy aged about 18 years taking into consideration the fact that the boy would have got future economic prospects.

19. In Rani Mangammal Trans. Corporation Ltd. v. K. Ramasamy Thevar (1996) 1 LW 122, a Division Bench of this court, for the death of a boy aged 15 years, studying 9th Std., fixed the compensation at Rs. 50,000.

20. These are all the judgments in which the quantum has been fixed on the basis of various materials placed before the Tribunal. At the most, these decisions could be taken into consideration for holding that for fixing the quantum of compensation to be awarded for the death of the young boy or girl, the future economic prospects of life and the overall picture have to be taken into account.

21. Therefore, in the present case, it cannot be contended that the similar amount fixed by this court as well as the Supreme Court should be fixed here as well.

22. Each case has to be decided on the basis of the facts and circumstances of

the said case. In the present case, the boy was 14 years old. According to the claimants, he was the only son. PW 1 would say that the deceased, if alive would grow and earn more.

23. These aspects of evidence, in my view, are to be given due importance, since it cannot be possible to adduce any concrete evidence to show in certainty as to how the deceased would grow and what would the ultimate status be that he would attain in future, had he been alive. It depends upon various uncertain factors and the Tribunal has to take the overall picture and form the estimate. The 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.

24. The paramount consideration of the matter is to protect the interests of the claimants, so that the amount awarded to them by way of compensation serves the purpose and the object of compensating them for the loss caused by the tragedy of the accident.

25. In the light of these principles, if we analyse the materials available on record, it would clearly show that the possibility of the deceased boy becoming successful in life and having a bright future economic prospects of life cannot be ruled out.

26. In this context, the observation of the Division Bench of this court in *United India Insurance Co. Ltd. Vs. Bankarappa Naicker and Others*, , is quite relevant, which is 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 the 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 a life of misery or a life of despondence or an insipid life.

27. The principles enunciated have to be borne in mind while computing the amount of compensation to be awarded to the beneficiaries for the death of the child.

28. As indicated earlier, in the instant case, the deceased was the only boy aged about 14 years and when he was in the roadside with a cycle, he was dashed by the lorry and crushed to death. The certificate obtained from the Headmaster of

the school would go to show that he was a good boy and was studying in VIII Std.

29. The very fact that he was put in the school would make it clear that father, PW 1, as he deposed, had a plan to give good education to see that the future of the life of the boy would be bright. These things have not been taken into consideration by the Tribunal.

30. Under these circumstances, we have to decide what is the quantum of the compensation that could be awarded to the parents of the deceased to compensate the loss sustained by them for the death of their only son. In the claim petition, they have asked for a consolidated amount of Rs. 1,00,000 as compensation. Even in the judgment of the Tribunal, there is no apportionment under the various heads. The Tribunal would simply say Rs. 15,000 as compensation.

31. Under these circumstances, in my view, instead of Rs. 15,000 the parents of the deceased are entitled to the enhancement of the compensation. Both the father and the mother had a mental shock and agony due to loss of their only son and they had also lost the future economic prospects of life of their deceased son.

32. Under these circumstances, it is appropriate to award the entire amount of Rs. 1,00,000 claimed as a consolidated amount of compensation, as that alone, in my view, would meet the ends of justice in the facts and circumstances of the present case.

33. Accordingly, the claimants are entitled to the compensation of Rs. 1,00,000 along with interest at the rate of 12 per cent per annum from the date of petition till the date of realisation.

34. In the result, the appeal is allowed. No costs.