
(1996) 01 MAD CK 0115
In the Madras High Court
Case No : A.A.O. No. 115 of 1987

Sudha Transport and Others

APPELLANT

Vs

Shanmughavadivu and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Citation : (1996) 01 MAD CK 0115

Hon'ble Judges : Sathasivam, J;A. Abdul Hadi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A. Abdul Hadi, J.—Respondent Nos. 1 to 4 in R.C.O.P. No. 421 of 1984 on the file of the Motor Accidents Claims Tribunal (IV Additional Subordinate Judge), Madurai, have preferred this civil miscellaneous appeal against the compensation of Rs. 3,50,160/- (with interest at 9 per cent per annum from the date of the petition till realisation), awarded by the said Tribunal in respect of the death of Thirunavukarasu in the motor accident that took place on 6.3.1984, in favour of the respondents herein, who are widow, child, father and mother of the said deceased. The accident took place due to the collision between the bus, whose owner is the appellant No. 1 and a lorry, whose owner is the appellant No. 2. The other appellants are the respective insurance companies.

2. The learned Counsel for the appellants restricted his argument only to the quantum of compensation awarded, No doubt, as against this appeal, the abovesaid claimants-respondents have preferred the cross-objection claim of Rs. 2,49,840/-, additional compensation (which has been disallowed by the Tribunal).

3. The age of the deceased at the time of his death was taken to be 30 years by the Tribunal in computing the abovesaid compensation. When he died, the respondent No. 1, widow, was aged 22 years and his minor child, the respondent No. 2 was V/2 years. The deceased, on the date of the accident, was working in Tiruchendur Spinning Mills and he was then earning Rs. 1,310/- per month as

per Exhs. P-1 and P-2, the salary certificates. Taking these into account, the Tribunal, adopting the multiplier method and fixing the multiplier at 28, arrived at the figure of Rs. 4,40,160 and from it, deducted, on the ground of lump sum payment and of provision for his own personal expenses, a sum of Rs. 1,20,000/- and arrived at the figure of Rs. 3,20,160/- Then, adding Rs. 30,000/- as consortium for the widow, arrived at the abovesaid compensation of Rs. 3,50,160.

4. Learned counsel for the appellants only argues that the multiplier adopted, viz, 28 is too high and it cannot be more than 16. In this regard, he relies on General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas 1994 ACT 1 (SC). There, when the claimants, who are parents, widow and children, claimed compensation on the death of the deceased, who was aged 38 years and who was earning as per the finding of the High Court a sum of Rs. 1,032/- per month, the High Court granted Rs. 2,64,000/- as compensation. But the Supreme Court reduced it to Rs. 2,25,000/- even though it fixed the abovesaid monthly income of the deceased at Rs. 2,000/- and after deducting one-third thereof, calculated the compensation, taking into account the abovesaid monthly income at Rs. 1,400/-. It adopted the multiplier of 12 and adding the consortium figure, it arrived at the total compensation awardable at the abovesaid Rs. 2,25,000/-. In the above context, the relevant observations of the Supreme Court are as follow:

It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period of life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and awarded the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say, 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years- virtually adopting a multiplier of 45- and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible.... The proper method of computation is the multiplier method.... The multiplier represents the number of years" purchase on which the loss of dependency is capitalised. Take, for instance, a case where annual loss of dependency is Rs. 10,000/-. If a sum of Rs. 1,00,000/- is invested at 10 per cent annual interest, the interest will take care of the dependency perpetually. The multiplier in this case works out to 10. If the rate of interest is 5 per cent per annum and not 10 per cent, then the multiplier needed to capitalise the loss of the annual dependency at Rs. 10,000 would be 20. Then the multiplier, i.e., the number of years" purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowance for immediate lump sum payment, the period over which the dependency is to last being shorter and the

capital feed also to be spent away over the period of dependency is to last, etc. Usually in English courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependants, whichever is higher) goes up.

5. Learned counsel for the appellants very much relies on the above referred to passages of the Supreme Court to contend that the multiplier adopted in the present case is very high. But it must be noted that in the present case, the abovesaid deduction of Rs. 1,20,000/- has been made from the abovesaid figure of Rs. 4,40,160 while adopting the multiplier of 28. As per the said judgment of the Supreme Court, this method adopted by the Tribunal is "unscientific" and as per the strict principle of multiplier method no deduction need be made if a correct multiplier is adopted. A Division Bench of this Court, to which one of us (Abdul Hadi, J.) was a party, in *K. Pushpam and Others Vs. Anna Transport Corporation*, also held thus:

So far as the next contention of the learned Counsel regarding the multiplier being fixed at 15 is concerned we think that the said figure would have been fairly reasonable, provided no reduction was made from it on ground of uncertainty in life and lump sum payment. In *State of Tamil Nadu v. M.N. Shamsudeen* 1981 ACJ 244 (Mad), a Division Bench of this Court held that it is only when the pecuniary loss is determined on the basis of longevity of the deceased that any deduction is possible for lump sum payment and not when compensation was assessed by adopting years' purchase method (multiplier method). The reason is that the multiplier is fixed not for the entire span of life, but only for a reasonable period.

(Emphasis supplied)

In the above Supreme Court case also, no deduction was made after adopting the multiplier of 12.

6. No doubt, in the present case, the multiplier adopted was 28. But it must be noted that the Tribunal has not taken into account the promotional prospects of the deceased employee and the consequent probable increase in his monthly earnings. Further, no doubt in this regard, learned Counsel for the appellants submits that the employer of the deceased was not examined to speak about any such promotional opportunity of the deceased employee. But a representative of the employer has been examined in this case as PW 3. Further, even before going to the evidence of PW 3, we may point out the evidence given by PW 1 (widow of the deceased) also. The relevant evidence of PW 1, on which there is no cross-examination, is that the deceased was working in the abovesaid mills as statistical quality control assistant at the time of the accident and that he was then a B.Sc. (Statistics) graduate and a holder of Diploma in Textiles. Therefore, particularly in the light of the fact that there was no cross-examination on this deposition given by PW 1, it could be safely inferred that the promotional prospects of the deceased employee were bright in view of his educational

qualification and his designation at the time of his death. Now, coming to PW 3's evidence, he deposed in chief-examination thus:

(Omitted as in vernacular)

On this evidence also, there is no cross-examination.

7. Further, we must also state that it cannot be concluded that he would be getting earnings only up to the age of 58. Even assuming that he might have to retire at the age of 58, it can be said, taking into account the normal life expectancy of even 65 to 70 years, that he could earn something decent, though not very much, even after the age of 58, particularly taking into account his educational qualification and the experience he would have gained in working in the abovesaid spinning mill, as stated above.

8. Further, the Tribunal has granted only 9 per cent interest, which also seems to be low. Further, note also has to be taken of the fall in the purchasing power of money.

9. Taking all these into account, it cannot be said that the ultimate amount of compensation arrived at by the Tribunal requires any modification in this appellate forum. No doubt, learned Counsel for the appellants also argues that the consortium of Rs. 30,000/- granted also is high and it should be only Rs. 10,000/-. But it must be noted that even in the above referred to Supreme Court case, the consortium awarded was Rs. 15,000/-. Taking an overall view, we do not think that the compensation awarded requires any modification. That apart, it is well settled that the appellate court, while assessing the quantum of damages, would only interfere where the amount awarded is too low or too high or as it is often said, outside the brackets, because the estimate made in the award by the lower court would often vary and some bracket has always to be kept in mind. [Vide also *Hirji Virji Transport v. Basiran Bibi* 1971 ACJ 458 (Guj)].

10. It is needless to say that despite the argument of learned Counsel for the respondents, there is no case for any increase of the abovesaid compensation as claimed in the cross-objection.

11. Accordingly, both the appeal and the cross-objection are dismissed. However, in the circumstances of the case, there will be no orders as to costs.