(2006) 03 MAD CK 0060

In the Madras High Court

Case No : C.M.A. No. 1076 of 1998

Tamil Nadu State Transport Corporation APPELLANT

Vs

Vasantha and Others RESPONDENT

Date of Decision : 16-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Motor Vehicles Act, 1988 — Section 163A

Citation : (2006) 3 ACC 190 : (2006) 2 MLJ 816 : (2006) 3 RCR(Civil) 412

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : Arun Mozhi and K. Gokul, for the Appellant; S. Srinivasa Raghavan and S. Senthilkumar, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—This appeal has been preferred against the award passed in M.C.O.P. No. 330 of 1996, dated

9.12.1997, on the file of the Motor Accidents Claims Tribunalï¿½ Principal District Judge, Sivagangai. The State Transport Corporation is the

appellant herein.

2. The facts of the case in brief are as follows:

On 11.7.1996, at about 10.15 p.m., when the deceased was proceeding on Madurai-Mandapam National Highway Road on the extreme left

hand side of the road, a bus bearing registration No. TN 45-N 0329 belonging to respondent, State Transport Corporation, was driven by its

driver in a rash and negligent manner and dashed against the deceased Ulaganathan, causing his instantaneous death. At the time of the accident,

the deceased Ulaganathan was working as a supervisor in a spinning mill by name, Somasundaram Super Spinning Mill and drawing Rs. 3,000 per

mensum towards his salary. Claimants have filed the claim petition claiming Rs. 4,00,000 towards compensation.

3. The respondent has filed a counter contending that driver of the bus bearing registration No. TN 45-N 0329, was driving the bus in a moderate

speed following the traffic rules at the time of the accident and since the deceased had suddenly crossed the road without observing the traffic

rules, dashed against the bus and sustained grievous injuries and died and that the accident had not occurred due to rash and negligent driving of

the driver of the bus bearing registration No. TN 45-N 0329.

4. Before the learned Tribunal, PW 1 to PW 3 were examined and Exhs. Al to A7 were marked on the side of the claimants and on the side of the

respondent, neither oral nor documentary evidence was let in.

5. After going through the oral and documentary evidence let in on the side of claimants, the learned Tribunal has come to the conclusion that the

accident had occurred only due to rash and negligent driving of the driver of the bus bearing the registration No. TN 45-N 0329 and has awarded

a compensation of Rs. 83,334 (Sic. Rs. 2,23,334) with 12 per cent interest from the date of petition till the date of realisation.

6. Aggrieved by the award of compensation in M.C.O.P. No. 330 of 1996, dated 9.12.1997, on the file of Motor Accidents Claims

Tribunalï¿½Principal District Judge, Sivagangai, the respondent has preferred this appeal.

7. Now, the point for determination in this appeal is whether the award of compensation passed in M.C.O.P. No. 330 of 1996, dated 9.12.1997,

on the file of Motor Accidents Claims Tribunalï¿½''Principal District Judge, Sivagangai, is liable to be reduced for the reasons stated in the

memorandum of appeal in CM.A. No. 1076 of 1998?

8. The learned Counsel for the appellant would contend that appellant is challenging only the quantum of compensation. The learned Counsel for

the appellant would represent that the age of the deceased was 51 years at the time of accident and at para 6 of the award, the learned Tribunal

has adopted the multiplier 11 and had taken the average monthly income of the deceased as Rs. 3,000 and after calculating the annual loss of

income as Rs. 36,000, had multiplied the same with future service of six years and seven months and arrived at the loss of income as Rs. 2,37,000

and subsequently in the same paragraph, the learned Tribunal has calculated the loss of income for the four years as Rs. 48,000 and for another

five months as Rs. 5,000 and for another eleven years as Rs. 2,90,000 and then after deducting ''/3rd towards his personal expenses, has come to

the conclusion that the loss of income is Rs. 1,93,334. It is not correct.

9. Per contra, learned Counsel appearing for the respondent also agrees that the method adopted by learned Tribunal for assessing the loss of

income is incorrect. One of the representatives of the mill in which the deceased had worked, PW 3, in his evidence, has deposed that the monthly

salary of the deceased was Rs. 2,937. In support of this, he has also produced salary certificate, Exh. A7 and he has also deposed to the effect

that the date of retirement of the deceased was 14.2.2003. If we take the monthly salary of the deceased as Rs. 2,937 as per Exh. A7 and after

deducting ''/3rd towards personal expenses, the dependency will come to Rs. 1,958 per mensum and the annual dependency will be Rs. 23,496

(Rs. 1,958 x 12 = Rs. 23,496) and the relevant multiplier as per Second Schedule to Section 163-A of Motor Vehicles Act, 1988, is 11. So, if

the multiplier 11 is adopted, total loss of income comes to Rs. 2,58,456 (Rs. 23,496 x 11 = Rs. 2,58,456). So, it is clear that the loss of income

assessed by the learned Tribunal for the deceased as Rs. 2,90,000 is incorrect. After assessing the loss of income as Rs. 2,90,000, the learned

Tribunal has reduced Rs. 96,666 being the ''/3rd salary towards his personal expenses and then has come to an erroneous figure of Rs. 1,93,334

towards loss of income by adopting his own method. In the claim petition, claimants have claimed Rs. 500 towards damages for clothing and

another sum of Rs. 1,000 towards loss of articles, namely, the wristwatch. There is no evidence let in on the side of claimants to show that the

deceased had wristwatch at the time of the accident and that he had lost the said wristwatch in the accident. On the other hand, his clothes would

have been damaged in the accident. So, I award Rs. 500 towards damage to the clothes. The learned Tribunal has awarded Rs. 30,000 for loss of

love and affection. Claimant No. 1 is the widow and claimant Nos. 2 and 3 are the children of deceased Ulaganathan. Out of them, the respondent

No. 2 is an unmarried daughter. So, under the head loss of consortium, I award

Rs. 10,000 to the claimant No. 1 and another sum of Rs. 10,000

for loss of love and affection to the claimants. I also award Rs. 2,000 for the funeral expenses. So, the total award of compensation comes to Rs.

2,80,956 (Rs. 2,58,456 + Rs. 500 + Rs. 10,000 + Rs. 10,000 + Rs. 2,000 = Rs. 2,80,956). learned Counsel appearing for the respondent

would contend that even without a cross-objection questioning the quantum the court can suo motu enhance the award of compensation under

Order 41, rule 33, Civil Procedure Code. In support of this contention, the learned Counsel relied on the dictum in The Divisional Controller, Now

The General Manager, Karnataka State Road Transport Corporation And Bangalore Transport Service, Bangalore Vs. J.D. Sigamany And

Another, , wherein it has been held as follows:

(4) At the hearing today, Mr. Pavin, learned Counsel who represents the Corporation submitted in the first instance that there is a bar of estoppel

against the respondent because he pointed out that the Order passed by the Tribunal was very much to their knowledge and that they have

accepted that Order and he submitted that in this background, they cannot be permitted to now raise the contention that compensation amount

should be enhanced. He put forward a familiar argument vis-a-vis the respondents that the Order has assumed finality and that under Order 41 of

the CPC they would have been entitled to support that Order but that they are precluded in law from asking for enhancement in view of the fact

that they have waived their right to file an appeal or cross-objections. In support of his submissions, he drew my attention to two Division Bench

decisions of this Court, the first of them reported in Jayakunvar Manilal Shah Vs. Syndicate Bank, and the second one reported in Sikka-N-Sikka

Engineers Private Ltd. Vs. Cargo Transports, . In both these cases, the Division Bench of this Court while considering the scope of the appellate

court in civil proceedings relating to money decrees held that it is not open to the court to enhance the liability by allowing a plea from the opposite

party for variation of the decree in the absence of a formal appeal or cross-objections. A more or less similar view has been propounded by the

Supreme Court in the decisions in Raghunath and Others Vs. Kedar Nath, and Tummalla Atchaiah Vs. Venka Narasingarao, , wherein again the

Supreme Court was dealing with the ambit and scope of Order 41, rule 22, Civil

Procedure Code, 1908. learned Counsel submitted on the basis

of these decisions that the law is well settled insofar as irrespective of what the record may indicate, the court cannot at the appellate stage enhance

the compensation in the absence of a formal appeal or cross-objections having been filed.

(5) As against this position, the respondents'' learned advocate has drawn my attention to a decision rendered by a five-Judge Bench of the

Supreme Court in Pannalal Vs. State Bombay and Others, . The court on that occasion was dealing with the provisions of Order 41, rule 33 of

CPC and while interpreting this provision of law laid down that if the circumstances so warrant, nothing precludes an appeal court from granting a

well deserved relief having regard to the powers vested in it under Order 41, rule 33, Civil Procedure Code. This view has been reiterated in a

later decision of Apex Court reported in Koksingh Vs. Smt. Deokabai, . Learned advocate drew my attention to two more decisions in Oriental

Fire and Genl. Ins. Co. Ltd. v. Jagadish Babu 1986 ACJ 890 (Karnataka) and National Insurance Co. Ltd. v. Labanya Roy 1985 ACJ 720 ,

wherein, in slightly different circumstances the same views have been expressed. The submission canvassed by him is a twofold one, the first being

that irrespective of whether an appeal or cross-objections have been filed, if the interest of justice so require then there is nothing to stop a court at

the appellate stage from granting a relief and the second submission is that on the facts of the present case that merely because the respondents

who because of their circumstances were either ill-advised or were unable to prefer a formal appeal or cross-objections, this circumstance should

not deprive them of their rightful entitlement. To my mind, both these submissions embody a situation which calls for this Court to decide the basic

issue that is being debated in this proceeding, namely, the question as to whether such a course of action as asked for by the respondents is

permissible and secondly, if so, in what category of cases. This last aspect of the matter assumes importance because the appellant''s learned

Counsel has, with considerable justification pointed out to me that often times even if a court makes any exception that it may give rise to serious

complications when the case is quoted as a precedent and is sought to be wrongly used, even in situations where such a relief is not warranted and that, therefore, it may virtually open the floodgates. Apart from this, on facts he has submitted that in this case no valid or cogent reasons have been

set out by the respondents for not having filed an appeal or cross-objections.

(6) I am in general agreement with the basic proposition of law that has been canvassed by the appellant''s learned advocate when he points out

that it is a well settled principle that a party who suffers an Order or a decree and does not appeal against it or assail it would normally not be

permitted at the hearing of the appeal to try and take advantage of the situation by asking for enhancement. The issue is not that but really as to

whether this situation prescribes an absolute and total bar to the court granting a relief if in the interest of justice such a relief is an absolute must.

One has to view the situation from a rather practical point of view the first of them being with regard to the very poor quality of legal assistance that

is usually available in and around the M.A.C.T. and thereafter, the second aspect of the matter being that the status of the parties and their general

condition themselves may be such that they are unable to agitate the matter further and the third aspect of the matter which is relevant having regard

to the present case, is the possibility of certain further tragic occurrences such as deaths that may have intervened, all of which may contribute to a

situation wherein the court finds that no appeal or cross-objections have been filed. The essence of doing justice requires that compensation when

awarded has got to be reasonable and fair and it has also got to be adequate having regard to the totality of the circumstances. The hearing of the

appeal involves a total review of the case and the appeal is virtually an extension of the proceedings before the lower court. The law is well settled

with regard to one interesting aspect of the matter, namely, that the courts do come across a few instances where instead of overpitching the case

before the trial court, a very modest amount is claimed and the Tribunals in these circumstances have been wrongly limiting the relief to the amount

that has been claimed on the ground that even though the party is entitled to something higher, what was asked for is a lower figure. this Court had

occasion to correct these orders and to lay down that the Tribunal is required to pass an Order quantifying the compensation correctly irrespective

of what has been claimed on the basis of the principle that it is not the amount that is claimed in that matter, insofar as if the court has the power to award a lesser amount, that it is equally equipped with the power to award a higher amount. It is that principle which applies with equal force to the

appeal court and though I do not dispute that a court would normally not permit a party to ask for enhancement unless an appeal or cross-

objections have been filed but there could be a very small category of cases in which the court would make an exception, the reason being that the

essence of doing justice requires that a court will not refuse a relief only because of a technical or a procedural bar. I need to amplify here that if

the technicalities are upheld, the result would be doing injustice insofar as the party will be left with a compensation lesser than what a fair

evaluation entitles the party to. Again, I do not on the basis of the law as enunciated by the courts in the decisions set out by me above, subscribe

to the view that there exists any bar in the way of this Court exercising such powers. The powers do exist under Order 41, rule 33, CPC and more

importantly, such powers can certainly be exercised u/s 151, CPC in the interest of justice.

10. The above dictum squarely applies to the present facts of the case wherein the learned Tribunal without adopting the proper method for

assessing the loss of income has arrived at a lesser compensation under the head loss of income and has not even considered the claim made by

the claimants under various heads in the claim petition, has reduced the claim of claimants to a sum of Rs. 1,93,334 towards loss of income,

whereas if the correct method is adopted to calculate the loss of income, it comes to Rs. 2,58,456. As observed in the above said dictum, if

circumstances so warrant nothing precludes an appeal court from granting a well deserved relief having regard to the powers vested in it under

Order 41, rule 33, CPC and also u/s 151, Civil Procedure Code.

11. I am of the view that this is a fit case in which the compensation is to be enhanced even without a cross-appeal.

12. Hence, I hold on the point that the award passed in the M.C.O.P. No. 330 of 1996, dated 9.12.1997, on the file of Motor Accidents Claims

Tribunalï¿½Principal District Judge, Sivagangai, is not liable to be reduced for the reasons stated in the memorandum of appeal in CM.A. No.

1076 of 1998. On the other hand, it is to be enhanced for the reasons stated above. The point is answered accordingly.

13. In the result, the appeal is dismissed. But the award of compensation passed in M.C.O.P. No. 330 of 1996, dated 9.12.1997, on the file of

the Motor Accidents Claims Tribunalï¿½Principal District Judge, Sivagangai, is enhanced and fixed as Rs. 2,80,956. The claimants are entitled to

12 per cent interest on the award amount from the date of the petition till the date of realisation. Out of the award amount, claimant No. 1 is

entitled to Rs. 1,50,000. Claimant No. 2 is entitled to Rs. 65,956 and claimant No. 3 is entitled to Rs. 65,000. The claimants are entitled to

withdraw 50 per cent of the award amount from their respective share at the first instance. The balance of the award amount are to be deposited in

any one of the nationalised banks for a period of three years in a fixed deposit. Claimants are entitled to withdraw the accrued interest once in 3

months from the fixed deposit. The claimants have to pay the court-fee for the enhanced award amount within 1 month. Time for deposit of the

enhanced award amount with the accrued interest by the appellant is three months. No costs.

