

(2010) 06 MAD CK 0240
In the Madras High Court
Case No : C.M.A. No. 2270 of 2003

Tamil Nadu State Transport Corporation Ltd.

APPELLANT

Vs

Kunjunjamma Mathew and Others

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 304A

Citation : (2012) ACJ 149 : (2011) 1 TAC 219

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : M. Krishnamoorthy, for the Appellant; M. Selvam, for V.
Manisekaran, for the Respondent

Judgement

R. Banumathi, J.—Being aggrieved by the quantum of compensation of Rs. 17,70,000/- awarded by the Tribunal to the claimants for the death of one P.G. Mathew, the State Transport Corporation has filed this appeal.

2. The brief facts are that on 19th May, 2001 at about 5.20 p.m., when the deceased Mathew was proceeding in his motorcycle on the Periyar Main Road from north to south, near Sri Devi Vilas Stores, Kovilpathu, the lorry bearing Registration No. TML 5083 driven by its driver in a rash and negligent manner, dashed against the deceased. In the accident, the deceased sustained severe injuries on his head and multiple injuries all over the body and his vehicle was also completely damaged. Immediately after the accident, the deceased was taken to Government Hospital, Karaikal, where he succumbed to injuries. A criminal case was registered in Crime No. 52 of 2001 for the offence u/s 304(A) I.P.C. The deceased was aged 58 years at the time of accident. The deceased was working as an Assistant Executive Engineer (C&M), Oil and Natural Gas Corporation Limited and earning a sum of Rs. 33,902.46 per month as salary. The deceased was an Ex-serviceman and he was also drawing pension of Rs. 2,999/- per month. He was also an income tax Assessee. Alleging that the

accident was due to the rash and negligent driving of the driver of the Appellant-Transport Corporation, the claimants have filed claim petition under Sections 140 and 166 of the Motor Vehicles Act, claiming compensation of Rs. 30,15,000/- (restricted to Rs. 25,00,000/-).

3. In the Tribunal, on behalf of the claimants, first claimant examined herself as P.W.1, the Personnel and Administration Officer of O.N.G.C. was examined as P.W.2 and one Maran was examined as P.W.3. and Exs.P1 to P11 were marked. On the side of the Appellant-Transport Corporation, the driver was examined as R.W.1.

4. Upon consideration of oral and documentary evidence, the Tribunal held that the accident was due to the rash and negligent driving of the bus driver and held that the Appellant-Transport Corporation is liable to pay compensation to the claimants. Based upon Ext. P8-salary certificate, the Tribunal has taken the monthly income of the deceased at Rs. 33,902.46 and calculated the annual income at Rs. 3,94,595/-. After deducting income tax payable at Rs. 84,399/-, the Tribunal has taken the annual income at Rs. 3,10,196/-. After deducting 1/3rd amount for personal expenses of the deceased i.e. Rs. 1,03,398/-, the Tribunal has calculated the annual loss of dependency at Rs. 2,06,798/- (Rs. 3,10,196/- - Rs. 1,03,398/- = Rs. 2,06,798/-). Taking the age of the deceased as 58 years and adopting the multiplier of 8, the Tribunal has taken the total loss of dependency at Rs. 16,54,384/- (Rs. 2,06,798/- x 8 = Rs. 16,54,384/-), rounded off to Rs. 16,54,300/-. The Tribunal has awarded total compensation of Rs. 17,70,000/- as under:

Loss of annual dependency

Rs.

16,54,300/-

Damages to the vehicle

Rs.

5,700/-

Funeral expenses and transport charges for taking the body of the deceased to his

native place

Rs.

10,000/-

Loss of love and affection

Rs.

1,00,000/-

Total

Rs.

17,70,000/-

5. We need not elaborate upon the facts, manner of accident, the question of negligence and the liability to pay the compensation fastened upon the Appellant-Transport Corporation. It is for the reason that those findings are recorded in favour of the claimants by the Tribunal. Secondly, those findings on the question of negligence is not seriously in dispute in this appeal. Only the quantum of compensation awarded to the claimants is under challenge.

6. Mr. Krishnamoorthy, learned Counsel for the Appellant-Transport Corporation submitted that the deceased was 58 years at the time of accident and that he had only two more years of service and while so, the Tribunal erred in adopting multiplier 8 and awarding Rs. 16,54,300/- towards loss of dependency. It was further submitted that instead of taking gross salary, the Tribunal ought to have taken the take home salary for fixing the income of the deceased and the Tribunal ought to have only adopted multiplier 2 based on that income and adopted excessive multiplier of 8, resulted in awarding the higher compensation of Rs. 17,70,000/-. The contention of the Appellant-Transport Corporation is that the quantum of compensation of Rs. 17,70,000/- is exorbitant and very much on the higher side and the learned Counsel for the Appellant-Transport Corporation prayed for reducing the same.

7. We have heard Mr. Selvam, learned Counsel for the claimants. Learned Counsel for the claimants submitted that the Tribunal ought to have taken the gross salary into account and the Tribunal erred in deducting the income tax paid by the deceased and the loss of dependency calculated by the Tribunal is incorrect. It was further submitted that since the deceased was aged 57 years and 9 months at the time of accident, the Tribunal, going by the Second Schedule, has rightly adopted multiplier 8 and the same does not warrant interference.

8. The deceased Mathew was working as Assistant Executive Engineer in Oil and Natural Gas Corporation Limited and he was getting salary of Rs. 33,902.46 per month. In her evidence, P.W.1 has stated that her husband was getting salary of Rs. 35,000/- per month and that he was aged 57 years at the time of accident. In his evidence, P.W.2 the Personnel and Administration Officer in O.N.G.C. has stated that the deceased was earning salary of Rs. 33,902/- per month and that his annual income was Rs. 3,94,595/-. In his evidence, P.W.2 has also stated that the deceased was paying income tax of Rs. 84,399/-. P.W.2 has further stated that had the deceased been alive, he would have got promotion as Executive Engineer and he would have got the salary of Rs. 37,000/- per month. The salary certificate of the deceased was marked as Ext. P8, which also corroborates the evidence of P.W.2 to the effect that the deceased was getting salary of Rs. 33,902.42 per month and annual income of Rs. 3,94,595/-.

9. Insofar as the multiplicand, the Tribunal had deducted Rs. 84,399/- paid by the deceased towards income tax from the annual income of Rs. 3,94,595/- and calculated annual income at Rs. 3,10,196/- and after deducting 1/3rd amount for personal expenses i.e. Rs. 1,03,398/-, the Tribunal has taken the annual loss of income at Rs. 2,06,798/-. It is fairly well settled that while calculating the multiplicand, the Courts and Tribunal should take into account only the gross salary and not the net salary. The Tribunal was not right in deducting the income tax of Rs. 84,399/- from the annual income of the deceased. The annual income of the deceased ought to have been taken at Rs. 3,95,000/- and after giving 1/3rd deduction towards personal expenses i.e. Rs. 1,31,666/-, the annual loss of dependency is calculated at Rs. 2,63,334/-.

10. Coming to the choice of multiplier, the Tribunal going by the Second Schedule, adopted multiplier 8. Ext. P7 is the service register of the deceased, from which, it is seen that the date of birth was 24th August, 1943. In his evidence, P.W.2 has stated that the date of birth of the deceased was 24th August, 1943. P.W.2 has also stated that the deceased would have attained the age of superannuation at 60 years. At the time of accident i.e. on 19th May, 2001, the deceased was aged 57 years 9 months. He would have continued to be in service only for a further period of two years. While so, the Tribunal was not right in adopting multiplier 8 by taking the annual loss of dependency at Rs. 2,06,798/-. Adopting multiplier 8 for the entire annual income would amount to giving the entire life span of 8 years and while adopting the same annual income, the Tribunal erred in not keeping in view that the deceased would have attained the age of superannuation after the period of two years. The annual income of the deceased ought to have been taken only for the initial period of two years. Adopting multiplier 2 for the period of two years, during which the deceased would have been in service, the annual loss of dependency is calculated at Rs. 5,26,668/- (Rs. 2,63,334/- x 2 = Rs. 5,26,668/-)

11. For the remaining period of six years, the deceased would have retired and would have only getting pension. As per the decision in National Insurance Co. Ltd. v. Shanthi Pandiyan and Ors. 2008 (2) TNMAC 73, the Division Bench of this Court has adopted the method that in case of Government Servant, 40% of the gross salary has to be taken as income of the deceased. Adopting 40% of the gross salary of the deceased, the income of the deceased after his retirement is calculated at Rs. 1,58,000/- (40% of Rs. 3,95,000/-). After deducting 1/3rd amount for personal expenses i.e. Rs. 52,666/-, the annual loss of dependency is calculated at Rs. 1,05,334/-. For the remaining multiplier 6, the total loss of dependency is calculated at Rs. 6,32,004/- (Rs. 1,05,334/- x 6 = Rs. 6,32,004/-). The total loss of dependency is calculated at Rs. 11,58,672/- (Rs. 5,26,668 + Rs. 6,32,004/- = Rs. 11,58,672/-) rounded off to Rs. 11,60,000/-.

12. Insofar as the conventional damages, the Tribunal has awarded Rs. 5,700/- for damages to the vehicle, Rs. 10,000/- for funeral expenses and Rs. 1,00,000/- for loss of love and affection. The quantum of compensation awarded for

conventional damages is quite reasonable. Insofar as the damages to the vehicle, amount of Rs. 5,700/- is awarded, which is rounded off to Rs. 6,000/-.

13. The total compensation awarded to the claimants is reduced to Rs. 12,76,000/- as under:

Loss of annual dependency (Rs. 5,26,668 + Rs. 6,32,004/-rounded off to Rs. 11,60,000/-)

Rs.

11,60,000/-

Damages to the vehicle

Rs.

6,000/-

Funeral expenses and transport charges for taking the body of the deceased to his native place

Rs.

10,000/-

Loss of love and affection

Rs.

1,00,000/-

Total

Rs.

12,76,000/-

14. Insofar as the interest, following the consistent view of the Supreme Court, interest awarded by the Tribunal at 9% is reduced to 7.5% per annum.

15. The order of the Tribunal in M.C.O.P. No. 75 of 2002 is modified and the quantum of compensation is reduced to Rs. 12,76,000/- payable with interest at the rate of 7.5% per annum. The reduced compensation is to be apportioned amongst the claimants on pro-rata basis as ordered by the Tribunal.

16. As directed by order dated 18th September, 2003, the Appellant-Transport Corporation is said to have deposited Rs. 12,00,000/-, out of which, claimants are said to have withdrawn part of the amount. The claimants are permitted to withdraw the balance compensation amount lying to the credit of M.C.O.P. No. 75 of 2002 alongwith accrued interest. Any balance amount of compensation to be payable by the Appellant-Transport Corporation is to be deposited to the credit of M.C.O.P. No. 75 of 2002 on the file of Motor Accidents Claims Tribunal (Subordinate Judge, Madurantakam), within a period of eight weeks from the

date of receipt of a copy of this judgment.

17. In the result, the Civil Miscellaneous Appeal is partly allowed. Both parties are directed to bear their respective costs.