

(2012) 08 MAD CK 0018

In the Madras High Court

Case No : CMA. (MD) . No. 68 of 2011

The Branch Manager, ICICI Lombard General Insurance Co.,
Ltd.

APPELLANT

Vs

Narayanamurthy and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 158(6), 170, 173, 95

Citation : (2013) 1 LW 277

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : S. Srinivasa Raghavan, for the Appellant; P. Santhana Krishnan for R1 to R5. R6-No appearance, for the Respondent

Judgement

T. Mathivanan, J.—Invoking the proviso to Section 173 of the Motor Vehicles Act, 1988, challenge is made in this appeal by the second

respondent Insurance Company to the award dated 12.11.2009 and made in M.C.O.P. No. 58 of 2008, on the file of the Motor Accident Claims

Tribunal (Sub-Court), Virudhunagar. The second respondent Insurance Company in the claim petition is the appellant herein. Whereas, the

claimants 1 to 5 are the respondents 1 to 5 herein and the first respondent in the claim petition, who is the owner of the vehicle, is the sixth

respondent herein.

2. The respondents 1 to 5 had made a claim petition before the learned Motor Accident Claims Tribunal (Sub-Court), Virudhunagar, claiming a

sum of Rs. 16,00,000/- for the death of one Mr. Varadharaja Perumal, who is none other than the son of the respondents 1 and 2 and brother of

the respondents 3 to 5 in a road traffic accident involving a timber lorry bearing

registration No. TN10 J0423 belonging to the sixth respondent

herein on 19.11.2007 at about 02.00 a.m., in front of Subhiksha Mobile Shop at Arcot Road, Valasaravakkam.

3. It is alleged in the claim petition that on 19.11.2007, at about 02.00 a.m., the deceased Varadharaja Perumal was proceeding by walk in front

of Door No. 201, Subhiksha Mobile Shop at Arcot Road, Valasaravakkam, when he was run over by the timber lorry bearing registration No.

TN10 J0423.

4. In the first information report relating to the case in Crime No. 1207 of 2007, on the file of the Valasaravakkam Police Station, dated

19.11.2007, it was alleged that the driver of the said lorry was the sole reason for the accident on account of his rashness and negligence.

5. The claimants have stated that at the time of occurrence, the deceased was working in a company under the name and style of "Horne Shajon

Pvt., Ltd.," and earned a sum of Rs. 3,726/-. Since he was a bachelor and died in harness at the age of 29, the claimants under all heads had

claimed a sum of Rs. 16,00,000/-.

6. It is pertinent to note here that originally the claim petition was filed by the respondents 1 and 2 being the parents of the deceased and

subsequently the respondents 3 to 5 being the sisters and brother of the deceased were impleaded in view of the Order dated 25.06.2009 and

made in I.A. No. 183 of 2009 on the file of the Motor Accident Claims Tribunal (Sub-Court), Virudhunagar.

7. The sixth respondent herein being the owner of the vehicle remained ex parte,

8. The second respondent Insurance Company after getting necessary permission u/s 170 of the Motor Vehicles Act, from the Motor Accident

Claims Tribunal, had contested the claim of the respondents on all the grounds, which are available to the sixth respondent being the owner of the

vehicle.

9. The appellant, who is the second respondent in the claim petition had projected his contentions on the following grounds:

i. The accident was taken place due to the total negligence of the deceased while he was trying to cross the road without observing the on going

vehicle.

ii. The age of the deceased and his earning at Rs. 3,700/- per mensem were invented to make an excessive and exorbitant claim.

iii. The respondents 1 to 5 are not entitled to claim so much of amount muchless Rs. 16,00,000/- as they had received a sum of Rs. 1,00,000/-

from the New India Assurance Company Ltd., through group personal accident policy of the deceased.

iv. u/s 158(6) of the Motor Vehicles Act (as amended), it is the legal obligation on the Police Department to forward an information about the

accident to the claims tribunal having jurisdiction. A copy of the intimation should have also sent to the insurer and the owner of the offending

vehicle. But, the appellant Insurance Company had not received any intimation.

10. In order to substantiate their respective cases, the parties to the claim petition were allowed to face the trial. The first respondent/first claimant

had examined himself as P.W. 1. During the course of his examination, Exs. P1 to P5 were marked. On the other hand, neither oral nor

documentary evidence was adduced on behalf of the appellant.

11. On appreciation of the evidences both oral and documentary and after hearing both sides, the Motor Accident Claims Tribunal had proceeded

to pass an award on 12.11.2009 to the tune of Rs. 5,63,544/- in favour of the respondents 1 to 5, directing the appellant as well as the sixth

respondent to pay this amount within a period of two months from the date of filing of claim petition till the date of deposit.

12. Being aggrieved by the Award dated 12.11.2009, the second respondent Insurance Company stands before this Court by way of this appeal.

13. Mr. S. Srinivasa Raghavan, learned counsel appearing for the appellant Insurance Company has focused his arguments on the following three

grounds:

i. In paragraph No. 11 of the Award, the Tribunal has found that the newly added parties viz., the respondents 3 to 5/claimants 3 to 5 were not the

dependants of the deceased. However, against this finding, the Tribunal has found that they are also entitled to the compensation along with the

respondents 1 and 2.

ii. What is the amount payable to the claimants considering the dependency of all the respondents/claimants?

iii. Whether the payment of compensation under different insurance scheme

could be deducted?

Ground-I:

14. Mr. S. Srinivasa Raghavan, has adverted to that the respondents 3 to 5 were said to be the sisters and brother of the deceased and hence they

were depending upon the earnings of the deceased. But, the evidence of P.W. 1 was silent with regard to the dependency of the respondents 3 to

5.

15. He has also submitted that in the absence of acceptable legal evidence, the Tribunal ought not to have considered that they were also having

competency to claim compensation along with the respondents 1 and 2 being the parents of the deceased.

16. It is significant to note here that the respondents 3 to 5 were added as parties respondents during the pendency of the claim proceedings. If at

all the appellant/second respondent wanted to object their impleadment, it should have objected at the earliest point of time. Having been allowed

to implead them as parties respondents, now it may not be proper on their part to object saying that the respondents 3 to 5 are not having

competency to claim compensation.

17. This contention has been totally turned down by the Tribunal in Paragraph No. 11 of it's Award. It is also obvious to note here that the

Tribunal has not found in paragraph No. 11 that the respondents 3 to 5 were not depending upon the earnings of the deceased.

18. Infact, in Paragraph No. 11, the Tribunal has stated that though a contention was putforth on behalf of the second respondent that the

respondents 3 to 5 were not depending upon the earnings of the deceased, the second respondent has not chosen to produce any evidence on

their behalf to disprove the contention of the claimants. This is what observed by the Tribunal.

19. The Tribunal has also observed that since the respondents 3 to 5 were unmarried and being the brother and sisters of the deceased they were

also entitled to get compensation.

20. Keeping in view of the above facts, this Court finds that the arguments, in this connection, advanced on behalf of the appellant, is not able to be

countenanced. Ground-II:

21. Mr. S. Srinivasa Raghavan, learned counsel appearing for the appellant Insurance Company, has canvassed that the claimants had already been paid a sum of Rs. 1, 00,000/- as settlement of claim under the personal accident coverage and under the same policy of insurance by the appellant/second respondent and therefore the said amount of Rs. 1,00,000/- had to be deducted from the compensation payable by the Tribunal as decided by the Hon''ble Apex Court in Mrs. Helan C. Rebello and others vs. Maharashtra State Road Transport Corpn., and another, reported in 1999-1-L.W. 208.

22. In this connection, he has also submitted that if the group insurance was otherwise than the accident, the amount could not be deducted from the compensation and if the group insurance is in respect of mediclaim rather than any other claim regarding accident then it should be appropriate to be deducted.

23. In this case viz., Mrs. Helan C. Rebello and others vs. Maharashtra State Road Transport Corpn., and another, reported in 1999-1-L.W.

208, a question was arisen as to

Whether the life insurance money of the deceased is to be deducted from the claimants'' compensation receivable under the Motor Vehicles Act, 1939?

24. This question has been considered and answered by His Lordship Hon''ble Mr. Justice A.P. Misra while speaking on behalf of the Division

Bench of the Apex

Court. His Lordship has observed as follows:

The amount received by the claimant on the Life Insurance of the deceased is not deductible from the compensation computed under the Motor Vehicles Act.

His Lordship has also held that:

The constitution of the Motor Accidents Claims Tribunal is for the purpose of adjudicating the claims, as stated in Section 110. It would not include that which claimant receives on account of other form of deaths, which he would have received even apart from accidental death.....

25. From the above context, it is made clear that where the employer insures his employee, as against injury or death arising out of an accident,

any amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. It is also crystallised that any amount received or receivable not only on account of the accidental death, but that would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage" liable for deduction.

26. Referring the Mrs. Helan C. Rebello's case (cited supra), the Division Bench of Delhi High Court in United India Insurance Co. Ltd. Vs.

Patricia Jean Mahajan and Others Etc. Etc., has held as follows:

35. We are in full agreement with the observations made in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport

Corpn. and Another, that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general

rule, but what is more important is that such receipts by the claimants must have some co-relation with the accidental death by reason of which

alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between

the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this Judgment, it

is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far

to be deductible from the amount of compensation. There must be some co-relation between the amount received and the accidental death or it

may be in the same sphere, in absence the amount received shall not be deducted from the amount of compensation. Thus, the amount received on

account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance

amount is accelerated due to premature death of the insured. So far other items in respect of which learned counsel for the insurance company has

vehemently urged, for example, some allowance paid to the children, and Patricia Mahajan under the social security system no co-relation of those

receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for

constituting the fund out of which, payment on account of social security system is made one of the constituents of fund is tax which is deducted

from income for the purpose. We feel that the High Court has rightly disallowed

any deduction on account of receipts under the insurance policy

and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of

Dr. Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the

hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on

account of accidental death. Such gains may be on account of savings or other investments etc., made by the deceased would not go to the benefit

of wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future

returns.

36. We, therefore, do not allow any deduction as pressed by the insurance company on account of receipts of insurance policy and social security

benefits received by the claimants.

27. It is pertinent to note here that as submitted by Mr. S. Srinivasa Raghavan, learned counsel appearing for the appellant, a sum of Rs.

1,00,000/- was paid to the claimants towards the settlement of claim under group personal accident policy from the New India Assurance Co.,

Ltd., It may also be more relevant to note here that the appellant Insurance Company is ICICI Lombard General Insurance Co., Ltd., What Mr.

S. Srinivasa Raghavan has argued is that the above said Rs. 1,00,000/- was paid to the claimants under the personal accident coverage and under

the same policy of insurance by the appellant/second respondent Insurance Company. It is not so.

28. On coming to the evidence of P.W. 1, he has fairly admitted that after the death of his son, a sum of Rs. 1,00,000/- was received by him from

the Company where his son was working at the time of accident under group accident policy.

29. It is admitted fact that the deceased was an employee in the Company under the name and style of "Home Shajon Pvt., Ltd.," As rightly held

in Mrs. Helan C. Rebello's case (cited supra), where the employer insures his employee, as against injury or death arising out of an accident, any

amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has

taken note of such contingency, through the proviso of Section 95. Under it, the liability of the insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee.

30. But, in the instant case on hand, the accident was not taken place in the course of employment of the deceased. Therefore, the argument advanced by the learned counsel appearing for the appellant with regard to the deduction of Rs. 1,00,000/- cannot hold good.

31. In this connection, Mr. P. Santhana Krishnan, learned counsel appearing for the respondents 1 to 5, while advancing his arguments, has placed reliance upon the decision in State of A.P. and Another Vs. K. Pushpalatha and Others, wherein it is held that:

Similarly, the payment of the group insurance or the provident fund or any amount of such nature, is from out of the mandatory contribution and savings made by the deceased to support his family in the event of any eventuality and to support his life and his dependants after retirement from service. The savings and contributions are to be made in accordance with the rules governing the service conditions and they are mandatory and the employee is left with no option. Therefore, both the compensation, i.e., awarded by Claims Tribunal and the payments made under ex gratia, provident fund, group insurance, etc., operate in different fields and they are governed by different set of rules with different objects and the entitlement of compensation under the latter, would not disentitle the claimants from receiving the former.

32. This decision is squarely made applicable to the instant case on hand. As agreed by P.W. 1, he had received Rs. 1,00,000/- from the company where his son was working at the time of accident through the group personal accident policy. As observed in the decision cited supra, the amount of group insurance was contributed by the deceased from his savings as it is mandatory as per the rules of their company to meet out in the event of any eventuality and also to support his life as well as his dependants after his retirement. The savings and contributions were made by him in accordance with the rules of their company governing the service conditions and therefore the deceased being the employee was left with no other option excepting to contribute towards group insurance. Under this circumstance, both the compensation awarded by the Tribunal and the

payments made by the company under group insurance etc., operate in different footings as well as different set of rules with different objects and

therefore the Motor Accident Claims Tribunal is not bound to give deduction in respect of Rs. 1,00,000/- from the compensation.

Ground-III:

33. Mr. Srinivasa Raghavan, learned counsel, has submitted that the evidence of P.W. 1 was silent with regard to the dependency of the sisters

and brother and he has also submitted that the finding of the Tribunal was contrary to paragraph No. 11 of the Judgment and that if the Tribunal

was of view that the respondents 3 to 5 were not the dependants, then the respondents 1 and 2 being the parents of the deceased should have

been awarded in proportionate to their dependency.

34. On coming to the instant case on hand, at the time of accident, the deceased was aged about 29 years. Admittedly, he was a bachelor and

earned a sum of Rs. 3,726/- as evident from Ex. P3 salary certificate.

35. In this connection, the learned counsel has argued that since the deceased was a bachelor as envisaged under Smt. Sarla Verma and Others

Vs. Delhi Transport Corporation and Another, 50% deduction would be appropriate as the family was not the dependants of the deceased.

36. He has also argued that based on the monthly salary of Rs. 3,726/- if 50% deduction was given after applying the multiplier of 12, considering

the age of the mother the dependency of the family would come to Rs. 2,68,272/- and therefore the award of the Tribunal to the extent of Rs.

5,03,544/- was absolutely wrong.

37. On the other hand, Mr. P. Santhana Krishnan, learned counsel appearing for the respondents 1 to 5 has placed reliance upon a decision in

Ramesh Singh and Another Vs. Satbir Singh and Another, In this case, it is held that:

The choice of multiplier is determined by the age of the deceased or the claimants, whichever age is higher. Schedule-II is to be used not only

referring to the age of victim but also other factors relevant therefor. If a young man is killed in the accident leaving behind aged parents who may

not survive long enough to match with a high multiplier provided by Schedule-II, then the Court has to offset such high multiplier and balance the

same with the short life expectancy of the claimants. Completed questions of fact

and law arising in accident cases cannot be answered always by relying on mathematical equations. In the present case, taking the age of the deceased's father to be 55 years, the courts below had not committed any illegality in applying the multiplier of 8 based on the father's age and ultimately held that the Courts below has struck the right balance.

38. On coming to the instant case on hand, since the number of dependent family members is 5, as decided in *Sarla Verma* (cited supra), 1/4th deduction could be given instead of 1/3rd or 1/2.

39. In the given case on hand, the age of the first respondent being the father of the deceased was 54 at the time of death of the deceased.

Whereas the age of the second respondent being the mother was 50.

40. The learned counsel appearing for the appellant has fairly conceded that the age of the mother could be taken into account to calculate the quantum.

41. As decided in *Sarla Verma* (cited supra), since the age of the second respondent being the mother of the deceased was 50, 13 would be the appropriate multiplier.

42. Admittedly, as evident from Ex. P3, the monthly salary of the deceased is Rs. 3,726/-. Accordingly, the annual dependency of the family

members would be Rs. 44, 712/-. Since the respondents 1 to 5 were the deponents of the deceased, 1/4th deduction can be given instead of

1/3rd towards the personal and living expenses of the deceased as envisaged in *Sarala Varma*.

43. On application of the multiplier of 13, as per *Sarala Varma*, as the second respondent being the mother was aged about 50 at the time of accident, the dependency of the family members would come to Rs. 4,35,942/-.

44. The Tribunal has awarded a sum of Rs. 10,000/- each to the respondents 1 and 2 being the parents towards loss of love and affection. This Court finds that this amount may be allowed.

45. The Tribunal has also awarded a sum of Rs. 7,000/- towards funeral expenses. This amount may also be allowed.

46. Apart from this, this Court finds that towards transportation, a sum of Rs. 2,000/- can be awarded and towards the loss of love and affection in respect of the respondents 3 to 5 each a sum of Rs. 5,000/- can be awarded.

Adding this amount, the total compensation comes to Rs.

4,79,942/-.

47. The appellant and the sixth respondent are jointly and severally liable to pay this amount to the respondents 1 to 5/claimants 1 to 5.

48. Since the appellant is the insurer of the vehicle of the sixth respondent herein, he is directed to pay the amount with interest at the rate of 7.5%

per annum from the date of claim petition within a period of one month from the date of this Order, if not deposited earlier.

49. After the deposit is made by the appellant, the respondents 1 to 5 are at liberty to withdraw and apportion the amount as detailed below.

i. The first respondent being the father is entitled to get Rs. 1,50,000/-;

ii. The second respondent being the mother is entitled to get Rs. 2,54,942/-;

iii. The respondents 3 to 5 being the brother and sisters are each entitled to get Rs. 25,000/- altogether Rs. 75,000/- along with proportionate

accrued interest.

Accordingly, this civil miscellaneous appeal is partly allowed and the Award of the Tribunal of Rs. 5,63,544/- has been reduced to Rs. 4,79,942/-

The second respondent is directed to pay the amount of Rs. 4,79,942/- within a period of four weeks from the date of receipt of a copy of this

Court. Consequently, connected miscellaneous petitions are closed. No costs.