(2010) 10 MAD CK 0033

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 197 of 2004

The Branch Manager, United India Insurance Co. Limited — APPELLANT

Vs

Amutha and Others — RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 168
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2011) 1 TAC 68

Hon'ble Judges : S. Nagamuthu, J;R. Banumathi, J

Bench : Division Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; M. Maruthaiyan, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Challenging the award of compensation of Rs. 14,00,000/-for the death of Sivanantham, Appellant-Insurance Company

has preferred this Appeal.

2. Brief facts are that on 03.06.2002 at 21.30 hours, the deceased Sivanantham was riding his TVS-50 bearing registration No. TN-49 X 4176

from Kumbakonam to Thippirajapuram on the extreme left side of the road. While he was nearing Mettu Theru Colony, the bus bearing

registration No. TN-49 v. 4555 driven by its driver in a rash and negligent manner dashed against the TVS-50. Due to the impact, the rider of

TVS-50 sustained severe injuries. Immediately, he was admitted in Government Hospital, Kumbakonam and thereafter, he was admitted in

Thanjavur Medical College Hospital where he succumbed to the injuries on 09.06.2002. Regarding the accident, criminal case in Crime No.

102/2002 of Nachiyarkoil Police Station was registered against the driver of the bus u/s 279, 337, 304A IPC. At the time of accident, deceased

was working as Senior Co-operative Auditor and was getting salary of Rs. 9768/- per month. Alleging that the accident was due to rash and

negligent driving of the bus driver, the Claimants who are wife, sons and parents of the deceased have filed Claim Petition claiming compensation

of Rs. 25,00,000/-.

3. Before the Tribunal, Appellant-Insurance Company resisted the Claim Petition denying the manner of accident, age, income and status of the

deceased.

4. Before the Tribunal, 1st Claimant-Amutha examined herself as PW1. One Sundaram, eye-witness to the accident was examined as PW2. One

Ramadoss, who is then working as Auditing Officer in Director of Co-operative Audit, Nagapattinam was examined as PW3. Exs.P1 to P17 were

marked. The driver of the bus viz., Thangamani was examined as RW1. Ex.R1 was marked.

5. Upon consideration of oral and documentary evidence, Tribunal held that the accident occurred due to rash and negligent driving of the bus

driver. Tribunal had taken the monthly income of the deceased at Rs. 7500/-and calculated the annual income at Rs. 90,000/-. Deducting 1/3rd

towards personal expenses, Tribunal has taken the annual income at Rs. 60,000/-. Adopting multiplier ""15"", Tribunal calculated the loss of

dependency at Rs. 9,00,000/-. Tribunal has also held that at the time of accident, the deceased was aged 41 years and if he had been alive, he

would have got promotion and he would have served in the department for another 17 years. However, the Tribunal has taken the basic salary of

the deceased at Rs. 6600/-for ""future prospects"" and calculated the amount at Rs. 79,200/-p.a. Adopting multiplier ""17"", Tribunal calculated the

amount at Rs. 13,46,400/-and from out of Rs. 13,46,400/-, Tribunal awarded Rs. 3,50,000/-for ""future prospects"". Tribunal has also awarded

Rs. 50,000/-for ""medical expenses""; Rs. 30,000/-for ""loss of consortium""; Rs. 60,000/-for ""loss of love and affection""; Rs. 60,000/-for ""loss of

estate"", totalling Rs. 14,00,000/-.

6. It is not necessary for us to narrate entire facts in detail such as firstly, as to how the accident occurred and who was negligent and who is liable

to pay compensation. It is for the reason that these things are recorded infavour of Claimant and consequently, none of the findings are under

challenge, only quantum is under dispute.

7. Deceased-Sivanantham was selected in Group-IV examination conducted by the TNPSC and he was appointed as Junior Assistant in Co-

operative Auditing department. Later, he was promoted and at the time of accident, the deceased was working as Senior Co-operative

Accountant and was drawing salary of Rs. 9900/-per month. His basic salary was Rs. 6550/-; Special Pay Rs. 50/-; Dearness Allowance Rs.

2990/-; House Rent Allowance Rs. 280/-; Medical Allowance Rs. 50/-, totalling the gross salary of Rs. 9900/-. Total deduction is Rs. 3700/-and

his take home salary was Rs. 6200/-. Tribunal has taken the monthly salary of the deceased at Rs. 7500/-.

8. The consistent view taken by the Hon''ble Supreme Court is that the annual gross income at the time of death has to be taken into account for

determining the compensation. In New India Assurance Co. Ltd. Vs. Charlie and Another, , the Supreme Court held that the expression ""net

income"" would ordinarily mean gross income minus the statutory deductions like any tax, etc. In the said decision, the Hon''ble Supreme Court held

as under:

11. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants,

and to deduct there from such part of his income as the deceased was accustomed to spend upon himself, as regards both self maintenance and

pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should

be capitalised by multiplying it by a figure representing the proper number of a year''s purchase.

9. Holding that income is not confined to pay-packet only, in National Insurance Company Ltd. Vs. Indira Srivastava and Others, , the Hon''ble

Supreme Court held as under:

9. The term ""income"" has different connotations for different purposes. A court of law, having regard to the change in societal conditions must

consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensation on

monetary terms.

10. Section 168 of the Act uses the word ""just compensation"" which, in our opinion, should be assigned a broad meaning. We cannot, in

determining the issue involved in the matter, lost sight of the fact that the private sector companies in place of introducing a pension scheme take

recourse to payment of contributory provident fund, gratuity and other perks to attract the people who are efficient and hardworking. Different

offers made to an office by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some

facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of

computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required

to be determined....

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation

of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones

which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon

must be deducted.

Applying the ratio of the above decisions, we are of the considered view that Tribunal ought to have taken the gross salary of Rs. 9900/- as

monthly income of the deceased.

10. Taking the income at Rs. 7500/-and after deducting 1/3rd for personal expenses, Tribunal has calculated the monthly contribution to the family

at Rs. 5000/-and annual income at Rs. 60,000/-. Date of birth of the deceased was 12.04.1961. Date of accident was 03.06.2002. At the time of

accident, deceased was aged 41 years. As per II Schedule to M.V. Act, the Tribunal has adopted multiplier ""15"" and calculated the ""loss of

dependency"" at Rs. 9,00,000/-.

11. Instead of taking into account the ""future prospects"" and thereafter arriving at the monthly income, Tribunal has taken into account the ""future

prospects"". In second count, by taking the income at Rs. 6600/-, Tribunal has calculated the annual income at Rs. 79,200/-. For that income,

Tribunal adopted multiplier ""17"" and calculated the income at Rs. 13,46,000/-. From out of which, Tribunal has taken the income at Rs.

3,50,000/-. Adding sum of Rs. 9,00,000/-, Tribunal awarded Rs. 12,50,000/-for ""loss of dependency"". After awarding the amount for ""future

prospects"", Tribunal was not right in working on the second count and then adding to the ""loss of dependency"".

12. Since the approach adopted by the Tribunal is not correct, the compensation awarded is necessarily be re-worked. As pointed out earlier,

gross salary of the deceased was Rs. 9900/-per month. Taking the gross salary of the deceased at Rs. 9900/-and deducting 1/3rd towards

personal expenses, the monthly contribution to the family is calculated at Rs. 6600/-. As per II Schedule, the proper multiplier to be adopted is

''15"". Adopting multiplier ""15"", the loss of dependency/contribution is calculated at Rs. 11,88,000/-. If we add 25% as per the decision reported in

Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for ""future prospects"", the compensation to be awarded for ""loss of

dependency"" would be more than Rs. 12,50,000/- awarded by the Tribunal. Even though the approach adopted by the Tribunal in calculating the

loss of contribution at two counts, the total compensation of Rs. 12,50,000/- awarded for ""loss of dependency"" by the Tribunal is reasonable.

13. Insofar as the conventional damages, Tribunal has awarded Rs. 50,000/-for ""medical expenses""; Rs. 30,000/-for ""loss of consortium""; Rs.

60,000/-for ""loss of love and affection""; Rs. 60,000/-for ""loss of estate"", which in our considered view is very reasonable warranting no

interference. The Tribunal has awarded interest at 9; p.a. and the same is maintained.

14. In the result, the Civil Miscellaneous Appeal is dismissed. There is no order as to costs.

