

(2009) 07 MAD CK 0392

In the Madras High Court

Case No : C.M.A. (MD) . No. 56 of 2009 and M.P. (MD) . No. 1 of 2009

The Divisional Manager and The New India Assurance Co. Ltd. APPELLANT

Vs

Mr. T. Chelladurai, Smt. D. Maragadam and C. Nivitha RESPONDENT
Varadhalakshmi

Date of Decision : 14-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2010) ACJ 382 : (2010) 1 MLJ 1442

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : B. Vijay Karthikeyan, for the Appellant; K. Mahendran, for the Respondent

Judgement

N. Kirubakaran, J.—This appeal has been preferred by the Insurance Company against the award of a sum of Rs. 5,85,000/- as against the claim of Rs. 10,00,000/- by the respondents 1 to 3/claimants.

FACTUAL MATRIX

2. The case of the respondents/claimants before the Tribunal was that one Mr. Ragavendran, a final year B.E., (Automobile Engineering) student, met with an accident on 13.04.2006 and died on the spot due to multiple injuries.

3. According to the claimants, the deceased died when he was riding the motor cycle from the East to West in Melur-Trichy N.H. Main road and the fourth respondent driver drove the lorry in a rash and negligent manner from West to East and came to the wrong side and dashed against the motor cycle in the southern side of the road and then went off the road and dashed against the Tamarind tree in the southern side of the road and thereby the deceased C.Ragavendran thrown out from the motor cycle and died on the way to Hospital. According to the claimants, the deceased was a final year B.E., (Automobile Engineering) student and had a potential of earning more and though, a sum of

Rs. 6,850/- was calculated as compensation and they restricted their claim to Rs. 10,00,000/-.

4. The appellant/Insurance Company contested the claim petition by filing detailed counter statement and in paragraph 3 of the counter statement, it was pleaded that there was no negligence on the part of the driver of the fourth respondent. On the side of the claimant, three witnesses, namely, PW-1 to PW-3, were examined and the following documents were marked as follows:

Exhibit P-1 - Certified copy of F.I.R.

Exhibit P-2 - Certified copy of postmortem certificate

Exhibit P-3 - Certified copy of charge sheet

Exhibit P-4 - Certified copy of Judgement passed in C.C. No. 252 of 2006

Exhibit P-5 - Legal heirship certificate issued by Tahsildar, Melur

Exhibit P-6 - Authorisation letter issued by MAVMM Engineering College, Madurai.

Exhibit P-7 - Certificate issued by MAVMM Engineering College

Exhibit P-8 - Identity Card of the deceased Ragavendran

5. On the side of the appellant, no one was examined and no documents were marked. One Court witnesses, namely, CW-1 was examined and three documents were marked as X-1 to X-3 and the same is held as follows:

X-1 - Particulars of driving licence letter given by the Motor Vehicle Inspector Gr.I.

X-2 - Xerox copy extract of driving licence issued to the deceased compared with the original

X-3 - Xerox copy of the office copy of driving licence extracted from the licence register.

FINDINGS OF THE TRIBUNAL:

6. On appreciation of pleadings and evidence and the exhibits marked before it, the Tribunal found that the driver of the fourth respondent was responsible for the accident. The reasoning were elaborately dealt with by the Tribunal in paragraph 8 of the award. The Tribunal found that the deceased, Ragavendran was holding proper licence to ride the two wheeler based on Exhibit X-1 to X-3. For coming to the conclusion that the driver of the fourth respondent alone was responsible for the accident, the Tribunal relied upon the testimony of PW-1.

7. Apart from that, the Tribunal considered Exhibit P-1- F.I.R. and Exhibit P-3- Charge sheet, filed against the lorry driver and Exhibit P-4- the Judgement passed in C.C. No. 252 of 2006, in which, the driver of the fourth respondent was convicted for the offence of rash and negligent driving. Based on the evidence and the exhibit as stated above, the Tribunal found that the fourth respondent

driver was responsible for the accident.

AWARD OF TRIBUNAL:

8. The Tribunal awarded the compensation as follows:

Loss of Income : Rs. 5,40,000/-

Loss of Love and affection for 1st and 2nd Respondent : Rs. 30,000/-

Loss of Love and affection for the 3rd Respondent : Rs. 10,000/-

Funeral Expenses : Rs. 5,000/- ----- Rs. 5,85,000/- -----

The aforesaid award is being challenged before this Court in this appeal.

NEGLIGENCE:

9. There is no challenge by the appellant with regard to the negligence part. Even otherwise, the tribunal after appreciating the pleading, evidence on record correctly found that the driver of the insured vehicle alone was responsible for the accident and therefore the finding of the tribunal does not warrant any inference and the same is confirmed.

QUANTUM:

10. As far as the quantum is concerned, the counsel for the appellant attacked the award on three grounds:

1. That the deceased was an Engineering college student and non-earning member and the Tribunal wrongly fixed the monthly income at Rs. 4,500/- and hence the finding in this regard has to be interfered with.

2. The multiplier adopted by the Tribunal is contrary to the Judgement of the Hon'ble Supreme Court passed in Lakshmana Iyer case.

3. The Tribunal ought to have deducted 50% from the monthly income of the deceased towards personal expenses, as the deceased was a bachelor.

11. In support of the above submissions, he relied upon the Judgement of the Hon'ble Supreme Court passed in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . He also further relied upon another Judgement of the Hon'ble Supreme Court passed in Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, .

12. The learned Counsel further relied upon another Judgement of the Division Bench of this Court TATA AIG General Insurance Company Ltd. v. Balakrishna Ready and five Ors. reported in 2009 (1) TANMAC 205, in the said Judgment for the death of 19 years old Engineering student, this Court fixed at Rs. 3,000/- as his monthly income and the same amount should be fixed in this case also.

13. On the other hand, Mr. K. Mahendran, the learned Counsel for the respondents/claimants supported the award of the Tribunal contending that the

deceased was 22 years final year B.E., student and he was a bright student and having the potential of earning more and the future prospectus are more. He relied upon the judgement of the Division Bench of this Court passed in National Insurance Co. Ltd. v. T.A. Nicholas and two Ors. reported in 2009 (1) TN MAC 373. In that case, 22 years old Engineering student suffered greivous injuries in the right leg. For loss of earning capacity, the Tribunal fixed the notional income of Rs. 10,000/- per month and the same was affirmed by the Division Bench of this Court. Relying upon the said Judgement, in fact, the learned Counsel pleaded for enhancement.

14. Heard the learned Counsel for the appellant and the respondents.

INCOME:

15. It is not in dispute, the deceased was a final year student in Automobile Engineering. In fact, the said fact was proved by PW-3 and the letter given by the college Principal, Exhibit-P-6 and Exhibit P-7 and Exhibit P-8. To arrive at the income, the Tribunal gave its reasoning in paragraph 10 of the award and the same is extracted as follows:

The deceased Ragavendran being an Engineering college student at the time of accident he was not earning any income at that time. But as an Engineering college student he has got the latent ability, talent and potential to earn substantially in future as an Engineering student soon after the completion of his course. Though there is no concrete evidence to prove his monthly income and though he was not earning at the time of the accident. Considering that he was studying a professional course and as a would be engineer he would have great prospect to earn substantially, this Tribunal feels that it would be just and fair compensation if the monthly income of the deceased is fixed at Rs. 4,500/- p.m.

16. The aforesaid reasoning given by the Tribunal would show that the prospects of the deceased could be more in case of his completion of the Engineering course. However, the Tribunal did not take into the future prospects of the deceased in proper manner. The future prospects of an Engineer is more compared to other fields. The Engineers are more in demand in any part of the world. In this electronic era, the service of the Engineers are more required. In a number of Judgements, the Hon"ble Supreme Court as well as this Court, held that arriving at income, the future prospects of the deceased should be taken into consideration.

17. In Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , while arriving at loss of income, it was held by the Hon"ble Supreme Court that the future prospects has to be considered. In a recent Judgement passed in R.K. Malik and Another Vs. Kiran Pal and Others, , the Supreme Court while awarding compensation to the parents of the death of school children, held that:

It is well settled legal principles that in addition to awarding the compensation for pecuniary losses, the compensation must also be granted with regard to the

future prospects of the children. It is incumbent upon the Court to consider the said aspect while awarding the compensation.

18. In the aforesaid R.K. Malik's case, the Hon'ble Supreme Court took into consideration, the earlier decision passed by the Apex Court passed in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , Lata Wadhwa and Others Vs. State of Bihar and Others, and held that the future prospects of the deceased is one of the vital aspects to be considered by the Tribunal, while arriving at the loss of income. In the said case, for the death of school children, the Tribunal awarded Rs. 1,55,000/- to the dependents of the children between the age group of 10 to 15 years and Rs. 1,65,000/- between 15 to 18 years and Rs. 1,30,000/- to Rs. 1,31,000/- for the death of three children below 10 years. On appeal, the High Court enhanced the compensation in all cases by Rs. 75,000/-. On appeal by the claimants, the Hon'ble Supreme Court awarded a sum of Rs. 75,000/- more as additional compensation for future prospects of the children. In arriving at the decision, the Hon'ble Supreme Court in the said case, elaborately dealt with the cases already decided by the Hon'ble Supreme Court in detail.

19. As far as this case is considered to proper reasoning was given by the Tribunal to arrive at monthly income of the deceased at Rs. 4,500/-. Even in these days, a coolie is considered to be earning about Rs. 3,000/- to Rs. 5,000/-. The automobile Engineer's prospects is more when there are more automobile industries in this part of India.

20. The Judgement of the Division Bench of this Court passed in National Insurance Co. Ltd. v. T.A. Nicholas and two Ors. reported in 2009 (1) TN MAC 373, relied on by Mr. K. Mahendran, the learned Counsel for the claimant, spoke about the notional income at Rs. 10,000/- per month by the Tribunal, which was confirmed in appeal by this Court. In paragraph 8 of the said Judgement, it has been observed as follows:

We now come to the loss of his earning capacity or permanent disability. There is no evidence for this except the statement of the claimant, PW-1. But we do not think that it is an unreasonable figure, considering his qualification. Therefore, we will accept the figure as fixed by the Tribunal i.e., Rs. 10,000/- per month.

21. Based on the judgement and considering his position as student studying final year BE (Automobile Engineer), this Court could fix the monthly income of the deceased at Rs. 10,000/-. There was no contra evidence before the Tribunal to rebut the evidence adduced by the claimant. However, in the absence of any appeal by the claimant, such an exorbitant amount need not be fixed. Therefore, this Court fixes the monthly income of the deceased at Rs. 7,000/- per month. This exercise is being done by this Court, considering the facts and circumstances of the case by invoking Order 41 Rule 33 of C.P.C.

22. The case relied on by the learned Counsel for the appellant TATA AIG General

Insurance company Ltd. v. Balakrishna Reddy and Ors. reported in 2009 (1) TAN MAC 205 speaks about the death of Engineering college student, aged about 19 years, wherein, composite negligence on the part of the car driver as well as the deceased was arrived at and there was no reasoning given for fixing the monthly income at Rs. 3,000/- and it only confirmed the notional income adopted by the Tribunal. It is also understood from the Judgement, the no future prospects of the deceased was taken into consideration. The other Judgement relied upon by the learned Counsel for the appellant, Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, , wherein a business man died in the accident and his monthly income was fixed at Rs. 7,000/- by the Tribunal and the same was reduced to Rs. 4,000/- based upon the entries in the current bank account of the deceased.

23. The case on hand is relating to the death of non-earning member, namely, the final year B.E., (Automobile Engineering) student, whose future prospects are more compared to a business man. In any event, the prospects of an Engineering student cannot be compared with a business man especially when there are more automobile industries in India.

24. As stated above, the prospects of the Engineering student is more compared to any other field as found by this Court, the monthly income of the deceased student is fixed at Rs. 7,000/- per month.

DEDUCTION TOWARDS PERSONAL EXPENSES:

25. The learned Counsel for the appellant assailed the Tribunal's award for non-deduction of 50% of income towards personal expenses as the deceased was bachelor. The learned Counsel for the appellant strenuously argued relying upon the Judgement of the Hon'ble Supreme Court passed in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . In that case, the deceased was a scientist in Indian Council of Agricultural Research (ICAR) earning a monthly salary of Rs. 3,402/- and other benefits. While dealing with deduction, the Hon'ble Supreme Court gave the following guidelines for deduction towards personal and living expenses of the deceased. The paragraph No. 14 and 15 of the Judgement are extracted as follows:

14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3; one-fourth (1/4th) where the number of dependent family members is 4 to 6; and one-fifth (1/5th) where the number of the dependent family members exceed six.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally 50 per

cent is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant and 50 per cent would be treated as the personal and living expenses of the bachelor and 50 per cent as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

26. Relying upon the said Judgement, the learned Counsel for the appellant contended that the deceased in this case was a bachelor and 50% of the income should be deducted towards his personal and living expenses, whereas the Tribunal deducted only 1/3rd and hence contended that 50% should be deducted.

27. It has been held by a number of Judgements by the Hon''ble Supreme Court that 1/3rd amount only has to be deducted towards personal income whereas only in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and another Judgement in Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, , 50% of the income was ordered to be deducted for the death of the bachelor.

28. In a recent Supreme court Judgement passed in Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, , it has been held that deduction of 1/3rd towards personal expenses is the ordinary rule in India. Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, , the Hon''ble Supreme Court deducted only 1/3rd towards personal expenses from the income of the bachelor. Similar is the view taken by the Hon''ble Supreme Court in Bilkish Vs. United India Insurance Co. Ltd. and Another, , Bangalore Metropolitan Transport Corporation v. Sarojamma and Anr. reported in MG. Dir., Bangalore Metropolitan Tpt. Corp. Vs. Sarojamma and Another, .

29. The aforesaid ratio adopted by the Hon''ble Supreme Court in a number of cases would demonstrate the normal rule in India is deduction of 1/3rd amount from monthly income towards personal expenses. This case is not exceptional case where 50% has to be deducted. There is no statutory mandate in the Motor Vehicles Act that 50% should be deducted for the death of the bachelor. On the other hand, in some of the cases, it is noticed that no amount was deducted towards personal expenses. However, to strike a fine balance, 1/3rd deduction is the normal rule and the Tribunal rightly deducted 1/3rd towards personal

expenses and it does not warrant any interference by this Court.

MULTIPLIER:

30. The learned Counsel for the appellant submitted, taking into consideration of the age of the mother, namely 43 years, the Tribunal adopted multiplier of "15". The learned Counsel relying upon the Judgement of Lakshmana Iyer case, wherein it was held that "10" is the appropriate multiplier, submitted that same multiplier has to be adopted in this case.

31. A perusal of the second schedule appended to the Motor Vehicles Act, 1988 would reveal that for the age of 22 years, the proper multiplier is "17" and for the age of 43 years, the multiplier is "15". In this case, the deceased was aged about 22 years and the age of the mother was 43 years. The Tribunal rightly took the age of the mother 43 years and adopted multiplier of "15" as per the schedule and the same cannot be found fault with.

32. The Hon"ble Supreme Court in a number of Judgement held, the second schedule appended to the Motor Vehicles Act should not ordinarily be deviated from. In Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , the Hon"ble Supreme Court held that the second schedule should not ordinarily be deviated and in Rani Gupta and Others Vs. United India Insurance Co. Ltd. and Others, , it was held that the multiplier specified in the second schedule should be taken as guideline and in National Insurance Company Ltd. Vs. Smt. Saroj and Others, , it was held that appropriate multiplier from the second schedule has to be followed. In U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , the Hon"ble Supreme Court observed that the second schedule suffers from many defects and it is only guide not reckoner. However, as on date, the second schedule is appended to the Motor Vehicles Act and forms part of the statue and no amendment has been made or it has been deleted or set aside by any of the Courts.

33. As long as the second schedule remains with this Motor Vehicles Act, the same, as far as possible has to be followed, depending upon the facts and circumstances of the case.

34. In this case, no exceptional or extraordinary circumstances has been made out by the appellant to deviate from the second schedule. Hence, the second schedule was properly taken into consideration and suitable multiplier was adopted by the Tribunal. Hence, the multiplier adopted by the Tribunal is confirmed.

35. The learned Counsel for the appellant found fault with the Tribunal for awarding a sum of Rs. 15,000/- for each of the parents towards loss of love and affection and Rs. 10,000/- for the loss of love and affection of the sister stating that it is on the higher side. The facts of the case would reveal that the family had one male child who was miserably lost in the accident. To put it in nutshell, there is no male descending for the family. The time took away the child

mercilessly by the cruel accident and no amount of money could compensate the loss of the child especially only a male child. The same cannot be compensated any amount of money. Though, the amount given towards loss of love and affection, namely Rs. 40,000/- for three claimants, in the opinion of this Court is very, low the amount awarded by the Tribunal is confirmed by considering ""just compensation"" u/s 168 of the Motor Vehicles Act 1988.

TAX DEDUCTION:

36. Though the tribunal did not deduct any amount towards deduction while arriving at the compensation, the same is required to be considered by this Court. In National Insurance Company Ltd. Vs. Indira Srivastava and Others, , the Hon"ble Supreme Court held that the tax payable has to be deducted from the compensation. The same principle was reiterated in Oriental Insurance Co. Ltd. v. Ram Prasad Varma reported in 2009 (1) TNMAC 134. Based on the above Judgments, 10% deduction has to be made from the loss of income.

Rs. 8,400 X 10 ----- 100 = Rs. 84,000/-

8,40,000 - 84,000 = Rs. 7,56,000/-

Net loss of Income = Rs. 7,56,000/-

37. The Tribunal rightly awarded interest at the rate of 7.5% and the same is confirmed.

38. Hence, the award of the Tribunal is modified as follows:

Loss of Income

(7000 x 12 x 15 x 2/3rd) = Rs. 8,40,000 - Rs. 84,000 = Rs. 7,56,000

Net loss of Income = Rs. 7,56,000/-

Loss of love and affection = Rs. 40,000/-

Funeral Expenses = Rs. 5,000/- ----- Total = Rs. 8,01,000/-

39. The award of Rs. 5,85,000/- is enhanced to Rs. 8,01,000, which will bear interest at the rate of 7.5% per annum and the appeal is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.