
(2015) 07 MAD CK 0236

In the Madras High Court

Case No : C.M.A. (MD) No. 11 of 2015 and M.P. (MD) No. 1 of 2015

The General Manager, Tamil Nadu State Transport Corporation **APPELLANT**
Vs

N. Paramasivam **RESPONDENT**

Date of Decision : 29-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : (2015) 07 MAD CK 0236

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Advocate : D. Sivaraman, for the Appellant; K.P. Narayanakumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V.M. Velumani, J—Being aggrieved over the award passed by the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli, made in M.C.O.P. No. 1541 of 2013, dated 08.0.2014, the appellant/Tamil Nadu State Transport Corporation has filed this appeal.

2. The facts of the case are:

On 14.05.2011, the respondent's brother Mani was working in underground drainage system along with one Veerasamy. At that time, a bus belonging to the appellant Transport Corporation bearing Registration No. TN 45 N 2342 was driven by its driver in a rash and negligent manner and hit against the said Mani and Veerasamy. Due to that impact, the said Mani died. The respondent, brother of the deceased claimed a sum of Rs. 12 lakhs, as compensation for the death of his brother Mani.

3. The appellant Transport Corporation filed a counter affidavit denying the averments made by the respondent/Claimant. According to the appellant, bus belonging to the appellant Corporation was driven by its driver slowly in a careful manner. At that time, one un-identified car driven by its driver speedily, tried to

over-take the bus from the left-hand side. On seeing this, the driver of the bus belonging to the appellant Transport Corporation was turning the bus towards left side. On seeing the speedy car, the deceased Mani and the Veerasamy suddenly came to the left side of the road and dashed against the standing bus. Therefore, the appellant is not liable to pay compensation to the claimant. The appellant would state that the respondent is not depending upon the deceased and therefore, he is not entitled to any compensation for loss of income. If at all, the first respondent is dependent, he is only eligible to get award under the head of loss of love and affection.

4. Before the Tribunal, the respondent herein was examined as P.W.1 and one Saravanan and P. Sivashankar were examined as P.W.2 and P.W.3 and six documents were marked as Ex.P1 to Ex.P4 and EX.X1 and EX.X2 through P.W.3, an employee of the Transport Corporation of Trichy. The appellant examined the driver of the bus as R.W.1 and no document was marked by the appellant.

5. The Tribunal formulated necessary points for consideration. The Tribunal after considering the pleadings and evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of R.W.1, driver of the bus belonging to the appellant Transport Corporation. The Tribunal based on the evidence of the respondent herein held that the respondent is dependant of the deceased Mani and he is entitled to compensation. Applying multiplier as per the judgement reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , the Tribunal awarded a total compensation of Rs. 5,74,634/-.

6. Against the said order, the present Civil Miscellaneous Appeal has been filed.

7. The learned counsel for the appellant/Transport Corporation contended that:

(i) the accident did not take place due to the rash and negligent driving of its driver.

(ii) the accident took place only due to the negligence on the part of the deceased, as he came and dashed against the standing bus to avoid being hit by the speedy car

(iii) the respondent herein is not depending on the deceased and therefore, he is not entitled for any compensation for loss of income

(iv) the multiplier ""9"" applied by the Tribunal is not correct as the deceased was aged 59 years at the time of accident and the compensation awarded by the tribunal, is excessive and therefore, prayed for allowing the appeal.

8. In support of his contention, the learned counsel for the appellant/Transport Corporation relied on the following decisions:

1. The first decision reported in The Branch Manager, National Insurance Co. Ltd.

Vs. M. Arulmozhi and Others and the relevant portion is extracted hereunder:

""13. It is an admitted fact that the deceased was employed as Assistant Administrative Officer in Agricultural Department and was earning an income of Rs. 17,529/- per month, which is evidenced by Exs.P6 and P7-Salary certificates. From perusal of Ex.P6, it could be seen that a sum of Rs. 255/- is deducted compulsorily from the salary. Therefore, the deceased was getting a net monthly income of Rs. 17,274/-. The age of the deceased on the date of accident was 57 years and the multiplier to be adopted is 8, are not in dispute. From the materials available on record, it can be inferred that on the date of accident, the deceased was 57 years and 3 months old and had only 9 months of service before his retirement. Though normally 8 multiplier would be applied in computing the Loss of Dependency, in this case, the same cannot be done as the income of the deceased will not be the same from the date of retirement. Though the deceased had only 9 months of service, the Appellant has got no serious objection to round it off to one year. Accordingly, the period before retirement is taken as one year. Therefore, the Loss of Dependency before retirement of the deceased would be Rs. 17,274 x 12 x 1/4 x 1 = Rs. 1,55,466/-.

14. Now the dependency after the retirement of the deceased is to be considered. Had the deceased Murugesan been alive, after the age of superannuation, he would get only half of the salary as pension. Therefore it is an exceptional case where the split multiplier has to be adopted i.e., 1+7=8. As there is no scope for evidence about the prospect of future increment of the deceased and since the earning would be reduced to 50% after retirement, the Multiplier 8 as adopted by the Tribunal cannot be sustained. Hence, this Court feels that split multiplier can be adopted and as such, after superannuation, 7 multiplier would apply. Therefore, the Loss of Dependency from pensionary benefits would be Rs. 8,637/- x 12 x 1/4 x 7 = Rs. 5,44,131/-."

2. The second decision reported in The Divisional Manager, M/s. Royal Sundaram Alliance Ins. Co. Ltd., "Sundaram Towers", No. 45 and 46, Whites Road, Chennai-600014 Vs. Saraladevi and Others, (2013) 1 ACC 862 : (2012) 7 MLJ 410 and the relevant portion is extracted hereunder:

""10. On perusal of records, we find that deceased was 58 years old at the time of his death and he was left with only two years of service. When that being so, the Tribunal, while calculating the amount under the head "loss of income" ought to have split the multiplier into two parts and ought to have made the calculation i.e., from the date of accident till the date of retirement based on the actual salary and for the remaining years, by fixing 50% of the salary as notional loss of income. Instead of doing so, the Tribunal adopted the multiplier of 8 and made the calculation based on the actual salary, which had resulted in awarding an exorbitant sum of Rs. 36,58,248/- as total loss of dependency. Further we find that Tribunal while making calculation under the head of loss of dependency, has deducted 1/4th amount towards personal expenses of the deceased. Hence, we hold that the method of multiplier adopted by the Tribunal for arriving at the

compensation under ""loss of dependency"" is not correct and the same has to be modified by way of reassessment.""

9. Per contra, the learned counsel for the respondent contended that the accident took place only due to the rash and negligent driving by the driver of the appellant Transport Corporation. P.W.2 is the eye-witness to the occurrence, has stated that the accident took place due to the rash and negligent driving of the driver of the appellant Transport Corporation bus. In Ex.P1-First Information Report, it has been stated that the accident took place only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation. Therefore, the Tribunal considering the evidence of the respondent, P.W.2 and Ex.P1-FIR, came to the conclusion that the accident took place only due to the rash and negligent driving of the driver of the bus belonging to the appellant Transport Corporation. The Tribunal did not consider the evidence of first respondent, since he was an interested witness.

10. In the counter statement filed in the M.C.O.P, the appellant has stated that its driver has given a complaint to the Cantonment Police station, Trichy stating that the accident had occurred due to the unidentified car and nature of accident. But, the Police refused to register the said complaint. The appellant/Transport Corporation has not taken any step against the refusal of the Police to register their complaint. Therefore, there is no infirmity in the conclusion of the Tribunal that the accident took place only due to rash and negligent driving by the driver of the appellant Transport Corporation. The respondent herein has stated that he is suffering from ""Disc Prolapsed ""Peripheral Neuropathy"". He also gave evidence on oath to the effect that the deceased Mani was maintaining him and he is depending on the deceased for his livelihood. The appellant did not let in any contra evidence and did not prove that the respondent herein was gainfully employed and he is not a dependant of the deceased. Therefore, the conclusion of the Tribunal that the respondent herein is dependent of the deceased is correct.

11. The appellant has further contended in the Grounds of Appeal that the multiplier applied by the Tribunal is not correct. The Judgements relied on by counsel for the appellant reported in The Branch Manager, National Insurance Co. Ltd. Vs. M. Arulmozhi and Others squarely applies to the facts of the case. Similar to deceased in those cases, the deceased in the present case, was also aged 59 years. He would have retired on completion of age of 60. In the circumstances, following the above two judgements, I am inclined to accept the contention of the learned counsel for the respondent that the respondent is entitled to compensation by applying split multiplier method.

12. Therefore, the respondent is entitled to compensation for loss of income for one year on the full salary of the deceased and thereafter, only on 50% of the salary, as loss of income based on the pension, which the deceased would have received after his retirement. The deceased was aged 59 years and multiplier applicable as per the Judgement of the Honourable Apex Court in Smt. Sarla

Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , is ""9"" The first respondent is entitled to loss of income as follows:

The deceased was earning a sum of Rs. 10,271/- p.m. He died as bachelor. 50% from his salary is deducted towards his personal expenses. After deducting 50%, he would have contributed Rs. 5,135.50/- p.m. towards maintenance of respondent. After his retirement, he would have received Rs. 5135.50 and after deducting 50% his contribution, the monthly loss of income will be Rs. 2567/- which is rounded off to Rs. 2600/- Following the two judgements, the order of the Tribunal with respect to compensation for loss of income to the respondent, is modified as follows:

13. The learned counsel for the respondent contended that the compensation awarded by the Tribunal, is very meagre and compensation must be enhanced. He also contended that even though no appeal or cross-objection by the respondent, this Court by invoking the provisions under Order 41 Rule 33 of Civil Procedure Code, can enhance the compensation.

14. It is well-settled principle that the Courts cannot invoke the provisions of Order 41 Rule 33 C.P.C., because the same must be enhanced judicially in the circumstances of the case. The Tribunal has granted only Rs. 10,000/- for loss of love and affection. This is a very meagre sum and the same is enhanced to Rs.50,000/-. The compensation awarded under the head of transportation and funeral expenses is also very meagre and the same is enhanced to Rs. 20,000/-.

15. In view of the settled position of law, this Court modifies the award of the Tribunal and enhancing the compensation as stated above.

16. In the result, the Civil Miscellaneous Appeal is disposed of reducing the compensation from Rs. 5,74,634/- to Rs. 3,82,000/- with interest at 7.5% p.a. from the date of claim Petition till the date of realisation. The appellant/Transport Corporation is directed to deposit the amount now modified by this Court along with accrued interest and costs, less the amount already deposited if any, before the tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same by filing proper application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.