
(2000) 01 MAD CK 0030

In the Madras High Court

Case No : C.M.A. No's. 1425 to 1428 of 1995 and C.M.P. No. 16113 to 16115 of 1995 and C.M.P. No. 19162 to 19165 of 1999

The Managing Director, Annai Sathya Transport Corporation
Ltd., Dharmapuri

APPELLANT

Vs

Janardhanam and 7 others

RESPONDENT

Date of Decision : 03-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 166

Citation : (2002) ACJ 1133 : (2000) 2 CTC 272 : (2000) 2 LW 849

Hon'ble Judges : B. Akbar Basha Khadiri, J; A.S. Venkatachala Moorthy, J

Bench : Division Bench

Advocate : Mr. R. Swaminathan, for the Appellant; Mr. B. Ramamurthy, for the Respondent

Judgement

Judgement pronounced by A.S. Venkatachalamoorthy, J.—These Appeals have been filed against the common judgment in

M.C.O.P.Nos.805 of 1989, 806 of 1989, 807 of 1989 and 808 of 1989 by the Motor Accidents Claims Tribunal and District Judge, North

Arcot Ambedkar District Vellore. Hence, all these Appeals can be disposed of by the common judgment:

2. C.M.A.No.1425 of 1995 has been filed against the order in M.C.O.P.No.808 of 1989. The claimants in the said petition are the widow of the

deceased Shanmugham and their children.

3. C.M.A.No.1426 of 1995 has been filed against the order in M.C.O.P.No.805 of 1989. The claimant in the said petition is none else than the

wife of the deceased Shanmugham. Her claim for compensation is in respect of the injuries sustained by her in the accident.

4. C.M.A.No.1427 of 1995 has been filed against the order in M.C.O.P.No.806 of 1989, wherein the owner of the vehicle, viz., an Ambassador

Car bearing Registration No.TDI 3939 claimed compensation for the damage caused to the said car.

5. C.M.A.No.1428 of 1995 has been filed against the order in M.C.O. P.No. 807 of 1989. The wife of the driver of the ambassador car and

their children are the claimants in the said petition.

6. The case of the petitioners in the M.C.O.Ps., is that the family of Shanmugham after attending the funeral of the elder brother (of Shanmugham)

at Vellore, returning to Coimbatore in the ambassador car bearing Registration No.TDI 3939. The said car was driven by the driver by name

A.Davados and it was proceeding from East to West When the said car was nearing Chinnatheri Bridge, Vettavalam, Vellore, the bus bearing

Registration No.TCB 8068, belonging to the appellant Corporation, which was coming in the opposite direction, and which was driven by the first

respondent in the M.C.O.Ps in a rash and negligent manner without adhering to the traffic rules dashed against the car and smashed it. According

to the appellant in the said accident the said Shanmugham succumbed to the injuries sustained by him. The petitioner in M.C.O.P.No.808 of 1989

and also the driver of the car, viz., Devados also sustained injuries. It is the further case of the petitioners in the M.C.O.Ps. the accident could

have been avoided had the driver of the bus driven the bus, carefully adhering to the traffic rules. The specific case of the petitioners is that the

accident occurred only because of the rash and negligent driving of the driver, who drove the bus bearing Registration No.TCB 8068.

7. The further case of the petitioner in M.C.O.P.No.808 of 1989 is that the deceased Shanmugham was not only one of the partners in three

companies, viz., M/s. Guard Curing Company, M/s.Textcart Engineering Company and M/s. Devaki Textiles Company earning an income not less

than Rs.4000 per month but also a hard worker. In view of the sudden demise of Shanmugham, who was the only bread winner of the family, the

first petitioner in M.C.O.P.No.808 of 1989 has lost her husband and petitioners 2 to 7 in the said M.C.O.P. have lost their father. The further plea

of the petitioner in M.C.O.P.No.808 of 1989 is that in the family of the deceased Shanmugham the life expectancy is 75 years. The petitioners in

M.C.O.P.No.808 of 1989 though made a claim of Rs.17,00,800 restricted it to only Rs.12,00,000.

8. Annai Sathiya Transport Corporation, the appellant herein resisted the claim, contending that the accident took place only in view of the rash

and negligent driving of the driver of the said ambassador car viz., Devadoss. It has been specifically contended that the driver of the bus, bearing

Registration No.TCB 8068 drove the bus strictly adhering to the traffic rules. That being so, the claimants in M.C.O.P.No.808 of 1989 would not

be entitled to any compensation. There is a specific contention that even assuming that the claimants would be entitled for compensation

considering the age of the deceased and his monthly income, their claim of Rs.12 lakhs is very much on the higher side and thoroughly unjustifiable.

The appellant viz., Annai Sathiya Transport Corporation prayed for the dismissal of the said M.C.O.P.

9. The claimant in M.C.O.P.No.805 of 1989 is the wife of the deceased Shanmugham. According to the petitioner therein, the said accident

occurred solely due to the negligence and rash driving of the bus on account of which the petitioner sustained injuries on the right side of her face,

nose, chest and right eye brow. She also underwent operation in her right side eye. She claimed compensation to the tune of Rs.1 lakh.

10. The claimant in M.C.O.P.No.806 of 1989 is the company by name M/s. Cart Gear Engineering Company and the same is filed by one of its

partners viz., V.K.Devarajan. The petitioner/claimant has claimed a compensation of Rs.1,09,388 being the expenses incurred by the said company

for repairing the damaged ambassador car, which belongs to the said company.

11. The claimants/petitioners in M.C.O.P.No.808 of 1989 are none else than the wife and children of the deceased Devadoss, who at the relevant

point of time was the driver of the ambassador car bearing Registration No.TDI 3939. Originally, the said petition was filed by the said Devadoss,

viz., the driver of the Ambassador car. During the pendency of the said M.C.O.P., the said Devadoss died and his wife and children were brought

on record. The claim of compensation that has been made by them in the said petition is Rs.2,60,000.

12. With regard to M.C.O.P.Nos.805, 806 and 808 of 1989, the appellant herein viz., Annai Sathiya Transport Corporation Limited, Dharmapuri

resisted the claim reiterating the same stand taken by it in M.C.O.P.No.808 of 1989. To put it in brief, the case of the Corporation is that the

accident took place due to the rash and negligent driving of the driver of the ambassador car by name Devadoss and that it is not liable to pay any compensation.

13. Both parties let in both oral and documentary evidence before the Motor Accidents Tribunal, Vellore.

14. Learned Principal District Judge, Vellore, after considering both the oral and documentary evidence came to the conclusion that the accident

took place only due to the rash and negligent driving of the driver of the bus. That being so, Annai Sathya Transport Corporation Limited,

Dharmapuri, viz., the appellant herein in all these appeals is liable to pay adequate compensation to the claimants.

15. With regard to the quantum of compensation, learned Principal District Judge came to the conclusion that the claimants/petitioners in

M.C.O.P.No.808 of 1989, would be entitled for a total compensation under the various heads to the tune of Rs.8,28,000.

16. With regard to the claim in M.C.O.P.No.805 of 1989 by the wife of the deceased Shanmugham the Tribunal fixed the compensation at

Rs.61,000 for the injuries sustained by her in the said accident.

17. As far as the claim of the company viz., M/s.Textcort Engineering Company for compensation with regard to the expenses incurred for

repairing the car, the Tribunal awarded a sum of Rs.19,900.

18. With regard to the claim in M.C.O.P.No.807 of 1989 made by the driver of the car, viz., Devadoss, the Tribunal fixed the compensation

under the various heads totalling in all Rs.1,79,000.

19. As against these awards of the Motor Accidents Claims Tribunal in the said M.C.O.Ps. these appeals have been filed.

20. Learned counsel appearing for the appellant herein viz., Annai Sathya Transport Corporation has made two fold submissions before this Court.

The first submission that has been made by him is that the accident took place only due to the rash and negligent driving on the part of the driver of

the ambassador car and not due to the rash and negligent driving of the driver of the bus, belonging to the Corporation. Learned counsel appearing

for the appellant also contended that even assuming for the sake of argument

that there was negligence on the part of the driver who drove the bus in question, the driver of the Ambassador Car drove the vehicle bearing Registration No.TDI 3939 also was responsible for the accident in the sense that only due to the rash and negligent driving of both the vehicles viz., car and the bus, the accident took place. When the drivers of both the vehicles were negligent, the Tribunal is not justified in awarding the compensation. The second contention raised by the learned counsel for the appellant is that even assuming that the accident took place only because of the rash and negligent driving of the driver of the bus belonging, to the said Corporation, the Tribunal has erred in fixing such excess compensation in all the four cases.

21. Let us first consider the question of negligence. There is no dispute that the accident took place on 18.1.1989 at about 2.45 p.m. Equally, there is no dispute that the vehicles in question are the ambassador car bearing registration No.TDI 3939 and the bus belonging to appellant corporation. At the relevant point of time, the car was driven by the driver viz., Devadoss and it was proceeding from East to West. The fact that the accident took place in Chinnatheri Bridge also is not in dispute. The wife of the deceased Shanmugham by name S. Indrani got herself examined as P.W.I in this case. The said witness has deposed before Court that when the Ambassador Car, in which her husband and her children were travelling driven by one Devadoss, entered the Chinnatheri Bridge, the bus in question which was coming from the opposite direction at a very high speed dashed against the ambassador car. She has also deposed that the bridge is wide enough, for two vehicles to pass at a time. She has further stated that the accident took place only because of the carelessness and negligence on the part of the driver of the bus. There is no suggestion to her in the cross-examination that in the course of avoiding a hit against the children who were crossing the road, the driver of the Ambassador Car suddenly turned the vehicle to the right hand side, resulting in a dash against the bus belonging to the appellant Corporation. We may also point out that there is no suggestion in the cross - examination that the bus was proceeding strictly adhering to the traffic rules, keeping to the extreme left and that the ambassador car driven by the driver by name Devadoss suddenly turned it to the right hand side thereby coming to the

extreme right hand side, resulting in the accident. She has also deposed that there was a head on collision and in that virtually, the Ambassador

Car came underneath the number of the bus.

22. The driver of the bus was examined as RW1 in this case. He has deposed that when he almost crossed 3/4th of the Chinnatheri Bridge, two

children crossed the road from North to South and he immediately applied the brake and tried to bring the vehicle to a complete halt, he has also

stated that at that time the ambassador car came from the opposite direction at a very high speed it dashed against the bus. He has further stated

that he was not responsible for the accident and only because of the rash and negligent driving of the ambassador car the accident took place. In

the cross-examination the said witness has deposed that the road where the accident took place is not wider. It may also be pointed out that

nowhere the said witness has stated in the cross-examination that he was driving the bus strictly adhering to the traffic rules viz., keeping to the

extreme left and that being so, the Car which came in the wrong direction hit against the stationed bus in question.

23. We are inclined to accept the testimony of PW1 for the reasons stated above.

24. We have also perused the photographs filed in these Appeals viz., Ex.P34 series which would give an idea as to the nature of the damage

caused to the Ambassador Car. Virtually, the first half portion of the ambassador car viz., the engine and the body of the vehicle completely got

smashed. There is no material available in this case to show that the actual extent of the damage caused to the in question. This factor coupled with

the fact that the driver of the ambassador car did not drive the Ambassador Car in a rash and negligent manner would go to show that it was only

the driver of the bus, who drove the vehicle in a rash and negligent manner which resulted in the accident. Apart from that we also find from the

evidence of RW1 that after the accident the driver of the bus ran away from the spot.

25. The next question that arises for consideration in these appeals is with regard to the quantum of fixed in each case. In C.M.A.No.1425 of

1995 filed against M.C.O.P.No.808 of 1989, the widow of Shanmugham and her children are the claimants. At the time of accident the deceased

Shanmugham was aged about 47 years. He was also one of the partners in three

companies. This fact has not been disputed by the appellant

Transport Corporation. In the petition, it is claimed by the claimants that the said Shanmugham was earning not less than Rs.4,000 per month. In

her evidence P.W.I has clearly deposed that the said deceased Shanmugham used to give the entire amount viz., Rs.4,000 for the family. It may

also to be pointed out at this stage that with regard to this there is no cross-examination on behalf of the transport Corporation. The tribunal

without assigning any reason whatsoever has fixed the monthly income of the deceased Shanmugham at Rs.3,000. Inasmuch as the Corporation

has not challenged this categorical statement made by P.W. 1 before Court that her husband at the relevant point of time, was earning a sum of

Rs.4,000 per month, we are inclined to come to the conclusion that at the relevant point of time, the deceased Shanmugham was getting a sum of

Rs.4,000 per month and he was giving the entire income for the family expenses.

26. The next question that arises for consideration is with regard to the extent of dependency by the claimants. The deceased Shanmugham and his

wife by name Indrani have six daughters of whom the first three daughters attained majority and in fact they already got married at the relevant

point of time. The other three daughters at that time were aged about 18 years, 16 years and 14 years respectively. The deceased also left his

mother, who was at the relevant point of time was aged about 80 years. But she was not impleaded as one of the claimants in the said original

petition. The widow of the deceased Shanmugham at the relevant point of time was aged about 40 years. Once this Court comes to the conclusion

that the deceased was contributing a sum of Rs.4000 every month to his family because of the sudden demise of Shanmugham, the lawful claimants

in his family are entitled to get compensation With regard to the extent of loss sustained by them, the principles laid down by the Apex Court in

U.P.State Road Transport Corporation and others v. Trilok Chandra & others, 1996 (2) L.W. 226 will have to be applied to proceed with the

calculation adopting the unit method. As per the said ruling, on adult member in the family must be given two units and a minor in the family must

given one unit. In the present case, the adult member are the deceased Shanmugham, his wife and his old mother and the fourth daughter, who was

aged about 18 years. Each of them must be given two units. The other daughters

who were left at that point of time were aged about 16 years and 14 years old. Each of them has to be given one unit, thus totalling in all ten units. Normally, one fifth of the said amount has to be deducted. But, in this case, there is a specific, clear and uncontraverted statement by P.W.1 that the deceased Shanmugham was earning a sum of Rs. 4,000 per month and he was also giving the entire sum to his family. In such a situation, we are inclined to proceed on the basis that the deceased Shanmugham might have contributed a sum of about Rs.3,300 every month to the dependents. If one calculates the income of the deceased on that basis, his yearly contribution comes to roughly 40,000. The Tribunal has held that the normal expectancy in the family of the deceased is 70 years. The deceased was aged about 47 years at the relevant point of time. The Apex Court has pointed out that the maximum multiplier can be 18 and that while deciding what is the multiplier to be adopted, the Court has to take into consideration not only the age but also the age of the dependents. As already mentioned in this case, the wife of the deceased was 40 years old and his three daughters were aged 18 years, 16 years and 14 years respectively. The mother of the deceased at the relevant time was aged about 80 years, which would go to establish that the longevity of life in the family of the deceased is on the higher side.

27. We also take into consideration that the deceased was an active businessman, and there is a possibility that he would have been in the business line till his death. In other words, it is not as if that the deceased would have retired from the profession at a particular age. Taking into consideration all these factors, this Court has to strike a balance and fix the multiplier. We consider that the multiplier that has to be adopted and applied in this case is 16 and not 23. On that basis we arrive at a figure of Rs. 6, 72,000 being the loss of dependency.

28. The petitioners in the M.C.O.P. even though have not claimed any amount towards funeral expenses this Court taking into consideration the status of the family, can award a sum of Rs. 5,000 for the funeral expenses., A sum of Rs. 1,000 has to be awarded towards transport charges. As already pointed out the deceased left with his age old mother, his wife and six daughters. Ofcourse all the three daughters at the time of filing of the petition got married and settled in life. Towards loss of love and affection, this

Court is inclined to award a total sum of Rs.30,000. Under the other headings, this Court considers that some amount has to be awarded as a loss of consortium and loss to estate. This Court is inclined to award a sum of RS. 25,000 under each heading. Thus, in all this Court is fixing the compensation in M.C.O.P.No.808 of 1989 challenged in C.M.A.No. 1425 of 1995 at Rs. 7,23,000 as the loss sustained, as against what has been awarded by the Tribunal viz., Rs.8,23,000.

29. With regard to the claim by the wife of the deceased Shanmugham for the injuries sustained by her viz., loss of eye, the Tribunal has awarded Rs.61,000. At the relevant point of time, the injured was only 40 years and she has six daughters. Considering the fact that she was left with only one eye for the rest of the period of her life viz., for atleast twenty to thirty years, we do not consider that the said amount of Rs.61,000 as awarded by the Tribunal is on the higher side. In this view of the matter, we confirm the compensation fixed by the Tribunal in respect of the injuries sustained by the claimant in M.C.O.P.No.805 of 1989.

30. With regard to the compensation payable towards the expenses incurred for repairing the ambassador car in question, we find that the reasons given by the Tribunal are totally acceptable. We do not find any reason to reduce the compensation fixed in M.C.O.P.No.806 of 1989 viz., at Rs.19,900.

31. In M.C.O.P.No.807 of 1989 filed by the deceased himself he claimed compensation for the injuries sustained by him and subsequently, the said driver viz., Devadoss died. His wife and children were brought on record. The said Devadoss left behind him his wife aged about 45 years and two daughters and two sons. Ofcourse the daughters were married even on the relevant date. At that time, the two sons who were left behind were aged about 24 years and 20 years respectively. In his evidence, P.W.3 has stated that the deceased Devadoss was earning Rs.500 per month at that time and he was also paid Rs.15 every day towards batta and thus his monthly income would be about Rs.1,000. This part of the testimony has not been disputed in the cross-examination. That being so, this Court has to proceed on the basis that the deceased Devadoss was earning a sum of Rs.1,000 per month at the relevant time. We can also take into consideration the fact the monthly salary of the deceased

Devadoss would have increased and on that basis, we are inclined to take his average income as Rs.1,200 to 1,300 per month. Out of this sum he

would have contributed atleast a sum of Rs.700 per month to his family. The total contribution per year in such case would come to Rs.8,400 and

odd. Unlike the other case, in this case, there is nothing to show that the longevity of life in the family of the deceased is on the higher side. In fact,

the elder brother of the deceased was aged about 85 years. We are inclined to adopt the multiplier of 16 as in the other case and on that basis, we

arrive at a figure of Rs.1,30,000. Apart from this amount, we are also inclined to award a sum of Rs.15,000 towards loss of consortium and

Rs.15,000 towards loss to the estate and a sum of Rs.20,000 towards loss of affection, in all totalling Rs.1,80,000. We do not propose to

interfere with the amount of compensation fixed by the Tribunal.

32. In the result, we hold that the Tribunal is justified in fixing the compensation at Rs.1,79,000.

33. At this stage, learned counsel appearing for the respondent/claimants would submit that the Tribunal has awarded interest only from the date of

the Judgment and not from the date of the petition. The learned counsel for the respondents/claimants would submit that even though no Appeal

has been filed by the respondents/claimants or no cross objections have been filed by them, this Court has discretionary power by virtue of Order

41, Rule 33 of CPC and also in view of the rulings of the Supreme Court in Mahant Dhangir and Another Vs. Madan Mohan and Others, to grant

the proper relief. Ofcourse, the Apex Court has pointed out in clear and categorical terms and the power conferred under Order 41, Rule 33 on

the appellate Court is discretionary, and then it must be used in proper case using the judicial discretion to render justice. The Apex Court in

United India Insurance Co. Ltd. Vs. Narendra Pandurang Kadam and Others, has clearly laid down that the rate of interest must be awarded from

the date of the petition and not from the date of the Judgment.

34. This Court considers that this is a fit case, where the discretionary power under Order 41, Rule 33 of CPC has to be exercised by this Court

in favour of the claimants/respondents. This Court has to see that the claimants are awarded just compensation. In this view of the matter, we hold

that even though the petitioner/petitioners in any of the petitions has/have not

filed any appeal or cross objection in the interest of justice it has to be held that he/she/they is/are entitled to claim interest at 12 per cent per annum on the amount awarded in the respective cases from the date of the respective petitions.

35. In the result, C.M.A.No.1425 of 1995 filed by the appellant is partly allowed. C.M.A.Nos.1426 and 1427 and 1428 of 1995 filed by the

appellant Corporation are dismissed. The claimants/respondents would be entitled to claim interest on the amount of compensation at the rate of

12 per cent per annum from the date of filing of the respective petitions viz., M.C.O.P.Nos.805 to 809 of 1989 on the file of the Motor Accidents

Claims Tribunal, Vellore. The award of compensation in the above M.C.O.Ps. shall stand modified/allowed to the extent indicated above.