

(2012) 06 MAD CK 0057

In the Madras High Court

Case No : C.M.A. No. 2870 of 2005

The Managing Director, Tamil Nadu State Transport
Corporation Ltd. Div. I, Coimbatore

APPELLANT

Vs

Chinnammal, Maheswari, Baby (Minor, rep. by mother and
guardian 2nd respondent) and Krishnan (R4 given up)

RESPONDENT

Date of Decision : 06-06-2012

Acts Referred:

Evidence Act, 1872 — Section 114(g)

Citation : (2012) 06 MAD CK 0057

Hon'ble Judges : R. Karupiah, J

Bench : Single Bench

Advocate : A. Babu, for the Appellant; P.P. Shanmugasundaram R4-Given up, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice R. Karupiah

1. The appellant/2nd respondent has filed this civil miscellaneous appeal challenging the award and decree dated 7.1.2004 made in MACTOP.

No. 1369 of 1999 on the file of Motor Accidents Claims Tribunal (Addl. District Court, Fast Track Court No. V), Coimbatore at Tiruppur. The

respondents 1 to 3/petitioners have filed the claim petition for compensation of Rs. 5,00,000/- for the death of one Subramani. According to them,

on 1.9.1999 at 11.30 am the deceased was proceeding in his TVS 50 moped bearing Registration No. 38 Y 1475 with a load of "pori" to go for

Seyoor in Avinashi Main Road near A.Kurumbapalayam bus stop towards north in the extreme left side of the road in a careful manner by

following the traffic rules. At that time, the appellant/2nd respondent in OP bus bearing Registration No. TN 37 N 0635 came in the opposite

direction in a rash and negligent manner and hit against the abovesaid TVS 50 moped, resulting which, the deceased was crushed by the wheels of

the bus and got seriously injured and died on the spot and the accident occurred only due to the negligence of 4th respondent/1st respondent in

OP. They further stated that at the time of accident, the deceased was 33 years and he was doing "pori" business and also a milk vendor and was

earning Rs. 10,000/- per month and the claimants are mother, wife and daughter of the deceased and therefore they claimed compensation of Rs.

5,00,000/- from the respondents, who are driver and owner of the bus.

2. The first respondent in the main O.P remained exparte before the Tribunal. The appellant/2nd respondent has contended that on 1.9.1999, the

driver of the bus bearing Regn. No. TN 37 N 0635 was proceeding from Nambiyur to Avinashi in its 11.10 am trip slowly and cautiously keeping

to the left. While the bus was nearing Kurumbapalayam pirivu at 11.40 am, the TVS 50 moped bearing Regn. No. TN-38-Y-1475 came in a high

speed and dashed against the bus and the rider of the TVS 50 moped fell down and sustained injuries. It is further contended that the deceased

was fully drunk at the time of accident and therefore the accident was occurred only due to the negligence of the deceased and not due to the

negligence of the driver of the second respondent bus and also denied the age, income, relationship etc stated in the claim petition.

3. Before the Tribunal, on the side of the claimants, have examined three witnesses as PWs.1 to 3 and marked three documents as Exs.P1 to P3.

On the side of the respondents, have examined one Ponnusamy as RW.1 and no document was marked.

4. Considering the abovesaid oral and documentary evidence, the Tribunal has discussed in detail and held that the accident was occurred only due

to rash and negligent driving of the 4th respondent/first respondent in O.P, who is the driver of the appellant/second respondent bus and therefore

the appellant/2nd respondent is liable to pay compensation and awarded compensation as under:

Loss of income Rs. 6,80,000.00

Loss of love and affection to the first Rs. 5,000.00

petitioner

Loss of consortium to the second petitioner Rs. 15,000.00

Loss of love and affection to the third Rs. 10,000.00

petitioner

Funeral expenses Rs. 2,000.00

Rs. 7,12,000.00

5. Even though in the appeal memorandum, appellant herein denied the finding regarding negligence and liability, at the time of argument, learned

counsel for appellant has not seriously objected the abovesaid finding but the appellant has challenged the quantum of compensation alone.

6. With regard to negligent aspects, a perusal of oral evidence of PW.2, eye witness to the occurrence and also Ex.P1-copy of FIR reveal that the

accident was occurred only due to rash and negligent driving of the driver of the 2nd respondent/appellant bus. In contra, the driver of the bus was

not examined. No sufficient reason has been given for non-examination of driver of the bus. On the side of the appellant, only conductor of the bus

alone examined as RW.1. As rightly discussed by the Tribunal, RW.1 has deposed contrary to the averments made in the counter and therefore

the abovesaid oral evidence is unbelievable. From the above circumstances, the Tribunal has correctly discussed about Section 114(g) of the

Indian Evidence Act and U.P. State Road Transport Corporation Vs. Raj Kumar and Others, and held that the accident was occurred only due to

the rash and negligent driving of the driver of the 2nd respondent bus and the 2nd respondent is liable to pay compensation.

7. With regard to the quantum of compensation, the Tribunal has fixed the age of the deceased as 33 considering Ex.P3-post mortem certificate.

The learned counsel for the appellant has not seriously objected to the above fact.

8. The learned counsel for the appellant has mainly contended that the Tribunal has fixed the income of the deceased as Rs. 5000/- per month only

on the basis of oral evidence and the accident was occurred in the year 1999 and therefore the monthly income of the deceased fixed at Rs.

5000/- is exorbitant.

9. The learned counsel for the respondents 1 to 3/claimants has submitted that as per the decision of this Court in Pandian Roadways Corporation

Ltd. Vs. Sankarammal and Others, relied on by the Tribunal, even without documentary evidence income may be fixed by the Tribunal and

accordingly the Tribunal has fixed the monthly income of the deceased as Rs. 3000/- p.m, but the Tribunal has further held that considering the future prospects, the income of the deceased was taken as Rs. 5000/- p.m. The learned counsel for the appellant has contended that the Tribunal has wrongly fixed the abovesaid income as Rs. 5000/- p.m instead of Rs. 3000/- p.m and therefore the monthly income of the deceased has to be taken only as Rs. 3000/- p.m.

10. With regard to future prospects are concerned, the Honourable Supreme Court in the decision reported in Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another, has held as under:

24. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words ""actual salary"" should be read as ""actual salary less tax""). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

11. From the abovesaid facts and circumstances, since the deceased was not a Government employee, this Court is of the view that the monthly income of the deceased is to be fixed as Rs. 3000/- p.m. and the future prospects cannot be taken as per the above said decision of the Honourable Supreme Court and therefore the monthly income of the deceased is fixed as Rs. 3000/- p.m.

12. Considering the age of the deceased as 33, as per the decision of the Honourable Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier i.e. 17, taken by the Tribunal, is correct.

13. With regard to other aspects, the Tribunal has awarded Rs. 5,000/- for loss of love and affection to the first petitioner, which is considered as low and therefore the abovesaid amount is increased as Rs. 10,000/-. With regard to loss of consortium to the second petitioner, the Tribunal has awarded Rs. 15,000/-, which is a reasonable amount and hence need not be reduced. For loss of love and affection to the third petitioner, the Tribunal has awarded Rs. 10,000/-, which is also a reasonable amount and therefore need not be reduced. With regard to funeral expenses, the Tribunal has awarded Rs. 2,000/-, which is considered as very low and it has to be increased as Rs. 10,000/-.

14. As already stated, the monthly income of the deceased is fixed at Rs. 3000/- p.m and since the claimants are 3 in number, one third i.e. Rs.

1000/- is deducted for personal living expenses of the deceased and hence the loss of income would come as Rs. $2000 \times 12 \times 17 =$ Rs.

4,08,000/-.

15. From the abovesaid discussion, the award passed by the Tribunal is modified and reduced as under:

Loss of income ($2000 \times 12 \times 17$) Rs. 4,08,000.0

Loss of love and affection to the first petitioner Rs. 10,000.00

Loss of consortium to the second petitioner Rs. 15,000.00

Loss of love and affection to the third petitioner Rs. 10,000.00

Funeral expenses Rs. 10,000.00

Rs. 4,53,000.00

16. In the result, the appeal is allowed in part and the compensation awarded by the Tribunal is reduced from Rs. 7,12,000/- to Rs. 4,53,000/-

with interest at 9% per annum from the date of claim petition till date of realisation. Out of the abovesaid amount, the first petitioner is entitled to

20%, 2nd petitioner is entitled to Rs. 50% and 3rd petitioner is entitled to 30% of the award with proportionate interest. It is reported that entire

amount awarded by Tribunal has been already deposited by appellant. Hence the Respondents 1 and 2/petitioners 1 and 2 are permitted to

withdraw the abovesaid amount less any amount received already on necessary application before the Tribunal. With regard to the share of minor

3rd respondent/3rd petitioner, the Tribunal is directed to deposit the amount of

the minor in any one of the nationalised banks till she attain majority
and the second respondent/second petitioner is entitled to receive the quarterly
interest from the bank for the maintenance of the minor 3rd
respondent/3rd petitioner. No costs.