**(2013) 06 MAD CK 0151**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Appeal No. 1357 of 2010 and Cross Objection No. 52 of 2013

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Chandra and Others <BR>Chandra, Kanagesan, K. Elamathi and K. Komathi Vs The Branch Manager, S. Rathna, Suhantha and The New India Assurance Co. Ltd. RESPONDENT

**Date of Decision :** 12-06-2013

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, 168
Penal Code, 1860 (IPC) — Section 279, 304(A), 338

**Citation :** (2013) 3 ACC 622 : (2014) ACJ 1293 : (2013) 2 AnWR 992 : (2013) 5 MLJ 257

**Hon'ble Judges :** T.S. Sivagnanam, J;R. Banumathi, J

**Bench :** Division Bench

**Advocate :** N. Vijayaraghavan, for the Appellant; M. Selvam for Respondents 1 to 4 in CMA and Cross Obj. No. 52 of 2013 and Mr. N. Vijayaraghavan 1st Respondent in Cross. Objection No. 52 of 2013, for the Respondent

## Judgement

R. Banumathi, J.—Being aggrieved by the award of compensation of Rs. 25,76,336/- for the death of deceased Sivakumar in the road traffic accident, Appellant Insurance Company has filed C.M.A. No. 1357 of 2010. Being dissatisfied with the quantum of compensation, dependents of deceased Sivakumar have filed Cross Objection No. 52/2013 claiming enhancement of compensation. Since both the Appeal and Cross Objection arise out of the same order and the points for determination are one and the same, both the Appeal and Cross Objection were heard together and shall stand disposed of by this Common Judgment. Brief facts are that on 25.10.2006, deceased Sivakumar and his three friends were returning in Maruthi Esteem car bearing registration No. TN-09-M 2706 from Pondicherry to Chennai after attending betrothal function at Pondicherry. When the car was nearing Sambuvelli street, Marakkanam at about 4.00 A.M., the bus bearing registration No. PY-01-Z 9697 owned by the 5th Respondent proceeding in the same direction stopped all of a sudden and the car rammed into the bus. Due to the impact, the driver of the car, Sivakumar and the other occupants have sustained grievous injuries and the driver and two other occupants died on the spot. Immediately after the accident, Sivakumar was taken to Pondicherry Institute of Medical Science Hospital, Kalapet where he succumbed to the injuries. Regarding the accident, a criminal case was registered against the bus driver in Crime No. 442 of 2006 under Sections 279, 338 and 304(A) I.P.C. of Marakkanam Police Station. At the time of accident, deceased Sivakumar was working as Software Engineer in Satyam Computers Service Limited, Chennai and earning Rs. 3,44,332/- per annum. Alleging that the accident was due to rash and negligent act of the bus driver in suddenly stopping the bus and that they have lost their son and his support, the Claimants who are parents and sisters have filed the Claim Petition claiming compensation of Rs. 60,00,000/-.

2. Resisting the Claim Petition, Appellant-Insurance Company filed counter stating that the car bearing No. TN-09 M 2706 was driven in a rash and negligent manner which resulted collision on the bus and that the Respondents 6 and 7, who are owner and insurer of the car alone is liable to pay compensation. It was averred that the driver of the car had no valid and effective driving licence. Appellant-Insurance Company also denied the age, occupation, monthly income of the deceased and that the compensation claimed is excessive.

3. Before the Tribunal, 2nd Claimant-Kanagesan examined himself as P.W.1. Eye-witness Manikandan was examined as P.W.2. Passenger of the bus bearing registration No. PY-01 Z 9697 viz., Saravana Kumar was examined as P.W.3. Srinivasan, Manager in Satyam Computers Service Limited, Chennai was examined as P.W.4. Exs. P1 to P25 were marked. On the side of Appellant-Insurance Company, the driver who was on duty [A. Krishnamurthy] was examined as R.W.1. The then Sub-Inspector of Police, Marakkanam Police Station [A. Babu] was examined as R.W.2. No document was marked on the side of Appellant-Insurance Company.

4. Upon consideration of oral and documentary evidence, Tribunal held that the accident was due to rashness and negligence of the bus driver in suddenly stopping the bus, due to which the car dashed against the bus and rammed into the bus which caused the death of deceased Sivakumar and three other persons. Finding that the accident was due to rash and negligent driving of the bus driver, Tribunal held that the 5th Respondent-owner of the bus and Appellant, who is the insurer of the bus bearing registration No. PY-01 Z 9697 are jointly and severally liable to pay compensation to the Claimants. Based on Ex. P11-Pay Slip and Ex. P20-salary particulars of the deceased, Tribunal had taken the monthly income of the deceased at Rs. 24,484/- per month and calculated the annual income at Rs. 2,93,808/-. Deducting one-third i.e. Rs. 97936/- for personal expenses, Tribunal has taken the loss of contribution to the family at Rs. 1,95,872/-. Based upon the age of the parents, Tribunal adopted multiplier "13" and calculated the total loss of dependency at Rs. 25,46,336/- (Rs. 1,95,872 x 13 = Rs. 25,46,336/-).

 

Adding conventional damages, Tribunal awarded total compensation of Rs. 25,76,336/-.

5. Mr. N. Vijayaraghavan, learned counsel for Appellant-Insurance Company submitted that Tribunal failed to appreciate that the car in which deceased Sivakumar was travelling was driven rashly and the driver was unable to control and stop the vehicle behind the bus and the Tribunal ought to have seen that if the car proceeding behind the bus had been driven cautiously, it could have averted the accident and without proper appreciation of evidence adduced, Tribunal erred in fastening the liability upon the Appellant-Insurance Company and owner of the bus. Quantum is also assailed by the Appellant-Insurance Company as excessive.

6. Per contra, learned counsel for Claimants 1 to 4/Cross Objectors Mr. M. Selvam contended that based on the consistent evidence adduced by the Claimants, Tribunal rightly held that the accident was due to the negligence of the bus driver. Learned counsel for Claimants 1 to 4 also contended that the quantum of compensation awarded by the Tribunal is very low and seek for enhancement.

7. On 25.10.2006, deceased Sivakumar was travelling in Maruthi Esteem car bearing registration No. TN-09 M 2706 from Pondicherry to Chennai. When the car was proceeding near Sambuvelli street, Marakkanam at about 4.00 A.M., the bus bearing registration No. PY-01 Z 9697 proceeding in the same direction stopped all of a sudden, due to such act of the bus driver, the car in which deceased was travelling with his friends rammed into the bus and due to the accident, the driver of the car-Rajendra Babu and other occupants-Karthik and Vijaya Anand died on the spot. Sivakumar was taken to Pondicherry Institute of Medical Science Hospital, Kalapet, where he succumbed to the injuries.

8. To prove the accident, Claimants have examined eye-witness P.W.2. In his evidence, P.W.2-Manikandan stated that on 25.10.2006 at about 4 O''Clock, he was proceeding near the scene of accident to go to agricultural work along with his brother Nagaraj and at that time, he saw the bus being stopped in the tar road, due to which, the car dashed against the bus and rammed into the bus. P.W.2 stated that the accident was only due to stopping of the bus in the tar road. P.W.3 Saravanakumar, passenger of the bus bearing registration No. PY-01 Z 9697 also stated that when the bus was nearing the occurrence place, the driver of the bus applied sudden break and stopped the bus in the tar road, which caused the accident. P.Ws. 2 and 3 have consistently spoken about the negligence of the bus driver in suddenly stopping the bus in the tar road.

9. To disprove the evidence of P.Ws. 2 and 3, Appellant-Insurance Company examined the driver of the offending bus as R.W.1. In his evidence R.W.1 Krishnamoorthy stated that when he was driving the bus, the bus rod was cut and due to cutting of the rod, he parked the bus on the side of the road and while he was attending the repairs, he heard the noise of the car hitting against

 

the bus.

10. In the night time, if the bus driver parked the vehicle on the side of the road due to such mechanical defect, it was the duty of the driver to give proper signal to the vehicles proceeding in the road by putting red lights. R.W.1 has not spoken anything about such signal being given by him. In the absence of any such evidence, it cannot be said that R.W.1 had taken due care and caution while so stopping the bus in the road due to mechanical defect.

11. Based upon the evidence of P.Ws. 2 and 3 and registration of Ex. P1-FIR against the bus driver, Tribunal has rightly held that the accident was due to negligence of the bus driver and that owner (5th Respondent) and insurer of the bus (Appellant-Insurance Company) are jointly and severally liable to pay compensation to the Claimants. In this appeal the finding of the Tribunal as to the negligence of the bus driver and fastening of liability upon the owner of the bus (5th Respondent) and the Appellant-Insurance Company are not under serious challenge. Only the quantum alone is under challenge.

12. Insofar as quantum of compensation-As is seen from Ex. P13-Degree Certificate, deceased Sivakumar completed his B.E. Degree Course. Exs. P18 to P24 are the school Marksheet, College Transfer Certificate and other qualifications of the deceased. At the time of accident, Sivakumar was working as Software Engineer in Satyam Computers Service Limited, Chennai and he was earning Rs. 28,333/- per month. To prove the income of the deceased, Claimants have examined P.W.3-Srinivasan, Manager in Satyam Computers Service Limited, Chennai. From the evidence of P.W.3 and Exs. P11 to P20-salary slip and salary particulars, at the time of accident, the salary of the deceased Sivakumar was Rs. 28,333/- and after deduction, his net salary was Rs. 24,484/- per month. Tribunal has taken the net salary of the deceased i.e. Rs. 24,484/- for arriving the compensation.

13. Even in cases where the deceased was self employed or employed in private sector or unorganised organisation, for future prospects additions are to be made. Admittedly, deceased was working in Satyam Computers Service Limited, Chennai a private I.T. Company. However, he had permanent job with prospects for future promotion and increment. It is pertinent to note that Tribunal has not given any increase in salary for future prospects.

14. In Santosh Devi Vs. National Insurance Company Ltd. and Others, it was held as under:-

14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be na?ve to say that the wages or total

 

emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma 2 judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation.

15. In the recent judgment in Rajesh and Others Vs. Rajbir Singh and Others, , three Judges Bench of the Hon''ble Supreme Court considered the decision of Santosh Devi''s case and reiterated the view taken in Santosh Devi''s case and held as under:-

 

11. Since, the Court in Santosh Devi''s case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma''s case (supra) and to make it applicable also to the self employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in the case of deceased was in the age group of 40 to 50 years.

12. In Sarla Verma''s case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuating, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

13. Whether the Tribunal is competent to award compensation in excess of what is claimed in the Application u/s 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At Paragraph 10 of Nagappa Vs. Gurudayal Singh and Others, it was held as follows:-

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be ''just''. There is no other limitation or restriction on its power for awarding just compensation.

Same is the view reiterated in Reshma Kumari and Others Vs. Madan Mohan and Another, .

16. As pointed out earlier, at the time of accident deceased Sivakumar was aged 26 years. Applying the ratio of the above decisions, 50% increase has to be given for the income of the deceased. Taking the monthly income of the deceased at Rs. 24,484/- and giving 50% addition for future prospects i.e. Rs. 12,242/-, the monthly income of the deceased is fixed at Rs. 36,726/-(Rs. 24,484/- plus Rs. 12,242/-), rounded of to Rs. 36,700/-. Deducting 20% towards income tax i.e. Rs. 7,340/-, the income of the deceased is fixed at Rs. 29,360/- per month. Deducting one-third for personal expenses i.e. Rs. 9,787/-, the contribution to the family is calculated at Rs. 19,573/-, rounded of to Rs. 19,600/- per month and the annual loss of contribution at Rs. 2,35,200/- per annum.

17. Deceased Sivakumar was a bachelor aged about 26 years. 1st Claimant-mother of the deceased was aged 44 years and 2nd Claimant-father of the deceased was aged 47 years. Based on the age of the father, Tribunal has

 

adopted multiplier "13" and calculated the loss of dependency.

18. Learned counsel for Claimants submitted that multiplier should be taken on the basis of the age of the deceased and not based on the age of the dependents for fixing the multiplier. In this case having regard to the fact that we have deducted one-third towards personal expenses instead of 50% as in the case of a bachelor, we feel that the multiplier to be taken based on the age of the Claimants. We are of the view that Tribunal was justified in adopting multiplier "13" based on the age of the parents. Adopting multiplier "13", the loss of dependency is calculated at Rs. 30,57,600/- (Rs. 2,35,200/- x 13 = Rs. 30,57,600/-)

19. Insofar as the conventional damages, Tribunal has awarded Rs. 20,000/- for loss of love and affection, Rs. 5,000/- for transport charges and Rs. 5,000/- for funeral expenses which in our considered view are reasonable and the same are maintained. Thus the total compensation of Rs. 25,76,336/- awarded by the Tribunal is enhanced to Rs. 30,87,600/-.

20. Tribunal awarded interest at the rate of 7.5% per annum and the same is maintained. The enhanced compensation of Rs. 30,87,600/- is to be apportioned amongst the Claimants 1 to 4 as follows:- (i) 1st Claimant Rs. 10,57,066/-; (ii) 2nd Claimant Rs. 10,00,000/-; (iii) 3rd Claimant Rs. 5,15,267/-; (iv) 4th Claimant Rs. 5,15,267/-. In the result, the compensation of Rs. 25,76,336/- awarded by the Tribunal in M.C.O.P. No. 641 of 2008 (24.10.2009) on the file of Principle District Judge, Dharmapuri is enhanced to Rs. 30,87,600/- and C.M.A. No. 1357 of 2010 preferred by the Appellant-Insurance Company is dismissed. Consequently, Cross Objection No. 52 of 2013 preferred by the Claimants is partly allowed.

It was stated before us that Appellant-Insurance Company has deposited 75% of the compensation amount awarded by the Tribunal along with accrued interest. Claimants 1 to 4 are said to have withdrawn 50% of their respective share of deposited amount along with proportionate accrued interest. Claimants 1 to 4 are permitted to withdraw the balance 25% of their respective share of deposited amount along with accrued interest lying in M.C.O.P. No. 641 of 2008, immediately after the receipt of copy of this judgment.

Appellant-Insurance Company is directed to deposit the remaining 25% of the compensation amount awarded by the Tribunal and also enhanced compensation amount (Rs. 5,11,264/-) along with accrued interest from the date of Claim Petition till the date of deposit within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the Claimants 1 to 4 are permitted to withdraw their respective share with proportionate accrued interest.

Consequently, connected M.P. is closed. No costs.