

(2017) 04 MAD CK 0217

In the Madras High Court

Case No : 3761 of 2004 and C M P No 20086 of 2004

The Oriental Insurance Co. Ltd., Pondicherry

APPELLANT

Vs

Govindammal, & Ors.

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0217

Hon'ble Judges : M.M.Sundresh, M.S.Ramesh

Bench : DIVISION BENCH

Advocate : M.M.Sundresh, M.S.Ramesh

Final Decision : Dismissed

Judgement

1. This appeal has been filed by the Oriental Insurance Company against the award passed by the learned I Additional District Judge, Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P.No.1193 of 2001 dated 29.04.2002.

2. The brief facts of the case is as follows:- a) On 18.05.2001 in the early morning at about 1.30 a.m., the bus bearing registration No.TN-01-N-6137 belonging to State Express Transport Corporation was proceeding from Krishnagiri to Chennai and en-route, when the bus was proceeding near Ayyannur Village, a lorry bearing registration No.PY-01-Q-6788 insured with M/s.Oriental Insurance Company came from the opposite direction and both the vehicles dashed against each other. In the impact, several persons were injured and five of them died.

b) The claimants in the present appeal, are the legal representatives, namely, wife, two daughters and son of the deceased Chinnasamy, who died in the aforesaid accident, had filed a claim petition before the Tribunal, claiming a sum of Rs.9 lakhs.

c) The Tribunal, after consideration of the various documentary as well as oral evidences let in, had awarded a sum of Rs.2,95,500/- towards compensation

under the following heads:

S. No. Head Amount awarded by the Tribunal

1. Loss of income 2,86,000
2. Loss of love & affection 5,000
3. Loss of Estate 2,500
4. Funeral Expenses 2,000

Total Rs. 2,95,500/-

3. Aggrieved over the said award, the Insurance Company has filed the present appeal. It is to be noted that the claimants have not preferred an appeal seeking for enhancement of compensation.

4. In the present appeal, Insurance Company has challenged the quantum as well as their liability to pay the compensation to the claimants.

5. According to the learned counsel for the appellant, the State Express Transport Corporation, whose bus was also involved in the accident, is liable to pay the compensation.

6. In connection with the same accident, the legal representatives of one of the passengers, namely, Pandian who had died in the accident, had filed M.C.O.P.No.423 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub Court, Thirupattur, Vellore District.

7. The Tribunal while awarding the compensation, had thought it fit to direct both the Transport Corporation as well as Insurance Company to equally pay the compensation to the claimants.

8. As against the same award, the Transport Corporation as well as the Oriental Insurance Company had filed CMA Nos.1308 of 2005 & 1147 of 2017, questioning their respective liabilities and quantum. The claimants have not filed an appeal seeking for enhancement of compensation. It is pertinent to mention here that this Court while passing final orders, has held as follows:

"7.Insofar as the quantum is concerned, the Tribunal had arrived at the compensation following the old method. After the amendment of Motor Vehicles Act w.e.f. 14.11.1994, the multiplier method has become the rule. The Hon''ble Supreme Court in Sarla Verma's case reported in 2009 ACJ 1298 has formulated a table and rate of deduction towards personal expenses. That apart, it has also been held that if the deceased is placed in a permanent employment with provision for future increment and promotion, 30% of his earnings has to be added towards future prospects, if the age of the deceased is between 40 and 50 years. In the present case in hand, the deceased was aged about 43 years at the time of the accident.

8.The State Transport Corporation has raised several grounds questioning the quantum of compensation awarded by the Tribunal. According to the learned counsel for the appellants, the Tribunal had erred in granting a total compensation of Rs.34,90,900/-.

9. On the perusal of the award, it is seen that the Tribunal had awarded a sum of Rs.34,90,900/- as against the total claim of Rs.50 lakhs under the following heads:

S. No. Head Amount awarded by the Tribunal

1. Loss of income 48,00,000
2. Loss of love & affection 50,000
3. Loss of hapiness 25,000
4. Funeral Expenses 5,000
5. Damage to clothes & Watch 2,000
6. Loss of Estate 1,00,000
7. Transportation 5,000

Total 49,87,000

After deducting 30% towards uncertainty & lumpsum [49,87,000- 14,96,100/-], amount awarded by the Tribunal Rs.34,90,900/-

10. Though the Tribunal had taken the loss of income, loss of love and affection and loss of hapiness, damage to personal belongings, loss of estate and transportation, there are several other heads under which the compensation to be awarded was not considered.

11. In the judgment in Rajesh & others V. Rajbir singh & others reported in 2013 (6) Scale 563, the Hon"ble Supreme Court, while applying the principles in Sarla verma's case reported in 2009 (6) SCC 121 laid down certain yardsticks for awarding the compensation under the conventional heads, namely, loss of consortium to the spouse, loss of love and affection to the children and funeral expenses.

The relevant portions of the judgment reads as follows:

"20.The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (Supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2500/- to Rs.10,000/- in those heads was fixed several decades ago and

having regard to inflation factor, the same needs to be increased. In Sarla Verma's case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5000/- to Rs.10,000/-. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly, in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast rupees one lakh for loss of consortium.

21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "Funeral Expenses". The "Price Index", it is a fact has gone up in that regard also. The head "Funeral Expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "Funeral Expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

12. Applying the well laid down ratios, 1/4th of the amount has to be deducted from the income declared as Income Tax, 13 years multiplier is to be applied and 30% has to be added towards future prospects. In addition to these, the wife is entitled to sum of Rs.1 lakh towards loss of consortium, children are entitled to Rs.1 lakh each towards love and affection, Rs.25,000/- towards funeral and transportation expenses. The compensation under these heads have not been considered by the Tribunal. Hence, even assuming that challenge made to the various heads are substantiated, the claimants would be entitled for further compensation under the heads of loss of consortium, loss of love and affection, funeral and transportation expenses. Hence, the quantum awarded by the Tribunal needs no interference and in our considered view, the same is just and reasonable.

13. The grounds raised by the appellants questioning their respective liabilities is

answered as follows:-

i)This is the case of Composite Negligence where the death of a passenger of a bus owned by the Tamil Nadu State Transport Corporation was caused due to the negligence of the drivers of the bus as well as the lorry which was insured with Oriental Insurance Company. The Tribunal, while determining the negligence had relied upon the exhibits A1, A14 & A15 and by taking into account the evidence of P.W.1 and P.W.2, had come to the conclusion that both the drivers of the bus, as well as the lorry, were equally negligent and had caused the accident.

ii)While awarding the compensation, the Tribunal thought it fit to direct both the Transport Corporation as well as the Oriental Insurance Company to equally pay the compensation to the claimants.

iii)It is well settled law in case of Composite Negligence that liability is joint and several and that the Tribunal shall pass a composite decree against the owners of both the vehicles. When this legal issue came up before the Hon"ble Supreme Court in Khenyei V. New India Assurance Company Ltd. & others reported in 2015 (1) TNMAC 801 (SC), the Court after taking into account, various judgments of the Hon"ble Supreme Court as well as the Full Bench Judgment of the High Court of Karnataka, while holding that the liability of the Joint Tort-feasors are joint and several, observed as follows:

"iii)In case all the Joint Tort-feasors have been impleaded and evidence is sufficient, it is open to the Court/Tribunal to determine inter se extent of Composite Negligence of the drivers. However, determination of the extent of negligence between the joint tort-feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in main case one Joint Tort-feasor can recover the amount from the other in the Execution proceedings."

iv)In the instant case, both the drivers of the bus as well as the lorry had died. The only witness namely, P.W.2 who claimed to have witnessed the accident had stated in the cross examination that he was in his house at the time of accident and that he was not present at the accident site. In the absence of any direct eye-witness and by relying upon Exhibits A1, A14 and A15 as well as the oral evidence of P.W.1 and P.W.2, the Tribunal had come to the conclusion that both the Transport Corporation, as well as the Oriental Insurance Company, which is the insurer of the lorry, are equally liable for payment of compensation. As held by the Hon"ble Supreme Court in the judgment cited above, whenever there is sufficient evidence, it is open to the Court/Tribunal to determine inter-se the extent of Composite Negligence of the drivers. The determination of extent of negligence between the drivers is only for the purpose of inter-se liability so as to enable one to recover the same from the other, after making whole of

payment to the claimants.

v) Since the Tribunal had rightly applied the doctrine of Composite Negligence and come to the conclusion that there was enough evidence to show that both the drivers were equally responsible for having caused the accident, has fixed the liability of the Transport Corporation as well as the Oriental Insurance Company was fixed in the ratio of 50:50. In view of the same, we have no hesitation to hold that the joint liability as arrived by the Tribunal in fixing the award is valid.

14. In view of the foregoings and above discussions, we do not find any merits in the appeal filed by the State Transport Corporation as well as Oriental Insurance Company. Hence, the Civil Miscellaneous Appeals stand dismissed accordingly. No costs."

9. The above reasonings rendered by us are self explanatory. In view of the decisions of the Hon"ble Supreme Court reported in 2015 (1) TNMAC 801 (SC), we do not find any merits in the appeal filed by the Insurance Company and accordingly, the Civil Miscellaneous Appeal stands dismissed.

10. However, as observed by us and in the line of judgment pronounced by the Hon"ble Supreme Court in 2015 (1) TNMAC 801 (SC), the Insurance Company as well as the State Express Transport Corporation are held to be Joint Tort-feasors in the accident. As such, the compensation awarded by the Tribunal are liable to be borne by both the Insurance Company as well as the State Express Transport Corporation. Hence, the appellant herein is granted liberty to seek for claiming 50% of the compensation from the State Express Transport Corporation, if they chose to do so.

11. The Civil Miscellaneous Appeal stands dismissed with the above observation. Consequently, connected Miscellaneous Petition is also closed. No costs.