

(2013) 09 MAD CK 0206

In the Madras High Court

Case No : C.M.A. No. 2575 of 2009 and C.M.A. No. 1115 of 2012

The United India Insurance Co. Ltd.

APPELLANT

Vs

D. Vasantha, G. Deenadayalu and D. Bharathi
D.
Vasantha, G. Deenadayalu and D. Bharathi Vs N.
Chandrasekar and The United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) 5 CTC 469 : (2014) 1 RCR(Civil) 816

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : M. Krishnamoorthy in C.M.A. No. 2575 of 2009 and Mr. A.N. Viswanatha Rao in C.M.A. No. 1115 of 2012, for the Appellant; A.N. Viswanatha Rao in C.M.A. No. 2575 of 2009 and Mr. M. Krishnamoorthy for R2 in C.M.A. No. 1115 of 2012, for the Respondent

Judgement

R. Subbiah, J.—Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Additional District Judge Fast Track Court No. IV), Chennai in M.C.O.P. No. 1289 of 2003 vide., order dated 14.07.2008, the Insurance Company has filed the appeal in C.M.A. No. 2575 of 2009. Not being satisfied with the quantum of compensation awarded by the tribunal, the claimants have filed the appeal in C.M.A. No. 1115 of 2012. Hence, both the appeal are disposed of by way of this common judgment. For the sack of convenience, the parties will be referred as per their ranking in C.M.A. No. 2575 of 2009. The appellant is the insurance company and the respondents are the mother, father and sister of the deceased D. Ravi respectively.

2. It is the case of the respondents/claimants that on 12.11.2012 at about 7.45 hours, while the deceased D. Ravi was proceeding in his two wheeler towards Ambattur Estate, the lorry bearing Registration No. TN-02-B-0553 came in a rash and negligent manner and hit the two wheeler, as a result of which the deceased sustained multiple and fatal injuries and died on the spot. Hence, the

respondents/claimants made a claim for a sum of Rs. 45 lakhs as compensation as against the owner of the lorry and its Insurer/appellant herein.

3. Before the Tribunal, in order to prove their claim, on the side of the respondents/claimants, the 1st respondent/mother of the deceased examined herself as P.W. 1, besides examining two other witnesses as P.W. 2 & P.W. 3, and Ex. P. 1 to Ex. P. 30 were marked. On the side of the Insurance Company, neither oral nor documentary evidence was produced. The Tribunal, after analysing the entire evidence, has passed an award for a total sum of Rs. 24,59,112/-. Hence, the present appeals.

4. Since the appeals have been filed only questioning the quantum of compensation, there is no need for this Court to go into other aspects.

5. With regard to the quantum of compensation, it is the case of the respondents/claimants before the Tribunal that at the time of accident, the deceased was 26 years old and he was possessing a Master Degree in Computer Science and he was an income tax assessee and he was employed at Wipro Company and earning a sum of Rs. 2,82,935/- per annum. In order to prove the income earned by the deceased, on the side of the respondents/claimants, the Manager-HR of the Wipro Technologies was examined as P.W. 3 and Salary Certificate was marked as Ex. P. 19 and income tax SARAL Form was marked as Ex. P. 28.

6. The Tribunal by placing reliance upon the evidence of P.W. 3 and Ex. P. 19 & Ex. P. 28 has fixed a sum of Rs. 2,82,935/- as annual gross income of the deceased and after deducting 1/3 amount towards personal expenses of the deceased, the Tribunal by taking into consideration the age of the mother of the deceased, who was 45 years at the time of the death of her son, by applying the multiplier of 13, has awarded a sum of Rs. 24,52,112/- for loss of income.

7. Now, it is the submission of the learned counsel for the appellant/Insurance Company that a perusal of the SARAL Form-Ex. P. 28, would reveal that the annual taxable income of the deceased is only Rs. 2,06,620/- for the assessment year 2002-2003, whereas the Tribunal has taken into consideration the Gross income of the deceased viz., Rs. 2,82,935/- for calculating the loss of income to the claimants on the account of the death of the deceased in the accident. The learned counsel for the appellant/Insurance Company further submitted that the deceased had worked in Wipro Company only for two days and when that being so, the Tribunal ought not to have placed reliance on Ex. P. 28 and thereby, the Tribunal ought not to have fixed the annual loss of income as Rs. 2,82,935/-. Hence, by fixing the total taxable income of the deceased as his actual annual income, the compensation amount awarded by the Tribunal has to be reduced.

8. Further, the learned counsel for the appellant/Insurance Company submitted that the claim was made by the parents of the deceased, who was a bachelor at the time of the accident. Under such circumstances, the Tribunal ought to have deducted 50% from the income towards his personal expenses, whereas the Tribunal deducted only 1/3 amount, which ultimately resulted in awarding an

exorbitant amount as compensation.

9. The learned counsel for the appellant/Insurance Company has also submitted that the Tribunal has failed to deduct amount towards income tax from the total compensation amount. Hence, 20% amount from the total compensation is liable to be deducted towards income tax deduction.

10. It is also submitted by the learned counsel for the appellant that the sister of the deceased cannot be construed as a dependent of her deceased brother and hence, the compensation amount awarded by the Tribunal by taking into account the sister of the deceased as one of the dependents is not correct.

11. Per contra, the learned counsel for the respondents/claimants by placing reliance upon the recent judgment of the Honourable Supreme Court reported in *Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others*, submitted that at the time of calculating the quantum of loss of income in the case of death of a bachelor, the Tribunal ought to have taken the age of the deceased into consideration for applying the multiplier method. Hence, by taking the age of the deceased, who was 26 years at the time of death into consideration, and by applying higher multiplier, the compensation amount has to be enhanced.

12. The learned counsel for the respondents/claimants further submitted that the Tribunal has not awarded any amount towards further prospects and therefore, there is no need to deduct any amount towards income tax.

13. That apart, the learned counsel for the respondents/claimants by relying upon the judgment of the Honourable Supreme Court reported in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, submitted that the brother & sister of the deceased could be considered as dependents for the purpose of awarding compensation.

14. Keeping the submissions made on either side. We have carefully gone through the entire materials available on record.

15. On perusal of Ex. P. 28 Income Tax SARAL Form. We find that the gross income of the deceased was Rs. 2,82,935/- and the taxable income of the deceased was Rs. 2,06,620/- for the assessment year 2002-2003. The Tribunal has taken into consideration the gross income of the deceased for calculating the loss of income. We do not find any infirmity in the award passed by the Tribunal in fixing the annual income of the deceased as Rs. 2,82,935/-. Therefore, we are not inclined to accept the submission made by the learned counsel for the appellant that by fixing the total taxable income of Rs. 2,06,620/- as annual income of the deceased, the compensation amount has to be reduced.

16. It is the submission of the learned counsel for the appellant that the deceased had worked only for two days in Wipro Company and under such circumstances, the Tribunal ought not to have placed reliance upon the evidence of P.W. 3 and Salary Certificate Ex. P. 19. But, we find from the evidence on

record that even prior to joining in the Wipro Company, the deceased had been working in another private company, which is evident from Ex. Ps. 20 to 25, and he was making a good income and he was possessing a Master Degree in Computer Science. Irrespective of the submissions made on either side, considering the qualification of the deceased as well as the income which the deceased was making till his death, the sum of Rs. 2,82,935/- fixed by the Tribunal as his annual income can not be said to be exorbitant.

17. While making his submissions the learned counsel for the respondents/claimants by placing reliance upon the judgment reported in *Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others*, , submitted that as per the said judgment, the age of the deceased could be taken into consideration in the case of death of the bachelor in the accident. In this regard, a useful reference could be placed to the judgment of the Honourable Supreme Court reported in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, , wherein it has been held that in the case of death of a bachelor, the age of the parents would be relevant in the choice of multiplier.

18. In the judgment reported in *New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others*, , it has been held by the Honourable Apex Court that in the case of death of bachelor, the multiplier to be adopted is to be determined on the age of the claimants and not on the age of the deceased.

19. Therefore, as the Honourable Supreme Court has taken consistent view in many cases that in the case of death of a bachelor, the age of the parents/claimants has to be taken into consideration for determining the multiplier, in the case on hand. We do not find any error in adopting the multiplier of 13 adopted by the Tribunal based on the age of the mother of the deceased.

20. It is the submission of the learned counsel for the appellant/Insurance Company that the Tribunal has failed to deduct any amount towards the income tax from the compensation amount and that the Tribunal ought to have deducted 50% of the amount towards personal expenses, since the claim was made by the parents of the deceased. But, we find that the Tribunal has not awarded any amount towards future prospects of the deceased. As per the judgment of the Honourable Supreme Court reported *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, , the Tribunal ought to have added 50% of the actual salary to the actual income towards future prospects. But, this amount was not added by the Tribunal in the case on hand. Hence, there is no need to deduct any amount from the compensation amount towards income tax. Therefore, we are not inclined to accept the submission made by the learned counsel for the appellant/Insurance Company on that aspect.

21. With regard to the submission made by the learned counsel for the appellant that the 3rd respondent/sister of the deceased can not be construed as a dependent, we find from the evidence on record that the deceased is the only son of the respondents 1 & 2 and he is the bread-winner of the family and the

entire family was depending upon the income of the deceased. Hence, we are of the opinion that had the deceased been alive, he would have contributed a considerable amount for the marriage of his sister. Therefore, we do not find any infirmity in the claim made by the sister of the deceased. In this regard, a reference could be placed in the judgment reported in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , wherein it has been held by the Honourable Supreme Court as follows:-

In an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed in an accident, there is no justification to deny them compensation relying upon the provisions of Fatal Accidents Act.

Therefore, we are not inclined to accept the submission made by the learned counsel for the appellant that the 3rd respondent/sister of the deceased can not be considered as a dependent.

22. On the whole, we do not find any compelling circumstances warranting interference of this Court with the award passed by the Tribunal.

23. However, the Tribunal has awarded interest at the rate of 9% per annum, which is on the higher side. Hence, the same is hereby reduced to 7.5% per annum. Except this modification, the award passed by the Tribunal is confirmed. In the result, the appeal in C.M.A. No. 2575 of 2009 filed by the Insurance Company is allowed in part by reducing the rate of interest from 9% to 7.5% per annum. The appeal in C.M.A. No. 1115 of 2012 filed by the claimants is dismissed. The Insurance Company is directed to deposit the entire award amount, if the same has not been deposited so far, with proportionate interest, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares.

There is no order as to costs.