(1999) 04 MAD CK 0008

In the Madras High Court

Case No : C.M.A. No. 246 of 1992

Thiruvalluvar Transport Corporation Ltd. — APPELLANT

Vs

Sakunthala and Others — RESPONDENT

Date of Decision : 13-04-1999

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2001) ACJ 1322 : (2000) 1 LW 788

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Kala Ramesh, for the Appellant; M. Duraisamy and Kurian and Associates, for the Respondent

Judgement

M. Karpagavinayagam, J.—Challenging the award of Rs. 1,26,000 as against the total claim of compensation of Rs. 2,00,000, the present

appeal has been filed by the Thiruvalluvar Transport Corporation on the ground of quantum.

2. The learned counsel appearing for the appellant Corporation would submit that the multiplier of 15 is on the higher side and that though there is

documentary evidence to show that the deceased was earning about Rs. 700 per month, the Tribunal found that the monthly income of the

deceased was Rs. 1,000 even without any documentary evidence for the balance of Rs. 300.

3. Heard the counsel for the respondents.

4. This is a case where the accident took place due to collision of two vehicles. The Claims Tribunal, on consideration of the materials placed

before it, concluded that the drivers of both the vehicles had conjoint and composite negligence and as such, both are equally liable to pay the compensation.

5. Regarding the negligence or the percentage of negligence, there is no appeal by either of the parties. However, it is urged in this appeal preferred

by the transport corporation that the quantum of compensation awarded by the Tribunal is highly excessive.

6. On a perusal of the documents, the depositions and the impugned award, I am of the view that fixing the monthly income of the deceased at Rs.

1,000 by the Tribunal is based upon the evidence of PW 4, the daughter of the deceased. Though there is a document available to show that the

deceased was earning about Rs. 700 per month, PW 4 would specifically state that her deceased father would get Rs. 300 more by writing

accounts in other shops. There is no reason to disbelieve the evidence of PW 4, especially when the claim was made in the petition on the basis of

the monthly income of Rs. 1,000.

7. Regarding the multiplier, the counsel for the appellant would submit that adopting the multiplier of 15 years is not proper. The Tribunal fixed the

age of the deceased as 45, even though the evidence of the witnesses would show that the age of the deceased at the time of death was 40, in

view of the fact that the medical evidence through the post-mortem report would reveal that the age of the deceased at the time of death was 45.

Therefore, there is no difficulty in confirming the finding regarding age.

8. Moreover, according to the Schedule, a multiplier of 15 can be adopted for a person who was aged about 45 years. Therefore, I do not find

any merit in the submission made by the counsel appearing for the appellant that the quantum of compensation is on a higher side.

9. At the end, it is pointed out by the learned counsel appearing for the respondents/claimants, in the impugned award, there is no reference for

providing the amounts towards loss of consortium for the wife and loss of love and affection for the children and for funeral expenses.

10. There is no dispute that at the time of death of the deceased, the wife of the deceased was aged about 35 years. Totally, there are four children

and out of them, three persons were minors. The deceased in this case was an accountant working in Muniyandi commission shop at Dindigul. The

entire family of the deceased consisting of his wife and four children were living only on his income.

11. On the date of accident, the deceased Srinivasan was travelling in a bus belonging to the appellant Corporation from Madras to Trichy. The

accident took place near Siruvatchanur. While the bus in which the deceased was travelling was trying to overtake the lorry going ahead of the bus

in the same direction, both the vehicles got collided, since no sufficient space was given by the lorry driver. The deceased Srinivasan, a passenger

in the bus, due to the accident, died on the spot itself. Therefore, the defendants/ claimants claimed total compensation of Rs. 2,00,000 under

various heads.

12. As already indicated, the Tribunal correctly fixed the age of the deceased as 45 and correctly calculated the compensation on the basis of the

multiplier theory of longevity. But, in my view, the Tribunal ought to have awarded some more amount towards the other important heads, such as

loss of consortium for wife and loss of love and affection for children and for funeral expenses. The Tribunal awarded Rs. 1,26,000 only towards

loss of income though the total claim of compensation was Rs. 2,00,000. In the light of these facts, the learned counsel for the claimants would

request this court to award suitable amount by adding some more amount towards the other important heads.

13. However, this is objected to by the learned counsel for the appellant Corporation that this court cannot enhance the award of compensation

without filing any cross-objection by the claimants. In order to substantiate this, the learned counsel for the appellant would cite the following

decisions:

Cheran Trans. Corpn. Ltd. v. Marudhammal, (1998) 3 LW 112; Padmadevi Shankarrao Jadhav v. Kabalsing Gormilsing Sardarji, 1985 ACJ 382

Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another, ; National Insurance Co. Ltd. Vs.

Ramachandran and others, and The State of Punjab and Others Vs. Bakshish Singh, .

14. On the other hand, learned counsel appearing for the claimants/respondents, cited the decisions in Mahant Dhangir and Another Vs. Madan

Mohan and Others, and Managing Director (Metro), Managing Director (Metro), Pallavan Transport Corporation Ltd. Vs. Kalavathy and Others,

and would contend that even though the respondents have not filed any cross-objection against the award passed by the learned Tribunal seeking

for higher compensation, this court has got the power to enhance the compensation, if this court finds that the amount as awarded by the Tribunal is

not just and adequate.

15. Section 110-D of the Motor Vehicles Act, 1939 confers on this court the jurisdiction to entertain an appeal against the award passed by the

Claims Tribunal. The reading of the provision would reveal that the High Court has to deal with the said appeal presented before it under the Civil

Procedure Code.

16. Since the Motor Vehicles Act, 1988 empowers the High Court to hear the appeals, by virtue of Section 173 of the Act, the CPC is applicable

to the High Court. Therefore, Order XLI of CPC is attracted when the High Court hears the appeal preferred to before it against the award of the

Motor Accidents Claims Tribunal. This is the view taken by a Bench of this court in R. Govindarajulu Naidu v. S. Dharman, 1986 ACJ 178 .

17. In National Insurance Co. Ltd. Vs. Ramachandran and others, a Division Bench of this court has also held that Order XLI, Rule 33, CPC is

applicable to the Claims Tribunal cases and that once the matter comes before this court in appeal against the award of the Tribunal, the said

provision is applicable just like any other first appeal which comes before this court.

18. Order XLI, Rule 33 of the CPC provides as under:

33. Power of Court of Appeal.--The appellate court shall have power to pass any decree and make any order which ought to have been passed

or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court

notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although

such respondents or parties may not have filed any appeal, or objection and may, where there have been decrees in cross-suits or where two or

more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such

decrees.

19. As pointed out by the Apex Court in The State of Punjab and Others Vs. Bakshish Singh, , the reading of the provision would make it clear

that the appellate court has got wide power to do complete justice between the parties and which enables this court to pass such decree or order

as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be

exercised has not filed any appeal or cross-objection.

20. In view of the clear wording of this provision, there is no substance in the submission made by the learned counsel for the appellant that this

court has no power to enhance the quantum of compensation in the absence of any appeal or cross-objection.

21. Of course, it is true that this discretion has to be exercised with care and caution and that too, in rare cases where the order has been passed

which is wholly uncalled for in the circumstances of the case. In other words, though this court under the garb of Order XLI, Rule 33 cannot

enlarge the scope of the appeal, the appeal powers can certainly be exercised in a given case and such an exercise depends upon the nature and

facts of each case.

22. The Apex Court in Mahant Dhangir and Another Vs. Madan Mohan and Others, , while referring to Order 41, Rule 33, made the following

observation:

The appellate court could exercise the power under Rule 33 even if the appeal is only against a part of the decree of the lower court. The appellate

court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any appeal or objection.

The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also

between respondent and corespondents. The appellate court could pass any decree or order which ought to have been passed in the

circumstances of the case. The words ''as the case may require'' used in Rule 33 of Order 41 have been put in wide terms to enable the appellate

court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any

liberal interpretation. The rule itself is liberal enough. The only constraints that we could see may be these: That the parties before the lower court

should be there before the appellate court. The question raised must properly arise out of judgment of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court. It is true that the power

of the appellate court under Rule 33 is discretionary. But, it is a proper exercise of judicial discretion to determine all questions urged in order to

render complete justice between the parties. The court should not refuse to exercise that discretion on mere technicalities.

23. So, in the light of the above observation of the Supreme Court, I have no hesitation to hold that the Tribunal ought to have awarded

compensation towards other important heads also. Raising mere technical objection by the counsel appearing for the appellant that those things

cannot be considered in the absence of any appeal or cross-objection would amount to asking this court to shut its eyes over the infirmity found in

the award by not apportioning suitable damages towards loss of consortium for young wife and loss of love and affection for minor children.

24. Moreover, the two requirements, as indicated by the Supreme Court in the decisions referred to above are very much available here in the

instant appeal so as to entitle this court to make a suitable amendment with regard to the quantum of compensation awarded by the Tribunal.

25. Even the decision cited by the counsel for the appellant would not state that this court has no power for enhancing the compensation in the

absence of any appeal.

26. In such circumstances, I am at a loss to understand as to how the learned counsel appearing for the appellant would make before this court

such preposterous plea that this court cannot enhance the compensation in the absence of any cross-objection, more particularly when Rule 33

itself closely spells out the power of this court to go into the quantum of award of the Tribunal, even in the absence of any appeal by the

respondent.

27. In view of the above discussion, I am of the considered opinion that the award of compensation passed by the Tribunal shall be suitably

modified as follows:

The claimants are entitled to an amount of compensation of Rs. 1,26,000 towards loss of income, as already awarded by the Tribunal. In addition

to the said amount, the claimants are entitled to an amount of Rs. 15,000 towards loss of consortium for the wife, Rs. 15,000 towards loss of love and affection for the children and Rs. 4,000 for funeral expenses. After these amounts are added to the award already passed by the Tribunal, the

total amount of compensation to which the claimants are entitled comes to Rs. 1,60,000, which is within the original claim.

28. As held by the Tribunal that both the lorry driver and bus driver are equally negligent, the insurance company on behalf of the lorry owner and

the appellant Corporation on behalf of the bus driver are liable to pay this amount of compensation equally. This amount should be paid along with

interest at the rate of 12 per cent per annum from the date of claim petition till realisation. The respondents/claimants are directed to pay the

required court fee for the enhanced amount.

29. With this observation, the appeal is disposed of. No costs.