
(2017) 02 MAD CK 0183
In the Madras High Court
Case No : 2176 of 2012

Tmt Anitha

APPELLANT

Vs

Kennedy

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Citation : (2017) 02 MAD CK 0183

Hon'ble Judges : M.Sathyanarayanan, M.V.Muralidharan

Bench : DIVISION BENCH

Advocate : M.Sathyanarayanan, M.V.Muralidharan

Judgement

1. The legal representatives of the deceased / claimants are the appellants herein and aggrieved by the dismissal of the petition, vide judgment and decree dated 29.02.2012 in MCOP No.26/2006 on the file of the Motor Accidents Claims Tribunal / Additional District and Sessions Court / Fast Track Court, Vellore, had filed this appeal.

2. The deceased [late] Chakravarthy was aged about 41 years and according to the appellants / claimants, he was working as the Sub-Inspector of Police in Tamil Nadu Police Service and was earning a sum of Rs.10000/- per month. The appellants would further aver that on 05.09.2004 at about 08.45 a.m., he was riding a motorcycle bearing Registration No.TN-74-D-7059 from Katpadi to Tiruvalam on the extreme side of Katpadi to Chennai road following traffic rules and regulations and at that time, a Tata Sumo Car bearing Registration No.TN-23-K- 1555, owned by the 1st respondent was driven in a rash and negligent manner, endangering human lives and without following the traffic rules, proceeded in a wrong way and dashed against the said two-wheeler and as a consequence, the rider of the motorcycle was thrown out and sustained grievous injuries and he was immediately rushed to the Christian Medical College Hospital, at Vellore, for treatment and without responding to the treatment, he died on 06.09.2004. The appellants / claimants would further aver that the deceased was on the verge of promotion to the Inspector of Police and was earning not less

than Rs.12,000/- per month and on account of his sudden and tragic demise, the family has been left in lurch and therefore, claimed a lump sum compensation of Rs.30 lakhs from the respondents.

3. The 1st respondent - owner of the Car remained exparte and the insurer of the vehicle, viz., the 2nd respondent, had filed their counter, denying the averments made in the claim petition and would state that the Tata Sumo Car, owned by the 1st respondent, was not at all involved in the accident and the rider of the motorcycle / deceased, on his own volition, fallen down while driving the vehicle and sustained grievous injuries and the FIR with regard to the accident given by one Vedagiri was a false and concocted complaint, to enable the claimants to claim compensation and since the rider of the motorcycle himself, has contributed to the accident, prayed for exoneration and dismissal of the claim petition.

4. The wife of the deceased / first claimant / first appellant examined herself as P.W.1 ; the eyewitness to the accident was examined as P.W.2 and the Assistant attached to the District Police Office, Vellore, was examined as P.W.3 and Exs.P.1 to 13 were marked. On behalf of the 2nd respondent / Insurance Company, the Senior Assistant attached to their office, was examined as R.W.1 and the Inspector who conducted the investigation on behalf of the 2nd respondent / Insurance Company, was examined as R.W.2 and the Casualty Medical Officer, attached to the Christian Medical College Hospital at Vellore, was examined as R.W.3 and Exs.R.1 to 3 were marked.

5. The Tribunal, on a consideration of the claim petition, counter statement, oral and documentary evidences, had held that as per Ex.R1-Xerox copy of the intimation sent by the hospital to the Sub Inspector of Police, Katpadi Police Station, the deceased had fallen from the two-wheeler and sustained injuries and the Motor Vehicle Inspector's Report marked as Ex.P.5 also indicated that the vehicle which is said to have caused the accident, suffered no damage and also taking into consideration, Ex.P.9-the Death Summary, had reached the conclusion that the Tata Sumo Car owned by the 1st respondent, insured with the 2nd respondent, did not involve in the said accident and therefore, citing the said reason, has dismissed the claim petition. Challenging the legality of the judgment and decree passed by the Tribunal, the claimants have filed this appeal.

6. The learned counsel for the appellants / claimants has drawn the attention of this Court to the impugned judgment as well as the testimonies of the witnesses and the original records and would submit that P.W.2 has lodged the complaint based on which, Ex.P.1-FIR, came to be registered on 05.09.2004. The case, after investigation, has also culminated into charge sheet, which was taken on file in CC.No.215/2004 on the Court of Judicial Magistrate No.4, Vellore and the driver of the vehicle also pleaded guilty and paid fine and he was also imposed with the sentence of imprisonment till raising of the Court and in the absence of any challenge made, the said finding rendered by the Tribunal that the vehicle owned by the 1st respondent, did not cause the accident, is unsustainable. It is

the submission of the learned counsel for the appellants / claimants that the intimation sent by the Christian Medical College Hospital, Vellore, to the Sub Inspector of Police, North Police Station, marked as Ex.R.1, cannot be taken as a substantive evidence and even for the sake of argument, it cannot be treated so and the fact remains that the case after investigation, has resulted in a positive Final Report, which was taken on file and the Criminal Court has taken into consideration the plea of the accused and imposed him sentence of imprisonment till raising of the Court and also to pay fine and as such, the testimony of R.W.3 coupled with Ex.R.1, cannot be relied upon to reach the conclusion that the vehicle owned by the 1 st respondent did not cause the accident.

7. The learned counsel for the appellants / claimants has also drawn the attention of this Court to Exs.R2 to 4 and would submit that admittedly, the 2nd respondent prayed that the investigation to be done by CBCID on the ground that it is a false claim and since no progress took place in the investigation, moved this Court by filing CrI.OP.No.20203/2011 and it was also dismissed on 23.09.2011 and it was not put to challenge by way of an appeal before the Honourable Supreme Court of India and as such, the findings rendered by the Tribunal are perverse. Insofar the quantum of compensation is concerned, it is the submission of the learned counsel for the appellants / claimants that the deceased was employed as the Sub Inspector of Police and was aged about 41 years and he has got one more promotion as Inspector of Police and would have got higher salary and at the time of his demise, he has left behind two minor sons, aged about 15 years and 6 years respectively and a minor daughter, aged about 9 years and therefore, they should be paid with fair and adequate compensation and prays for setting aside the impugned judgment and decree and allowing of this appeal.

8. Per contra, Mr.J.Chandran, learned counsel appearing for the 2 nd respondent has drawn the attention of this Court to the exhibits marked on behalf of the appellants/claimants and the 2 nd respondent and would contend that as per the Motor Vehicle Inspector Report, marked as Ex.P.5, no damage has been noticed in the Tata Sumo Car and if really the cause of accident was dashing of the Car against the motorcycle, then some damage could have been caused and admittedly, it was no so. The learned counsel for the 2 nd respondent has drawn attention of this Court to Ex.R. Series and would contend that the earliest information was sent by the Christian Medical College Hospital, to the Sub Inspector of Vellore, North Police Station on 06.09.2004 and it would also indicate that the deceased had sustained grievous injuries on account of falling down from the two-wheeler and not on account of dashing of the Tata Sumo Car and copy of the Death Summary, marked as Ex.P.9, would also indicate that the manner of accident as pleaded by the appellants / claimants, cannot be true. It is the further submission of the learned counsel for the 2 nd respondent that since the deceased happened to be a member of Police Force, the concerned investigating officer has obliged them and P.W.2 was not an eyewitness to the accident and his services were utilised to enable the claimants to claim

compensation and the Tribunal, on proper and correct appreciation of the entire materials, had rightly reached the conclusion to dismiss the claim petition and prays for dismissal of this appeal.

9. This Court paid its anxious consideration and best attention to the rival submissions and also perused the typed set of documents as well as the original records.

10. The following issues arise for consideration: [1] Whether the accident was caused by the vehicle owned by the 1st respondent? and if the answer is positive . What is the quantum of compensation, the appellants / claimants are entitled to? Issue No.1:-

11. Ex.P.1 is the First Information Report lodged by P.W.2 and a perusal of the same would disclose that the accident took place at about 08.45 a.m. on 05.09.2004 and the first information was lodged to the Katpadi Police Station at about 10.30 a.m. on the same day and the contents of the same would reveal that the Tata Sumo Car bearing Registration No.TN-25-K-1555, driven by the driver, has dashed against the Hero Honda motorcycle, driven by the deceased and the jurisdictional police has registered a case in Cr.No.581/2004 for the commission of the offences u/s.279 and 338 IPC and took up the case for investigation and after investigation, has filed the Final Report, marked as Ex.P.6, charging the driver, namely, Seenivasan, of the Tata Sumo Car, for the commission of the offences u/s.279 and 304A IPC. The Court of the Judicial Magistrate No.4, Vellore, took the Final Report on file in CC.No.215/2004 and issued summons to the accused, who on appearance, pleaded guilty to the charges framed against him. The Trial Court, vide order dated 11.03.2005, marked as Ex.P.7, has imposed the punishment of imprisonment till raising of the Court and also fine of Rs.4,500/-, with a default sentence of six months simple imprisonment for the commission of the offence u/s.304A IPC and in the light of the said sentence, the Trial Court did not impose any separate sentence for the commission of the offence u/s.279 IPC. The fact remains that no further challenge has been made to the said order.

12. The Postmortem Report, marked as Ex.P.3 would indicate that the deceased died due to injuries to the vital organ, namely, the brain. The Motor Vehicle Inspector Report, marked as Ex.P.5 would indicate that the accident was not on account of any mechanical defect on the part of the vehicle and it is the submission of the learned counsel for the 2 nd respondent that the contents of the same did not disclose about the involvement of the Car as it did not suffer any damage. Ex.P.9 is the Death Summary issued by the Neuro Surgery Unit-II of the Christian Medical College Hospital, Vellore and it reads that the deceased was not under the influence of alcohol at the time of accident and he suffered severe diffuse brain swelling and despite all measures, his neurological status continue to deteriorate and he developed cardio-respiratory arrest from which, he could not recover and he died at 04.15 a.m. on 06.09.2004.

13. The learned counsel for the 2nd respondent has also placed reliance on Ex.R.1-intimation sent by the Christian Medical College Hospital, Vellore, to the Sub Inspector of Police, North Police Station, Vellore, wherein it has been stated that the deceased Chakravarthy, Sub Inspector of Police, was admitted on 05.09.2004 at about 09.35 a.m. with the history of RTA said to have been sustained due to fall from two-wheeler-severe head injury and expired on 06.09.2004 at 4.15 a.m. Thus, it is the primordial submission of the learned counsel appearing for the 2nd respondent that since the earliest intimation marked as Ex.R.1, reads that the deceased had fallen from the two-wheeler and sustained severe head injury, the car owned by the 1st respondent, would not have been the cause of accident and has also drawn the attention of this Court to the evidence of R.W.3. R.W.3 would depose that as per the procedure, if any MLC case death occurs in the hospital, it would be intimated to the nearest Police Station and accordingly, Ex.R.1 was sent and would admit that the entire medical chart was not available as it was destroyed after five years as per the Hospital Policy and he has no personal knowledge of the documents marked as Exs.R.6 and 7.

14. The 2nd respondent / Insurance Company has also conducted its own investigation, by engaging the services of R.W.2, who submitted his report, marked as Ex.R.5 and the contents of the same would disclose that he has gone to the Court of Judicial Magistrate as well as to the Christian Medical College Hospital, Vellore and collected the documents and he was of the opinion that no car was involved in the said accident and the deceased had sustained injuries on account of fall from the two-wheeler and succumbed to injuries.

15. Simultaneously, under Ex.R.2, R.W.2 also moved the Additional Director General of Police, CBCID, Chennai, for reinvestigation of the case in Cr.No.581/2004 registered by Katpadi Police Station, alleging falsity and fabrication. Under Ex.R.3, the Superintendent of Police, CBCID, North Zone, Chennai-32, in his letter addressed to the Superintendent of Police, Vellore District, in compliance of the order dated 29.07.2010 passed by this Court in WPMP.No.1060/2009, requested him to take necessary action based on the representation given by the 2nd respondent. Since no action was taken, the 2nd respondent has filed CrI.OP.No.20203/2011 on the file of this Court against [1] the Additional Director General of Police, CBCID, Chennai ; [2] the Superintendent of Police, CBCID, North Zone, Chennai ; [3] the Superintendent of Police, Vellore ; and [4] the Inspector of Police, District Crime Branch, Vellore, praying for appropriate direction, directing them to register FIR based on their complaint dated 15.11.2010 [marked as Ex.R.2]. This Court, vide order dated 23.09.2011, has dismissed the said Criminal Original Petition and it is relevant to extract paragraph 4 of the said order:- "... 4.This petition, seeking for registration of the F.I.R. is not maintainable, since already a case has already been registered in FIR No.581 of 2004, dated 05.09.2004 by the Katpadi Police. Now, the suspicion of the Insurance Company is that the claim is false one. It appears that the petitioner Insurance Company had also filed a counter before

the Court where MCOP No.22/2005 is pending. This Court does not find any material even to order for reinvestigation in the matter. Since the only reason given by the learned counsel for the petitioner is that in the Certificate of the Christian Medical College Hospital, it is mentioned that the deceased Chakravarthy sustained injury by fall from his two wheeler and the fact of another vehicle hitting is not mentioned. But, one Vedagiri has given the First Information Report in detail with the involvement of the another vehicle, viz., Tata Sumo and number of the vehicle also has been given. Therefore, this Court is not issuing any direction to the police to register the FIR. Hence, this Criminal Original Petition is dismissed. However, it is open to the petitioner to agitate the matter before the M.A.C.T."

16. A careful scrutiny and analysis of the above said documents would probablise that the vehicle owned by the 1 st respondent did cause the accident. The effort made by the 2 nd respondent for registration of the case alleging falsity and fabrication, has ended in futility in the light of the order of dismissal dated 23.09.2011 made in CrI.OP.No.20203/2011 by this Court and no further challenge has been made to the said order and therefore, it has become final. If really the 2 nd respondent is of the firm opinion that the registration of the case, filing of final report and pleading of guilt by the driver of the four wheeler was on account of connivance and fabrication, then they would have definitely made a challenge to the above said order passed by this Court. But, for the best reasons, they did not do so. This Court, on a careful scrutiny of the entire oral and documentary evidences, is of the view that the vehicle owned by the 1 st respondent, had caused the accident and on account of which, the husband of the first appellant / first claimant died and as such, they are entitled to claim compensation. Therefore, Issue No.1 is answered in affirmative and in favour of the appellants / claimants. Issue No.2:-

17. The claimants had claimed lump sum compensation of Rs.30 lakhs. P.W.1 is the wife of the deceased and through her Exs.P.1 to 13 were marked. P.W.3 is the Assistant attached to the Office of the District Police Office, Vellore and through her, Salary Certificate pertaining to the deceased was marked as Ex.P.13. Ex.P.13 is the Pay Certificate and there is a certification to the effect that the deceased was the Sub Inspector of Police and however, it was also stated that he was also a Head Constable, earning a gross salary of Rs.11,475/- and after deduction, his net salary was Rs.9902/- She was cross-examined and she would depose that she only prepared Ex.P.13, wherein it has been stated that the deceased was a Head Constable and denied the suggestion that he was the Sub Inspector of Police. In the light of the said testimony, this Court is of the view that the deceased was employed as a Head Constable at the relevant point of time, earning gross salary of Rs.11,475/- and after deduction, net salary of Rs.9902/-.

18. The Death Summary marked as Ex.P.9 and the copy of the intimation, marked as Ex.R.1 on the file of the Christian Medical College Hospital, would disclose that the deceased was aged about 41 years and at the time of demise,

left behind the claimants / appellants 1 to 4.

19. It is a well settled position of law that award of compensation is for the purpose of compensating the claimants for the loss suffered or likely to be suffered due to sudden and untimely demise of the breadwinner of the family and the principle for determination of compensation are:- [a] measure of compensation must be just and adequate ; and [b] no double benefits shall enure in favour of the claimants while awarding compensation.

20. The Hon''ble Supreme Court of India, in the decision reported in 2009 [6] SCC 121 [Sarla Verma [Smt] and Others V. Delhi Transport Corporation and Another], had considered the scope of Sections 166 and 168 of the Motor Vehicles Act, 1988, and formulated the principles with regard to the assessment of compensation. It is observed in the above cited judgment that "just compensation is adequate compensation, which is fair and equitable on the facts and circumstances of the case, to make good, the loss suffered as a result of the wrong, as far as money can do so, by applying well settled principles relating to award of compensation."

21. The Hon''ble Supreme Court of India had taken note of the general principles, multiplier to be applied, additional income for future prospects and deduction for personal and living expenses and has held as follows:- "..... Step 1 [Ascertaining the multiplicand:- The income of the deceased per annum should be determined. Out of the said income, a deduction should be made in regard to the amount which the deceased would have spent in himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand. Step 2 [Ascertaining the multiplier]:- Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by the Supreme Court. The multiplier should be chosen from the said table with reference to the age of the deceased. Step 3 [Actual Calculation]:- The annual contribution to the family [multiplicand] when multiplied by such multiplier gives the "loss of dependency" to the family. Thereafter, a conventional amount in the range of Rs.5000 to Rs.10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of Rs.5000 to Rs.10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain and suffering or hardship caused to the legal heirs of the deceased. The funeral expenses, cost of transportation of the body [if incurred] and cost of any medical treatment of the deceased before death [if incurred] should also be added."

22. Insofar as the multiplier is concerned, it is held that the multiplier 18 for the age groups of 15 to 20 years and 21 to 25 years ; 17, 16, 15, 14 and 13 for the age groups of 26 to 30, 31 to 35, 36 to 40, 41 to 45 and 46 to 50 years

respectively ; and 11, 9, 7 and 5 for the age groups of 51 to 55, 56 to 60, 61 to 65 and 66 to 70 years respectively and insofar as future prospects is concerned, it is held that an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and there should be no addition where the age of the deceased is more than 50 years and as regards dependency, it should be one-third [1/3 rd] where the number of dependent family members is 2 to 3 ; one-fourth [1/4 th] where the number of dependent family members is 4-6 ; and one-fifth [1/5 th] where the number of dependent family members exceeds 6.

23. The learned counsel for the 2nd respondent had feign attempt by stating that the said judgment is only having a prospective effect and since the claim petition came to be filed in the year 2006, the principles / ratio laid down in the said judgment cannot be made applicable to the case on hand. This Court is of the view that the said submission deserves summary rejection for the reason that the Civil Miscellaneous Appeal in the Sarla Varma's case [cited supra], came to be filed during the year 1993 and the Delhi High Court, rendered the judgment during February 2007 and the Hon''ble Supreme Court of India has decided the case on 15.04.2009. The Motor Vehicles Act, 1988, is a benevolent legislation and therefore, the applicability should advance the cause of the claimants and that apart, the appeal is also a continuation of the original proceedings and as such, the said judgment can be made applicable to the facts of the present case. Sarla Varma's case [cited supra], has also been approved by a Three Judges Bench of the Hon''ble Supreme Court of India, reported in 2013 [2] CTC 680 [SC] [Reshma Kumari and Others v. Madan Mohan and another]. This Court, keeping in mind the ratio / principles laid down in the above cited decision, is calculating compensation payable to the claimants as follows.

24. As per Ex.P.13 - Pay Certificate, the deceased was earning a gross salary of Rs.11,475/- and since his annual income was below the taxable range, no deduction was made towards income tax and after deducting the General Provident Fund Subscription, Festival Advance, he was earning net salary of Rs.9902/-. In the light of the testimony of P.W.3, the deceased, at the time of accident, was employed as Head Constable and was aged about 41 years. Therefore, this Court takes the income of the deceased as Rs.9902/- and the multiplier, in terms of Sarla Varma's case [cited supra], viz., 14, is applied. The dependant family members are four in number. Therefore, 1/4 th deduction of annual income should be applied. The deceased was a Head Constable and he had remaining service of 17 years and for future prospects, 30% should be applied. Therefore, loss of income, after adding future prospects and applying multiplier, would be :-

Sl.No

1

Monthly Income

Rs.9902/-

2

Annual Income

Rs.9902*12

Rs.118824/-

3

Applying multiplier

118824*14

Rs.16,63,536/-

4

Less 1/4th Deduction

1/4(1663536)

Rs.4,15,884/-

5

Total income

1663536-415884

Rs.12,47,652/-

6

Add 30% future prospects

30% of 1247652

Rs.3,74,295.60p.

7

Loss of Income

Rs.16,21,947.60p= Rs.16,21,947/- [rounded off]

25. The 1st claimant / 1st appellant was aged about 34 years, which is considered to be a young age and as such, she is entitled to a consortium of Rs.40,000/-. Two sons and one daughter, who were aged about 15, 6 and 9 years respectively, have lost the support of their father at a very young age and therefore, they are entitled to a sum of Rs.30,000/- each for loss of love and affection. The deceased died on the next day, i.e., 06.09.2004, and therefore, expenses would have been incurred for shifting him to the hospital and from

there, to his residence and as such, a sum of Rs.10,000/- towards transportation expenses is awarded. For funeral expenses, a sum of Rs.15,000/- is ordered.

26. In fine, the appellants / claimants are entitled to a sum of Rs.17,76,947/- [Rupees Seventeen lakhs seventy six thousand nine hundred and forty eight only] under the following heads:-

Heads

Amount in Rs.

Loss of Income

16,21,947

Loss of Consortium

40,000

Loss of Love and Affection

90,000

Transportation Charges

10,000

Funeral Expenses

15,000

Total

17,76,947

as compensation with interest @ 7.5% per annum from the date of claim petition, i.e., from 04.01.2005 till full and final settlement.

27. In the result, the Civil Miscellaneous Appeal is allowed and the Award and decree dated 29.02.2012 made in MCOP NO.26/2006 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore, are set aside and the appellants/claimants are entitled to a sum of Rs.17,76,947/- [Rupees Seventeen Lakhs Seventy Six thousand Nine Hundred and Forty seven only] with interest @ 7.5% per annum from the date of claim petition till deposit and the time for deposit is eight weeks from the date of receipt of a copy of this order and on such deposit, the 1 st appellant / 1 st claimant is entitled for a sum of Rs.9,00,000/- [Rupees Nine lakhs only] with proportionate interest and the appellants 2 to 4 / claimants 2 to 4 are entitled for a sum of Rs.2,92,315.67p. [Rupees Two Lakhs Ninety Two Thousand Three Hundred and Fifteen and Sixty Seven paise only] each, with proportionate interest each. On such deposit, the 1 st appellant / 1 st claimant is entitled to withdraw the compensation amount due and payable to her. Insofar as the minor claimants are concerned, their respective share of compensation should be

deposited in any of the Nationalised Banks for a period of three years in an interest bearing deposit and the accrued interest shall be paid once in three months to the 1 st appellant / 1 st claimant. However, if the appellants 2 to 4 / claimants 2 to 4 have attained the age of majority, it is always open to them to approach the Trial Court, taking appropriate applications for withdrawing the amount apportioned to them. The Trial Court is directed to follow the judgment reported in 2016 [3] CTC 128 [DB] [The Divisional Manager, Oriental Insurance Company Vs. Rajesh and 2 others]. However, in the circumstances of the case, there shall be no orders as to cost.