
(1986) 12 MAD CK 0012
In the Madras High Court
Case No : C.M.A. No. 372 of 1982

T.R. Rangaswami and Another	Vs	APPELLANT
Thiruvalluvar Transport Corporation (Express Wing), Madras		RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1987) 2 ACC 274 : (1987) ACJ 858 : AIR 1988 Mad 66 : (1987) 100 LW 732

Hon'ble Judges : Sengottuvelan, J; David Annoussamy, J

Bench : Division Bench

Advocate : P.J. George, for the Appellant; Sundaravaradan, for the Respondent

Judgement

Sengottuvelan, J.—This Civil miscellaneous appeal is filed by the parents of the victim Srinivasan, who are the petitioners in M O P 182 of

1979 on the file of the Motor Accidents Claims Tribunal. Chengalpattu, challenging the legality and correctness of the order passed by the learned

Subordinate Judge, in the above said petition.

2. The facts of the case are briefly as follows: - One Srinivasan aged 25 was killed .in the road accident on 11-12-1978 at G.S.T. Road in

Tapalmedu village. The accident occurred while the said Srinivasan and another Mohamed Mustaq were proceeding on a motor cycle in the G S T

Road from north to south, while the bus belonging to the Thiruvalluvar Transport Corporation bearing Registration number TMN 936 was coming

from south to north in the G S T Road, dashed against them resulting in the death of both of them. Hence the parents of the victim Srinivasan filed

MOP 182 of 1979 on the file of -the Motor Accidents Claims Tribunal. Chengalpattu, claiming compensation towards loss of support.

3. According to the version of P.W. 4, who was an eye-witness to the accident, the bus belonging to Thiruvalluvar Transport Corporation, bearing Registration Number TMN 936 following a lorry attempted to overtake the lorry and for that purpose came to the western side of the road and hit against the motor cycle as a result of which both the riders of the motor cycle were thrown away from the motor cycle. The unrebutted version of P.W. 4 was accepted by the Tribunal which came to the conclusion that the accident had occurred on account of rash and negligent, driving of the bus TMN 936. Late Srinivasan was born on 10-3-1953 as seen from his S S L C book and he was 24 years old at the time of the accident. He was employed as a medical representative with Hoechst Pharmaceuticals Ltd. According to the pay certificate Ex.A-2, the total income of the deceased for the year 1978-79 under various heads, viz., salary, commission, bonus, ex gratia, additional dearness allowance and gratuity was Rs. 17885-36. The Tribunal deducted the gratuity amount and arrived at a sum of Rs. 15206-36 as the total income and arrived at the monthly income of the deceased at Rs. 1267. After allowing expenses for maintenance and travelling, the Tribunal arrived at the loss of support to the parents of the deceased at Rs. 500 per month. The Tribunal also took the view that the appellants could have received Rs. 500 for 32 months i.e. till the deceased reached 28 years and afterwards there is a likelihood of the deceased being married and after such marriage the contribution of the deceased would be reduced to Rs. 150 per month. The Tribunal also took the view that the first appellant would get the support of the deceased for 12 years since he was aged 55 and the second appellant would get the support for 22 years since she was aged 45 years. Capitalising the loss at the above rates, the Tribunal arrived at the compensation payable to the appellants at Rs. 77200 from which the Tribunal deducted certain percentage towards lump sum payment and uncertainties in life. The Tribunal assessed the damage on account of pain and suffering undergone by the appellants on account of loss of son at Rs. 5000, each totalling Rs. 10000. After assessing the damage as stated above the Tribunal took note of the fact that the appellants received a sum of Rs. 50,000 under the Group Insurance Policy and Rs. 30,000 under the Accidents Benefit Policy, which were taken by the deceased totalling Rs. 80,000. The Tribunal held that on account of the fact that a sum of Rs. 80,000 had been

received by the appellants no amount is payable by way of loss of support to the appellants and awarded a sum of Rs. 10,000 only towards pain

and suffering undergone by the appellants. This civil miscellaneous appeal is filed challenging the legality and correctness of the award passed by

the Tribunal.

4. The basis on which the loss of support arrived at by the Tribunal is not seriously challenged. The only point that is raised on behalf of the

appellant is that the Tribunal ought not to have deducted the amounts received under the Group Insurance Policy and Accident Benefit Policy from

the amount arrived at towards loss of support and the Tribunal is not justified in coming to the conclusion that no amount need be paid to the

appellants towards loss of support.

5. On this interesting question whether the insurance amounts are to be deducted from the compensation payable to the dependents of the victim of

the accident judicial opinion is not uniform. In the case reported in *Nirmala Thirunavakkarasu Vs. Tamil Nadu Electricity Board*, , a case arising

under Fatal Accidents Act, Kader J. deducted the amount received by the dependent under the Family Benefit Scheme from the compensation

payable. Unfortunately no reasoning is given in the judgment for such reduction. Relying on this judgment it is contended on behalf of the

respondent that the Tribunal is right in deducting the amounts received by the appellants under the Group Insurance Policy and the accident benefit

policy from the compensation payable. In the case reported in *A.P. Dorairaj Vs. The State of Madras*, , a Division Bench of this court held that

where the injured receives payments or other benefits gratuitously which might equal his wages, such payments are not to be taken into

consideration in assessing the liability of the wrong doer to recompense the injured regarding loss of wages. A single Judge of the Delhi High Court

in the case reported in *Bhagwanti Devi v. Ishkumar* 1975 ACJ 56, held that gratuity, pension, provident fund and insurance amounts cannot be

deducted from the amount of compensation payable. In the course of the judgment the single Judge observed as follows : -

It thus appears that there is considerable judicial authority both in England and in this country in favour of exclusion of benefits received by the

legal representatives on account of life insurance policy, pension, gratuity,

provident fund and other such benefits from consideration in determining the amount of compensation which appeared to the Tribunal to be just on account of loss of pecuniary benefit arising out of death and this exclusion would appear to me to be just and reasonable because these are benefits for which the deceased had paid. These benefits are in the nature of Quid Pro Quo and have relation to the savings effected by the deceased besides having their genesis either in the contract or in the past service and good conduct and these benefits arising out of the death of a person in the sense in which the action for damages or inheritance could be related to such an event. There would be no justification, therefore, to give the benefit of these payments to the wrong doer, who by his negligent act, has caused the death of a person.

In the case reported in *N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another*, , the Supreme Court held that the reduction in the compensation on account of the fact that the widow of the deceased is entitled to pension is not justifiable. Earlier decisions relating to this point are not uniform.

In the case reported in 1967 ACJ 82, a Division Bench of the Punjab High Court justified the deduction of the proceeds of an insurance policy

although there is no discussion as to the rationale for such a deduction. In a later decision of the same Court reported in *Damayanti Devi v. Sita*

Devi, 1972 ACJ 334 it has been held that the deduction on account of the proceeds of insurance policy was unjustified. In the case reported in

Ishwar Devi Malik and Others Vs. Union of India and Others, , a Division Bench of the Delhi High Court held that the proceeds of life insurance

policy could not be deducted. Again in the case reported in *Unique Motor and General Insurance Co. Ltd. v. Mrs. Krishna Kishori*, 1968 ACJ

318, a single Judge of the Punjab and Haryana High Court upheld the deduction, of the Insurance amount but there is no reasoning for such a

conclusion. In the case reported in *Joginder Nath v. Smt. Shantidevi*, 1967 ACJ 150, a single Judge of the Punjab High Court approved the

deduction in respect of the provident fund amount. To the same effect is the earlier decision reported in *Dr. Ram Saran and Another Vs. Shrimati*

Shakuntala Rai and Others, . In the case reported in *Mohinder Kaur v. Manphool Singh*, 1973 ACJ 515, a single Judge of the Delhi High Court

allowed the deduction on account of pension but there is no further discussion on that question.

6. In the case reported in *Life Insurance Corporation of India and Another Vs. Kasturben Naranbhai Vadhia and Others*, a Division Bench of the

Gujarat High Court relying on the authority of *Parry v. Cleaver*, 1979 ACJ 363, held that the Insurance and retirement-cum-gratuity benefits could

not be deducted. In the case reported in *Union of India v. Soma Babiloni*, 1984 ACJ 728 the High Court of Jammu and Kashmir hold that the

amount received by the claimant on account of group insurance scheme, Life Insurance Policy, provident fund pension and education allowance for

children are not deductible from the amount of compensation arrived at.

7. We have to consider the question whether the insurance amount and the amount received under the accident benefit policy are deductible in the

light of the above decisions. The nature of the benefits like provident fund, family pension or gratuity is that they are the deferred fruits of

satisfactory service, industry, thrift, contributions and foresight of the employee. These may be the necessary incidents of statutory service rules

employment contracts, or beneficent legislation rooted in the employment of the deceased. It cannot be said that these payments had been derived

entirely due to the accident and the resultant death. If the deceased had not contributed to any of these schemes then he would not have derive any

benefit from the same. These benefits can only be termed as deferred earnings of the deceased payable on death whereas the compensation

payable by the Tortfeasor will amount to damages payable for his negligent act which causes the loss of support to the family of the victim. The

above principle is well recognised in the following English decisions under the Fatal Accidents Act.

8. In *Liffen v. Watson* (1940) 1 KB 556, a domestic woman servant, who had been receiving from her employer a wage of £1 a week plus free

boarding and lodging, was injured in an accident and while she was under treatment she was living with her father to whom she made no payment

for boarding and lodging. In an action by her against the wrongdoer, whose negligence caused the accident the court of appeal in England held that

the injured was entitled to recover damages not only in respect of her loss of wages but also in respect of her loss of boarding and lodging. It was

pointed out that the fact that during the period when the employer was not giving her free boarding and lodging, she had received such free

boarding and lodging from her father is no ground to disallow the claim for loss of free boarding and lodging on the principle that the wrongdoer

must recompense a plaintiff for all the damages which naturally flow from the wrong doer. The case reported in *Dennis v. London Passenger*

Transport Board (1948) 1 All ER 779, is a case where a person, who was injured in an accident, which was a result of wrongful act on the part of

the defendant, during the period when he was out of employment had received certain amount from the Minister of Pensions and certain amount

from his employers themselves and all the amounts so received equalled his wages which he would have earned if he had gone to work. But the

Court of Appeal held that the amount so received by the injured should not be taken into consideration in awarding the special damages payable

by the wrongdoer. Denning J. observed that a wrong-doer is not to be allowed to reduce damages by the fact that other persons have made up to

the plaintiff his wages and that in point of law the plaintiff should, have his wages paid by the wrong-doer as he has lost the same. It is also

observed that, the plaintiff was under a moral obligation to refund the amounts to the Minister of Pensions and the plaintiff's employer, viz. the

London County Council, on his getting damages from the wrong-doer to recompense him towards loss of wages. In *Mayne and Me Gregor on*

Damages, 12th Edn., page 663 paragraph 773, the above cases are referred to and it is stated that even if there had been no expectation of

repayment on the part of the benefactors, it would seem that principle demands that there should still be no reduction in the damages, as

recompense to employers should depend only on the conscience of the employee. Therefore even if there was no moral obligation on the part of

the injured to refund the amounts to the persons who had paid him and even if there was no chance of the injured so repaying the wrong doer

cannot be heard to say that there was no loss of wages and that therefore he would not recompense the injured. In the case reported in *Parry v.*

Cleaver, 1969 ACJ 363, the claimant had sustained injuries in a motor accident as a result of which he was discharged from service. He was

awarded disablement pension and the question arose whether the pension received by him should be deducted while assessing the liabilities. On

behalf of the claimant it was contended that pension, like life insurance, was the product of the employee's past services or thrift and the benefit of

the same cannot be given to the tortfeasor. The House of Lords in deciding the question observed as follows :-

As regards money coming to the plaintiff under a contract of insurance. I think that the real and substantial reason for disregarding them is that the

plaintiff has bought them and that it would be unjust and unreasonable to hold that the money which he prudently spent on premiums and the benefit

from it should enure to the benefit of the tortfeasor. Here again I think that the explanation that this is too remote is artificial and unreal. Why would

the plaintiff be left worse off than if he had never "Insured! In that case, he would have got the benefit of the premium money; if he had not spent it

he should have had it in his possession at the time of the accident grossed up at compound interest.

The principle laid down in the above case can be applied mutatis mutandis to this case and the resultant conclusion is that the insurance amount is

not deductible from the amount of compensation payable.

9. In so far as Accident Benefit Policy is concerned, it stands on a slightly different footing. Though the Accident Benefit Policy is the result of

carefulness on the part of the deceased yet the benefit had occurred on account of the death of the deceased. The amount received by the

deceased on an Accident Benefit Policy will have to be taken into consideration in arriving at the loss of support but at the same time it cannot be

said that the entire amount received from the Accident Benefit Policy will have to be deducted. We must also bear in mind that the thrift and the

carefulness on the part of the deceased cannot go to the benefit of the wrong-doer. Bearing this principle in mind we have to conclude that a

certain portion of the Accident Benefit Policy amount can be deducted from the total compensation arrived at in normal circumstances one-third of

the Accident Benefit Policy amount can be said to be so deductible.

10. In this case the basis on which the Tribunal arrived at the loss of support at Rs. 77200 is not seriously disputed. The only point canvassed by

the appellants is the deduction of the entire amount received by way of Group Insurance Policy and the Accident Benefit Scheme. In the light of the

conclusion arrived at the deduction made by the Tribunal on account of Group

Insurance Policy will have to be restored. In respect of the deduction made on account of the Accident Benefit Policy, the two-thirds will have to be restored-Apart from this we have to make allowance for lump sum payment and imponderable in life which in this case may be worked out at 10 per cent. On the above basis the loss of support by way of compensation payable to the appellants works out as follows : -

Total amount arrived towards loss of

Support. Rs.77, 200

Deduction for lump sum payment

and imponderablesRs. 7, 200

70, 000

Deduction for the benefit accrued on

account of the Accident Benefit

Policy ... Rs10, 000

Balance Rs.60, 000

The said amount is directed to be apportioned equally between the appellants. In the result, the appeal is allowed in part as indicated above. There will be no order as to costs.

11. Appeal allowed in part.