
(2005) 08 MAD CK 0014
In the Madras High Court
Case No : C.M.A. No. 677 of 2005

United India Insurance Co. Limited

APPELLANT

Vs

Nedunchelian and Others

RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Citation : (2006) 1 ACC 267 : (2006) ACJ 1675 : (2006) 2 CivCC 467 : (2006) 1 RCR(Civil) 408 : (2006) 1 RCR(Criminal) 504

Hon'ble Judges : S.K. Krishnan, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—The Insurance Company is the appellant before this Court as against the award of the Motor Accidents Claims

Tribunal, Madurai, in M.C.O.P. No. 2384 of 2002 dated 19.11.2004.

2. The deceased, a child aged about 5 years, was walking along with his parents in the Madurai-Dindigul Road from north to south direction.

According to them, they were walking on the extreme left side. At that time, a van bearing Registration No. TN 58 F 3925 was coming along in

the same direction. However, the vehicle was being driven in a rash and negligent manner and without observing the rules of the road, and in the

process, dashed against the deceased. The deceased sustained multiple and severe injuries all over the body and succumbed to the injuries on the

spot. The accident had taken place only as a result of the rash and negligent driving of the driver of the vehicle.

3. According to the claimants, the first claimant being the father of the deceased and the second claimant, the mother and the third claimant, the

sister, have stated that the child was a hale and healthy person and he was the only son of his parents. The child was an intelligent person with

bright future and the claimants have lost good future prospects as a result of the death of the child. He was the only son of his parents and there

was no other male issue. The parents expected their son to look after them in their old days. The claimants had quantified the claim at Rs.

2,50,000.

4. In the counter affidavit filed by the respondent/the appellant herein, the manner of the accident as well as the quantum of compensation claimed

by the claimants were disputed. At the time of the accident, the vehicle was not driven in a rash and negligent manner as stated by the claimants.

The accident had not occurred in the manner as alleged by the claimants. On the other hand, on 10.4.2002, when the vehicle was proceeding, it

was being driven by its driver in a slow and steady manner conforming to the traffic rules in Madurai-Dindigul Road. The accident had happened

only due to the carelessness and negligence of the deceased Alagesan who was responsible for his own death. There was no proper document to

prove the real age of the deceased.

5. On overall consideration, the Tribunal, after holding that the accident was the result of negligence on the part of the driver of the vehicle, held

that a sum of Rs. 1,50,000 was liable to be paid towards compensation and a sum of Rs. 20,000 was payable towards loss of love and affection

to each of the parents, Rs. 5,000 towards mental agony, Rs. 2,000 towards funeral expenses and Rs. 2,500 towards loss of estate. With the

result, a total sum of Rs. 1,79,500 was fixed as compensation. Hence, the above appeal by the Insurance Company.

6. Learned Counsel for the Insurance Company pleads that there can be no notional income which can be fixed in favour of a minor child aged 5

years. Any amount to be fixed has to reflect a reasonable assessment and cannot be speculative. It is not possible to perceive any possible income

out of which the minor could be stated to be in the position of making any contribution to the family. The amount awarded was very much on the

higher side and reference is made to the judgment of a Division Bench of this Court in Kokila and Another Vs. A.C. Rayan and Another, , in

which, the compensation was enhanced from Rs. 25,000 to Rs. 75,000 with

interest at the rate of 9% for the enhanced compensation of Rs.

50,000. Therefore, according to the learned Counsel, the amount of compensation awarded in this case was very much on the higher side.

7. We have considered the submissions of the learned Counsel for the appellant.

8. It is true that there can be no fixed formula on the basis of which notional income could be calculated in respect of a child aged about 5 years.

However, it is settled proposition that though in the case of death of an infant there may be no actual pecuniary benefit derived by the parents

during the child's life time, yet, it may not necessarily bar the claim of the parents and prospective loss will be found to be a valid claim, provided,

the parents establish that they had a reasonable expectation of pecuniary benefits if the child had lived vide the judgment of the Supreme Court in

Lata Wadhwa and Others Vs. State of Bihar and Others, . It is true that it was held that the claim cannot be a mere speculative possibility of

benefit. In that case, the Supreme Court held that the claimants would be entitled to a total amount of Rs. 2,00,000, comprising of Rs. 1.50 lakhs

as proper compensation and an additional conventional figure of Rs. 50,000.

9. In *Manju Devi and Anr. v. Musafir Paswan and Anr.* 2004 (2) TN MAC 262 (SC) the Supreme Court dealt with a case of a victim who was a

13 year old boy. The Tribunal awarded Rs. 90,000 as reasonable compensation. The Supreme Court, however, held that though the deceased

was a non-earning person, Rs. 15,000 should be taken as income and adopting a multiplier of 15, a sum of Rs. 2,25,000 was fixed as

compensation with interest. In the background of the above two judgments, it is not possible for us to accept the contention of the learned Counsel

for the Insurance Company that either the parents will not be entitled to any compensation for the death of a minor or that the amount awarded by

the Tribunal was highly exaggerated. The Tribunal has fixed only Rs. 1,50,000 and had added further amounts towards loss of love and affection,

penalty, expenses, etc. and the total amount fixed at Rs. 1,79,500 cannot be stated to be unconscionable or excessive, warranting any interference

by this Court. It is not disputed that the child was a hale and healthy person and would have certainly contributed a decent income to the parents.

The loss of the child with no possibility of begetting another child is undoubtedly a major loss to the family and as such, the amount awarded in

favour of the minor cannot be stated to be excessive.

10. On the issue of negligence, it is seen that the Tribunal has rightly held that the accident was only due to the negligence on the part of the driver

of the vehicle. While arriving at the said conclusion, the Tribunal had taken note of the evidence of one of the claimants as well as the Motor

Vehicle Inspector's report regarding the manner of the accident. Therefore, we do not find any justification to interfere with the findings rendered

by the Tribunal as regards negligence.

With the result, there are no merits in the above appeal. Hence, the appeal is dismissed. Connected C.M.P. No. 4372 of 2005 is also dismissed.