
(1992) 09 MAD CK 0011
In the Madras High Court
Case No : C.M.A. No. 486 of 1986

United India Insurance Co. Ltd.

APPELLANT

Vs

Bankarappa Naicker and Others

RESPONDENT

Date of Decision : 21-09-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : (1994) ACJ 91

Hon'ble Judges : T.S. Arunachalam, J;A. Thangamani, J

Bench : Division Bench

Advocate : K.S. Narasimhan, for the Appellant; A. Sivaji, for the Respondent

Judgement

A. Thangamani, J.—On 22.2.1984 at about 11.00 a.m. Subburaj, the eldest son of the claimants, was proceeding on his bicycle along

Sathur-Kovilpatti main road. When he was nearing Ezhayiram Farm diverse road the lorry bearing registration No. MEP 2338 came from the

opposite direction and knocked down the boy. As a result of the injury sustained in the accident Subburaj died instantaneously. The parents of the

deceased Subburaj filed M.C.O.P. No. 86 of 1984 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Srivilliputhur

claiming a compensation of Rs. 85,000/- from the owner of the vehicle and the insurance company alleging that the accident was due to the rash

and negligent driving of the lorry. The insurance company contested the claim on the ground that the accident took place only because the boy

suddenly took a right turn and that in any event it was liable to pay Rs. 15,000/-, the no fault liability alone. After enquiry the Tribunal awarded Rs.

50,000/- with interest at 6 per cent per annum from the date of petition as compensation. Aggrieved by the said award while the insurance

company has preferred this civil miscellaneous appeal, the claimants have come forward with this cross-objection.

2. The owner of the lorry involved in the accident remained ex parte before the Tribunal.

3. PW 2, Subba Naicker, speaks about the accident. It is his version that while he was grazing cattle near south of branch road, deceased

Subburaj was coming on his cycle keeping to the left side of the main road. The lorry came from the south at a great speed and dashed against

him. Exh. P-8 is the copy of the F.I.R. given by him in Sathur Police Station regarding the incident. In this he has narrated in detail how the

accident took place. This F.I.R. prepared within 15 minutes of the accident amply corroborates the version of PW 2, Subba Naicker. Besides, we

find from Exh. P-4 that in the criminal court the driver of the lorry has voluntarily pleaded guilty. This conduct on the part of the driver also goes in

support of the contention of the claimants that the accident was only due to the rash and negligent driving of the lorry. And the Tribunal has rightly

fastened the liability to pay compensation on the appellant herein.

4. The main controversy in this appeal relates to quantum of the compensation awarded. While the insurance company pleads that the sum of Rs.

50,000/- awarded is not based on any settled legal principles, in the cross-objections the claimants contend that they are entitled to the full amount

of Rs. 85,000/- asked for in the application. We find from the claim petition that the parents of the deceased were aged 60 and 45 respectively at

the time of the accident. In the application the age of the deceased is given as 14. The first claimant, Sankarappa Naicker, states in his evidence

that his son was studying in the 10th Standard in A.V.S. High School at the time of his death. Exh. P-1, the extract from the register of admissions

and withdrawals, discloses that deceased Subburaj joined the school in 1979-80 and he was studying in the 10th Standard when the accident took

place. His date of birth is given as 12.7.1969 which indicates that he was nearly 14 1/2 years old on the crucial date. Exh. P-2 is the certificate

given by the headmaster of the school on 20.3.1984 stating that the deceased was an obedient and intelligent student. The Tribunal has taken the

view on the basis of this certificate that the boy had a bright future. However, taking into account that he would not have spent his entire future

earnings on the claimants and that subsequent to his marriage his contribution to the parents would be reduced, the sum of Rs. 50,000/- has been awarded. In this connection it may be borne in mind that the claimants have not filed the marksheets of the deceased boy to assess how far he was good in his studies. In the absence of any evidence on this aspect we cannot hold with certainty that the boy would have come up very well later in his life. Besides, there is also no evidence on the resources of the family. It is seen from the petition that the first claimant was a retired police constable aged about 60. The second claimant was only a housewife aged about 45. There is no indication in the claim petition that the parents had the necessary wherewithal to educate the boy up to the maximum extent possible. PW 1, Sankarappa Naicker, the first claimant, describes himself as a coolie. His evidence is conspicuously silent about his capacity to educate the boy. He admits in cross-examination that he owns only an extent of one acre and 70 cents of dry land depending upon rain. He does not speak anything about his earnings. While so, we are not in a position to assess how far the deceased would have come up in life.

5. The paramount consideration of the Claims Tribunal must be to protect the interest of the claimants so that the amount awarded to them by way of compensation serves the purpose and object of compensating them for the loss occasioned by the tragedy of the accident. As a general rule, parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition, they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. How he would have turned out in life later is at best a guess. But there is a reasonable probability of the child becoming a successful man in life if he had been a bright boy in the school and his parents could afford him a good education. The thing to be valued is not merely the prospect of length of life, but the prospect of a predominantly happy life of the deceased. This undoubtedly would vary from case to case, depending upon the family environment, members of the family, health and age of the victim, his outlook in life, the interest which his parents were taking in the boy and the totality of circumstances tending to show whether the victim would have a predominantly happy life or life of misery or a life of despondence or an insipid life. Even though it depends upon

very many uncertain factors, the Tribunal has to take an overall picture and form its estimate, though to some extent, it must be based upon

speculation. A just and fair calculation of compensation would be what the beneficiaries would have received from the deceased as support for

their main- . tenance had the deceased lived and earned.

6. In *Kuncharamu v. Kerala State Road Transport Corporation* 1987 ACJ 1017 (Ker), the deceased was studying in the S.S.L.C. class.

According to the petitioners, the deceased was very intelligent, smart and healthy. They claimed Rs. 50,500/- as compensation. Held: to sustain a

claim of compensation u/s 110-A of the Motor Vehicles Act, it is not necessary that the deceased was actually earning money. Parents always

reasonably expect to be supported in their old age by their children. The possibility of the deceased becoming successful in life cannot be ruled out.

As the parents of the deceased could have reasonably expected pecuniary benefits when the deceased had completed his education and started a

career or avocation and as their expectations were shattered as under due to the unfortunate accident they can very well claim compensation from

those persons who were responsible for it. Merely on the ground that the deceased was not actually earning any amount at the time of death,

compensation claimed by the parents cannot be legally denied. And the Kerala High Court in this case awarded a compensation of Rs. 27,000/-.

7. In *Parvathi Ammal v. Pallavan Transport Corporation* 1984 ACJ 342 (Mad), the deceased was 18 years and he was a student in the B.A. class

at the time of his death. The mother of the deceased claimed that the father of the deceased was an established film producer and distributor and

so the deceased would have had the advantage of the wisdom and experience of his father and, therefore, he would have entered the cine field and

earned several lakhs of rupees. Her case was that the deceased was expected to have a predominantly happy life but for the untimely death

brought about by the accident, and that having regard to the above circumstances the sum of Rs. 2,50,000/- claimed by her was a reasonable

compensation for the death of her son. A Division Bench of this court held that it is not necessary that the deceased should have been actually

earning money or contributing to the support of the claimant at the time of his death. But in order to succeed, the claimant must necessarily show

that he has lost a reasonable probability of pecuniary advantage. However, having regard to the fact that the deceased was studying in B.A. degree

course in the college, there is every possibility of his taking up some employment or of his entering a business after the completion of his course and

so some amount has to be awarded towards the loss of pecuniary advantage as part of his earnings would have gone to the benefit of the claimant.

Though the parents of the deceased expected him to enter the film business, the deceased might have had his own plans. But it is not possible to

predict that the deceased would have entered the film business and would have earned lakhs of rupees by utilising the wisdom and experience of

his father. There was a reasonable probability that his parents could have afforded him a good education and a good footing in a business. And

having regard to the fact that the deceased would in all probability marry at the age of 25, the benefit of the earnings of the deceased would have

gone to the appellant subsequently only up to a period of 7 years, i.e., till the deceased would have married. Subsequently to the marriage, he will

have a family of his own to maintain and, therefore, the benefit that will go to the mother out of his earnings would considerably be reduced. Taking

all these facts into consideration, the Division Bench enhanced the compensation from Rs. 17,000/- to Rs. 30,000/-.

8. Relying on the citations referred to above the learned counsel for the appellant insurance company argued that the sum of Rs. 50,000/- awarded

by the Tribunal was on the high side. Whereas the learned counsel for the respondent Nos. 1 and 2, claimants, cited the decision of a single Judge

of Punjab and Haryana High Court in United India Insurance Company Ltd. Vs. Gurdev Singh and Others, and pleaded for raising the

compensation- amount to the sum of Rs. 85,000/- asked for. In that case, the deceased was 16 years old student and the compensation awarded

was Rs. 50,000/-. The learned counsel for the claimants contended that the facts therein are similar to those of the present case and hence it

cannot be said that the sum of Rs. 50,000/-awarded by the Tribunal herein is excessive. But it is seen that both the parents of the deceased in the

case cited are teachers and it is, therefore, reasonable to assume that they would both have been interested to ensure good education for their son

and what is more, they were also capable for providing him the necessary facilities for it. So we do not think that the amount awarded therein is

any guide for our present purpose.

9. Keeping in view our social norms, parents do have a legitimate expectation of financial support from their children, particularly in their old age

when their children are gainfully employed. But the extent of such monetary assistance must, of course, depend upon the circumstances of the

parents and the deceased child and also upon other surrounding circumstances. And it is well established that there can be no exact uniform rule

for measuring the value of the human life and the measure of damage cannot be arrived at by precise mathematical calculations. It is also equally

well established that in assessing damages, the court must exclude all considerations of matters which rest in speculation or fancy though conjecture

to some extent is inevitable. Taking all the facts present into consideration in this case we are inclined to hold that a sum of Rs. 37,000/- would be

a just one.

10. In the result, the award is modified and the insurance company is directed to pay Rs. 37,000/- with interest at 12 per cent per annum from the

date of petition till the date of realisation as compensation. The parties are directed to bear their own costs throughout. The civil miscellaneous

appeal and cross-objections are ordered accordingly.