
(2013) 06 MAD CK 0187
In the Madras High Court
Case No : C.M.A. No. 2623 of 2009

United India Insurance Co. Ltd.

APPELLANT

Vs

S. Malarvizhi and Others

RESPONDENT

Date of Decision : 06-06-2013

Acts Referred:

Citation : (2013) 06 MAD CK 0187

Hon'ble Judges : T.S. Sivagnanam, J; R. Banumathi, J

Bench : Division Bench

Advocate : S. Arunkumar, for the Appellant; Kovi Ganesan, for the Respondent

Final Decision : Dismissed

Judgement

1. This Appeal filed by the Insurance Company is directed against the Award passed by the Motor Accident Claims Tribunal, Additional District

Court, FTC No. II, Kancheepuram in M.C.O.P. No. 18 of 2004 dated 08.12.2008. The first respondent is the wife of the deceased, the second

respondent their minor daughter and the respondents 3 & 4 are the parents of the deceased Subramanian. The respondents/ claimants filed the

Claim Petition claiming a sum of Rs. 5 crores as compensation for the death of T. Subramanian alias Thanthoni Subramanian in a road traffic

accident, which occurred on 08.08.2003. The facts as stated in the Claim Petition could be briefly summarized as follows:

(a) On 08.08.2003, the deceased along with his wife and minor child left their residence at Tambaram, in a newly purchased Tata Indigo Car

bearing Registration No. TN 22 AB 1342 to Mamandoor to see his parents. It is stated that the deceased was driving the Car by following the

Traffic Rules at moderate speed. While the vehicle was proceeding near Nallur at

about 7.30 a.m., the lorry bearing Registration No. TN 04 C 7989, which came in the opposite direction in a rash and negligent manner dashed against the Car, which was proceeding to Mamandoor in the extreme left side of the road. On account of the accident, T. Subramanian died on the spot and his wife and minor daughter namely respondents 1 & 2 also sustained injuries. It is further contended that the accident occurred only because of the rash and negligent driving of the lorry which is owned by the 5th respondent herein. It is stated that the deceased was employed as an Electrician at Singapore between 1993 and 1997 and his salary during the said period was S\$.575 equivalent to Rs. 16,100/-. Subsequently, the deceased shifted jobs and worked in various Companies and ultimately he became the Director, Marketing of M/s. Revers Management Associates PTE Limited, Singapore and was drawing a salary of S\$ 3000 per month equivalent to Rs. 84,000/-. It is further stated that though the deceased had joined in 1993 as an Electrician, on account of higher qualifications acquired by him during the said period of stay at Singapore, he had reached the high position as Director of a Singapore based Company and was earning the monthly income of Rs. 84,000/-.

(b) The claimants claimed Rs. 5 lakhs as loss of earning, Rs. 15,000/- for Transportation, Rs. 3,50,000/- for damages to car & clothing, etc.; compensation for pecuniary loss to the family Rs. 2 lakhs; for loss of consortium Rs. 40,00,000/-; for mental shock & agony Rs. 50,00,000/-, for loss of love and affection Rs. 1,00,000/-, totaling to Rs. 11,44,65,000/-. Though the said amounts were said to be the particulars of the compensation claimed, the claimants restricted the claim to Rs. 5 Crores.

2. The appellant/Insurance Company resisted the Claim Petition by filing a counter, among other things stating that it is false to contend that the accident occurred on account of the rash and negligent driving of the driver of the lorry, they disputed the salary drawn by the deceased at S\$ 3000 per month and stated that the accident occurred due to the negligence on the part of the deceased and that the amount claimed as compensation is highly excessive and exorbitant and does not carry any legal basis.

4(i) Before the Tribunal, the first respondent/claimant examined herself as P.W.1 and 41 documents were marked as Exs. P1 to P41. On behalf of

the Appellant/Insurance Company, one Kanniappan/ Driver of the lorry was examined as R.W.1. However, no documentary evidence was adduced.

(ii) The Tribunal framed two questions for consideration viz. (a) whether the accident occurred due to the rash and negligent driving of the driver of the lorry ? and (b) whether the claimants are entitled for compensation and if so what would be quantum ?

(iii) The Tribunal on considering the oral and documentary evidence, fixed the salary of the deceased at S\$ 2000 per month, adopting the value at

Rs. 25/- per dollar, fixed the monthly salary as Rs. 50,000/-. As the deceased was employed in Singapore, the Tribunal held that 60% of the

salary would have been spent by the deceased and the remaining 40% given to his dependents viz. the claimants. The age of the deceased at the

time of the accident was fixed at 32 years and the age of the dependents/parents as 60 and 65 years and the Tribunal adopted the multiplier of 10

and fixed the loss of income as Rs. 24 lakhs. A sum of Rs. 10,000/- was awarded towards loss of consortium, a sum of Rs. 2,500/- towards

funeral expenses, Rs. 2,000/- towards loss of estate and in all a sum of Rs. 24,24,500/-, together with interest at 7.5% p.a. The compensation was

directed to be apportioned in the following manner viz. Rs. 10,00,500/- to the first respondent/claimant; Rs. 9,24,000/- the second

respondent/minor claimant and Rs. 2,50,000/- to each of the parents of the deceased. Challenging the Award, the Insurance Company has

preferred this Appeal.

4. Mr. S. Arunkumar, learned counsel appearing for the appellant contended that the Tribunal erroneously fixed the monthly income of the

deceased at S\$ 2000, when there was no document produced before the Tribunal to establish that after 16.5.2001, the deceased received salary

from his employer at Singapore. Further, the value of Singapore Dollar adopted at Rs. 25/- per dollar is erroneous and contrary to the decision of

the Hon"ble Supreme Court in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., .

5. Further, the learned counsel contended that if foreign income has to be considered, the multiplier has to be reduced as held by the Hon"ble

Supreme Court in the case PATRICIA JEAN MAHAJAN, referred supra wherein it

has been observed that a golden balance must be struck

somewhere, to arrive at a reasonable and fair mesne, especially when foreign income is taken into consideration. The learned counsel further

contended that the Tribunal did not consider the aspect of contributory negligence and rendered a finding solely based upon the finding of guilt

recorded by the Criminal Court, in which the Driver of the lorry admitted his guilt and on this aspect also, the Tribunal has committed serious error.

The learned counsel referred to the deposition of P.W.1-1st respondent/claimant and submitted that no evidence was produced before the

Tribunal to establish that the salary of the deceased was S\$ 3000 per month at the time when the accident occurred. On the above grounds, the

learned counsel prayed for interference with the Award passed by the Tribunal.

6. Mr. Kovi Ganesan, learned counsel appearing for the claimants submitted that the Tribunal rightly appreciated the zeal with which the deceased

had worked and became a Director of a reputed Company at Singapore and was drawing S\$ 3000 per month and apart from holding shares in

the said Company. The learned counsel placed reliance on Ex. P28, which is a Certificate issued by the employer stating that the deceased was

employed with them and drawing a salary of S\$ 3000 per month and his Bank Pass Books Ex. 31 to 33 and 38, and submitted that the Tribunal

has rightly come to the conclusion that the salary of the deceased was S\$ 2000 per month and adopting the value as Rs. 25/- per dollar, fixed the

monthly income at Rs. 50,000/-. Further it is submitted that considering the age of the deceased as well as the oral and documentary evidence, the

Tribunal rightly calculated the loss of dependency at Rs. 24 lakhs and awarded the compensation and the award being just and proper does not

call for any interference.

7. We have heard Mr. S. Arunkumar, learned counsel appearing for the appellant and Mr. Kovi Ganesan, learned counsel appearing for the

claimants and perused the records.

8. The deceased died on 08.08.2003 on account of a road accident. The accident occurred when the lorry owned by the fifth respondent herein

dashed against the car driven by the deceased at Nallur at about 7.30 a.m. In this Appeal the appellant has not seriously disputed the aspect

regarding negligence, though a feeble attempt was made by the learned counsel

for the appellant to convince us with regard to the aspect of contributory negligence stating that the same was not considered by the Tribunal. In the absence of any evidence and taking note of the admission of R.W.1, the Driver of the lorry, the appellant does not have a case to canvass on the question of negligence. Therefore, we confirm the finding recorded by the Tribunal in this regard and hold that the accident occurred due to the rash and negligent driving of the lorry driver.

9. The next aspect of the matter that is required to be seen is as to what would be the just and fair compensation payable to the dependents of the deceased and whether the Tribunal was correct in assessing the compensation and awarding a sum of Rs. 24,24,500/-.

10. From the facts and the evidence placed before the Tribunal, it is evidently clear that the deceased T. Subramanian alias Tanthoni Subramanian was an industrious person. Though at the time when he went to Singapore, he was only an Electrician and had a basic qualification by dint of hard work, he climbed the ladder, had become the Director of a Singapore based Company, within a span of about 13 years. Further, it appears that not only he had worked hard to achieve the position, but had also simultaneously improved his academic qualifications by obtaining various diplomas and certificates. These aspects were proved before the Tribunal by adducing evidence viz. Exs. P13, P21 and P23 to P25. Further, it is seen that the deceased had completed a certificate course in German, as evidenced by Ex. P22, which is a certificate issued by the Singapore School of Languages. Among the Diplomas obtained by him, several of the Diplomas have been granted by the University of Cambridge. The deceased had qualified himself in Computer Technology, obtained certificates in Electrical Installation, Industrial Automation and Control, had undergone Productivity Training, among other things. The deceased was able to secure these qualifications and achieved the position of Director in the Singapore Company at the age of 31 years.

11. The first contention raised by the learned counsel appearing for the appellant is that there is no valid proof to show that the deceased was earning S\$ 3000 per month at the time of his demise, since there was no remittance in his Bank Account after 16.05.2001 from the Singapore Employer and therefore, it has to be held that on the date of accident i.e. on

08.08.2003, the deceased was not employed in the Singapore Company. Ex. P28 is a certificate issued by the M/s. Revers Management Associates PTE Limited., Singapore, addressed to the Officer-in-charge, Singapore Immigration & Registration, Singapore, certifying that that deceased was then currently being employed by their Company as Director of Marketing from 01.08.2000 and he was paid a monthly salary of S\$ 3,000/- and he has unpaid leave from July 2001 to December 2001. As noticed above, the accident occurred on 08.08.2003 and the Employer at Singapore had certified that as on 09.04.2002, the deceased was their employee and paid a salary of S\$ 3000. Therefore, we are not persuaded to accept the submission of the appellant that the deceased was not in employment of the Singapore Company, after May 2001.

12. The Passports of the deceased have been marked as Exs. P38 and 39 and Ex. P39 being the latest Passport. From the said Passport, we are able to see that though the deceased ceased to be a permanent resident of Singapore after 26.4.2002, the deceased has gone to Singapore on a short visit and remained in Singapore till August 2002. There are endorsements in the Passport to establish this aspect of the matter. Therefore, we are of the view that the deceased who was well qualified and holding high position in a Singapore based Company had come down to India and had returned back to Singapore probably with an intention of seeking better prospects. On the date of accident, merely because the deceased was not employed at Singapore, it cannot be stated that he was not capable of securing job in Singapore. With the qualifications the deceased possessed, it can hardly be stated that he would be unable to secure a lucrative job at Singapore, moreso when he had sufficient experience in the field and was a Director (Marketing) of a Singapore based Company. Therefore, the finding recorded by the Tribunal regarding his employment is fully justified.

13. The next aspect of the matter is regarding the monthly salary which the deceased would have earned. By relying upon Ex. P28, the letter dated 09.04.2002, it was contended that the salary of the deceased at the relevant point of time was S\$ 3000 per month and therefore, the same has to be adopted. The Tribunal after considering all the aspects and taking note of the qualifications possessed by the deceased, fixed the monthly

income of the deceased as S\$ 2000 per month. The Tribunal held that the deceased would have spent 60% of his salary for his personal expenses

and sent the remaining 40% to the dependents viz. the claimants. Fixing the age of the deceased as 32 years on the date of demise and considering

the age of the dependents/parents, the Tribunal adopted the multiplier of 10.

14. The aspect regarding deduction towards personal expenses is no longer res integra. The Hon'ble Supreme Court in several decisions held that

1/3rd amount has to be deducted towards personal expenses and the same is the ordinary Rule in India. In *Oriental Insurance Co. Ltd. Vs. Deo*

Patodi and Others, , the Supreme Court held that "deduction of one-third towards personal expenses is the ordinary rule in India". Like wise in

Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, , the Supreme Court deducted one-third towards personal expenses

from the income of the bachelor. Similar view was taken by the Supreme Court in *Bilkish Vs. United India Insurance Co. Ltd. and Another*, and

MG. Dir., Bangalore Metropolitan Tpt. Corp. Vs. Sarojamma and Another, . Therefore, under normal circumstances, the Tribunal should have

adopted 1/3rd deduction for personal expenses, but in the instant case, the Tribunal has deducted 60% of the salary towards personal expenses of

the deceased.

15. Deceased was aged 32 years. For the age group of 30-35, as per the Second Schedule to M.V. Act, the proper multiplier to be adopted is

17". However, the Tribunal has chosen to adopt only lesser multiplier "10".

16. Learned counsel for Appellant-Insurance Company contended that the financial and economic condition in the Indian context are entirely

different from the foreign countries like Singapore and while so, the salary earned in the foreign countries cannot be taken as the basis for awarding

compensation and balance has to be struck. In support of his contention, learned counsel for Appellant-Insurance Company placed reliance upon

United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., . In the case of *PATRICIA JEAN MAHAJAN*, the Hon'ble

Supreme Court held that though the 2nd Schedule may provide a guide for application of multiplier, but for valid and proper reasons, different

multiplier can be applied and for some special reasons, some deviations from the schedule multiplier can be made. The said case before the

Hon''ble Supreme Court arose out of a claim made on behalf of the Doctor of Indian origin who became the American National and was killed in a road accident when he visited India. The claim for compensation was based upon the income in the foreign country and while considering the said case, among other things, the Hon''ble Supreme Court observed that the total amount of compensation would work out to Rs. 16.12 crores with interest and looking to the Indian Economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. It was further held that when there is so much disparity in the economic conditions and affluence of two places viz. place to which the victim belong and the place at which the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair compensation. Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of the country where most of the dependent beneficiaries reside.

17. Of course, for those employed in foreign countries, salary in foreign countries cannot be the basis for arriving at the compensation and the Tribunals are to strike the balance to arrive at just and reasonable compensation. As pointed out earlier, for personal expenses, Tribunal has deducted higher percentage of 60% of the income and also adopted a very low multiplier. In the facts and circumstances of the case, we are of the view that Tribunal was justified in fixing the monthly salary at S\$2000 as the salary earned by the deceased at Singapore. Having regard to the higher percentage of deduction towards personal expenses and low multiplier adopted by the Tribunal, we are not inclined to interfere with the award passed by the Tribunal.

18. As observed earlier, the deceased appeared to be an energetic young man who wanted to improve his career and in order to better equip himself, acquired several qualifications and also learnt a foreign language. The zeal with which the deceased proceeded in his career cannot be lost sight of by this Court and even if there is no specific proof to show that there was no salary remittance to the Bank Account of the deceased as on the date of the accident, we were able to find from the endorsement in the Passport-Ex. P39 that the deceased was in Singapore till August 2002.

It can hardly be stated that a person with such qualifications and good experience, cannot find better employment in the same foreign country.

Hence, we confirm the findings recorded by the Tribunal, calculating the loss of income at Rs. 24 lakhs. The first respondent had lost her husband

at a very young age and their minor daughter was aged about 10 months when the deceased died, the Tribunal has awarded a sum of Rs. 10,000/-

towards loss of consortium, Rs. 2,500/- towards funeral expenses and Rs. 2,000/- towards loss of estate. The amounts awarded under these

heads appear to be very meager. However, we are not interfering with the compensation awarded for conventional damages.

19. In the result, the compensation of Rs. 24,24,500/- awarded by the Tribunal in MCOP. No. 18 of 2004, dated 08.12.2008, is confirmed and

the appeal preferred by the Appellant-Insurance Company is dismissed. It is stated before us that the Appellant-Insurance Company has

deposited the entire compensation along with the accrued interest awarded by the Tribunal and the claimants have not withdrawn any amount. The

first claimant shall be entitled to withdraw the entire compensation apportioned to her. The amount apportioned to the second respondent/minor

claimant shall be deposited in a Nationalised Bank till the second respondent attains the age of majority and the first respondent/claimant shall be

entitled to withdraw the interest periodically once in three months directly from the Bank. The respondents 3 & 4 are also permitted to withdraw

the compensation as apportioned to them.

Consequently, connected miscellaneous petitions are closed. There will be no order as to costs.