

(2008) 03 MAD CK 0002
In the Madras High Court
Case No : C.M.A. No. 527 of 2001

Usha and Others

APPELLANT

Vs

Tamil Nadu State Trans. Corpn. Ltd.

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Citation : (2009) ACJ 2424

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : T. Selvakumaran, for the Appellant; D. Sivaraman, for the Respondent

Judgement

G. Rajasuria, J.—This appeal is focused as against the judgment and decree dated 12.7.2000 passed in M.C.O.P. No. 92 of 1999 by

learned Motor Accidents Claims Tribunal-cum-First Additional District Judge, Tirunelveli.

2. Heard both sides.

3. The Tribunal vide judgment dated 12.7.2000 awarded compensation to a tune of Rs. 5,15,000 (rupees five lakh fifteen thousand) under the

following sub-heads:

For loss of income Rs. 5,04,000

For funeral expenses Rs. 1,000

For loss of love and

affection Rs. 5,000

For loss of consortium Rs. 5,000

Total Rs. 5,15,000

4. Adverting to the meagre compensation awarded by the Claims Tribunal, the appellants-claimants preferred this appeal on the following main grounds:

The Tribunal fell into error in deducting more than 1/3rd of the monthly income of the deceased in assessing the compensation. The Tribunal also awarded under various other sub-heads cited supra meagre compensation. Accordingly, they prayed for enhancement of compensation.

5. The point for consideration is as to whether the Claims Tribunal awarded "just compensation"?

6. Learned Counsel for the appellants-claimants by placing reliance on the fact that the deceased was earning totally a sum of Rs. 5,773 (rupees five thousand seven hundred and seventy-three) as a Commercial Assistant in Tamil Nadu Electricity Board at the age of 34, would submit that

Tribunal could have notionally added some more amount and then deducted 1/3rd out of it and could have taken the remaining as the multiplicand

for assessing the compensation and under other sub-heads also, the Tribunal instead of granting meagre compensation could have granted more.

7. Whereas the learned Counsel for the respondent Corporation would submit that Exh. B7, the pay certificate refers to the gross salary and also

the deductions therefrom; towards motor cycle advance, a sum of Rs. 355 (rupees three hundred and fifty-five) was deducted out of the gross

salary and even as per the decision of the Hon'ble Apex Court in National Insurance Company Ltd. Vs. Indira Srivastava and Others, , such a

sum towards motor cycle advance cannot be included in the income of the deceased. Furthermore, he would submit that the multiplier 18 chosen

by the Tribunal is incorrect and the multiplier 13 alone has to be chosen. The perusal of Exh. B7 would reveal the following particulars and it is

extracted here under for ready reference:

Pay Certificate

This is to certify that V. Mohan, Commercial Assistant worked in T.N.E.B./ Distribution/Ottanatham Section and his pay details are as given below:

Pay Rs. 4,470

D.A. Rs. 983

H.R.A. Rs. 220

C.A. Rs. 50

M.A. Rs. 50

GPF subscription Rs. 440

F.A. Rs. 100

L.I.C. Rs. 91

F.S.S. Rs. 50

S.P.F. Rs. 20

Gross M.C.A. Rs. 355

Amount Rs. 5,773

Deduction Rs. 1,056

Net amount Rs. 4,717

(Rupees four thousand seven hundred and seventeen)

8. Applying the principle as enshrined in the decision of the Hon"ble Apex Court cited supra, the sum of Rs. 355 (rupees three hundred and fifty-

five) under the head ""motor cycle advance"" should be excluded and the remaining amount, i.e., Rs. 5,418 (rupees five thousand four hundred and

eighteen) could be taken as his monthly income. Accordingly, annual income of the deceased as on the date of his death would come to Rs.

65,016 (Rs. 5,418 x 12 = Rs. 65,016)(rupees sixty-five thousand and sixteen). It is a trite proposition of law that 1/3rd of the income should be

deducted towards expenditure which the deceased would have incurred for maintaining himself had he been alive irrespective of the fact whether

deceased lead the life of a Bohemian or that of a Spartan.

9. Since the deceased died at the age of 34, taking a cue from the Second Schedule appended to the Motor Vehicles Act, the multiplier 17 could

be chosen. I am fully aware of the fact that in all cases the multiplier as found set out in the Second Schedule appended to the Motor Vehicles Act

cannot be taken as conclusive. It could vary depending upon the circumstances. The Hon"ble Supreme Court in catena of decisions held that in

some cases the multiplier could be even more than what is contemplated under the Second Schedule appended to the Motor Vehicles Act and in

some other cases, it could be less than what is contemplated therein. However, the Hon"ble Apex Court cautioned that the multiplier should not

exceed 18 in any circumstance. Here, the crucial point to be considered is that the wife was aged about 26 years and minor son was aged about 7

years and the mother of the deceased was aged about 55 years and those factors should be borne in mind in choosing the multiplier. There is also

one other significant factor involved in this matter that there is no clinching evidence relating to the future promotion and future prospects of the

deceased and in such a case the question arises as to whether the decision of the Hon"ble Apex Court in General Manager, Kerala State Road

Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , could be ushered in. No doubt here in the absence of clinching

evidence, the court might find it difficult to award precisely compensation based on his future prospects. However, one fact is clear that but for his

untimely death, he would have got increments and he might have improved his income. As such instead of pondering over those imponderables, I

would like to choose the multiplier accordingly, so that the multiplier itself would look after all those characteristics involved in the assessment.

Accordingly, multiplier 17 would be the appropriate one. Hence, the compensation under the head "loss of income" shall be re-fixed at Rs.

7,36,848 (Rs. $65,016 \times \frac{2}{3} \times 17 = \text{Rs. } 7,36,848$)(rupees seven lakh thirty-six thousand eight hundred and forty-eight).

10. Towards loss of consortium a sum of Rs. 15,000 (rupees fifteen thousand) could be awarded and towards loss of love and affection in favour

of the minor son, another sum of Rs. 15,000 (rupees fifteen thousand) would be appropriate. For the mother of the deceased awarding a sum of

Rs. 10,000 (rupees ten thousand) under the said caption would be apposite.

11. Towards funeral expenses a sum of Rs. 3,000 and for transport expenses a sum of Rs. 2,000 could be awarded. Accordingly, compensation

is modified as under:

For loss of income Rs. 7,36,848

For funeral expenses Rs. 3,000

For loss of love and

affection (minor son) Rs. 15,000

For loss of love and

affection (mother) Rs. 10,000

For loss of consortium Rs. 15,000

For transport expenses Rs. 2,000

Total Rs. 7,81,848

12. The Tribunal awarded 12 per cent interest per annum considering the prevailing rate at that time, the interest awarded is reduced to 9 per cent per annum.

13. In the result, this civil miscellaneous appeal is partly allowed and the award of the Tribunal is enhanced from Rs. 5,15,000 (rupees five lakh

and fifteen thousand) to Rs. 7,81,848 (rupees seven lakh eighty-one thousand eight hundred and forty-eight) and the compensation amount

awarded by the Tribunal shall carry interest at the rate of 9 per cent from the date of M.C.O.P. till deposit and the enhanced amount shall carry the

interest at the rate of 7.5 per cent from the date of M.C.O.P. till deposit. Proportionately there will be variation in the allotments in favour of each

of the claimants depending upon the variation in the total compensation awarded herein. No costs.