(1999) 06 MAD CK 0043

In the Madras High Court

Case No : C.M.A. No. 1134 of 1993

V. Maragatham and Others APPELLANT

Vs

Managing Director, Thiruvalluvar Trans. Corpn. and Another RESPONDENT

Date of Decision : 16-06-1999

Acts Referred:

Citation : (2000) 1 ACC 124 : (2001) ACJ 1336 : (1999) 3 LW 179

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : A. Sriram, for M.B. Gopalan, for the Appellant; Arul Murugan, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—Having been dissatisfied with the quantum of compensation, the claimants-appellants herein have filed this

appeal seeking for enhancement. On 17.3.91 one Purushothaman was riding his cycle at the extreme left side of the road. At that point of time, the

bus belonging to the respondent Corporation proceeding from Madras to Trichy, being driven at excessive speed in a rash and negligent manner

came towards the left side and hit the cyclist from behind. As a result of the impact, he was thrown out from the cycle. He sustained head injury

and multiple injuries and died on the spot.

2. The claimants, being the wife, minor children and the mother of the deceased respectively, filed a claim petition in O.P. No. 411 of 1991 on the

file of the Motor Accidents Claims Tribunal, Principal Sub-Judge, Chingleput, claiming a total compensation of Rs. 5,00,000 on the ground that the

death of the deceased was due to negligent driving of the driver of the bus belonging to the respondent Corporation. On behalf of the claimants

two witnesses were examined. PW 1 is the wife and PW 2 is the eyewitness. On behalf of the respondent Corporation RW 1 the driver was

examined.

3. The Tribunal, on careful scrutiny of the materials placed before it, concluded that RW 1 the driver of the bus was negligent and consequently the

claimants would be entitled to a compensation of Rs. 96,000.

4. Aggrieved over the same, with regard to quantum the claimants filed this appeal. Mr. Sriram, counsel appearing for the appellants would

contend that the monthly contribution of the deceased assessed at Rs. 400 was without any basis, as it has been established by the claimants that

the income for every month would be about Rs. 1,425. He would also point out that the factor that the claimant No. 1 was given a job in the

department in which the deceased worked cannot be the basis for computing the amount of compensation. In support of this submission, the

learned counsel for the appellants cited the decisions in the case of Tata Engineering and Locomotive Co. Ltd. and Another Vs. Vasanthi alias

Anantha Lakshmi and Others, and Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . On the other hand, Mr. Arul Murugan, counsel

appearing for the respondent, in justification of the order of the Tribunal, submitted that the assessment made by the Tribunal on the basis of the

monthly income though adopted the multiplier of 20 years is correct and it cannot be contended that the quantum is on the lower side.

5. I have given careful consideration to the submissions made by the counsel on either side. As regards negligence, I need not go into the factum

aspects, as there is no appeal against the order of the Tribunal by the Corporation. However, it shall be noticed that the driver of the bus, who

took a contradictory stand while deposing evidence before the court, which is not in consonance with the counter filed on his behalf that he caused

the impact by hitting the cyclist who was proceeding in front of the vehicle and dragged him to a considerable length of 30 feet. The deceased died

on the spot. There is no dispute with regard to the fact that the deceased was aged about 31 years and the age of the claimant No. 1 was 26

years. They have got two children. One other dependent is the mother of the deceased. On the basis of Exhs. P3 and P4, PW 1 would state that the deceased used to get Rs. 1,600 per month and that he would spend towards family expenses about Rs. 1,200. However, as per Exh. P4, it is

stated that the take home pay is only Rs. 720. Exh. P4 is the salary certificate. It is also noticed that PW 1 in the cross-examination had admitted

that the deceased was getting Rs. 720 after deductions per month. In the light of all these materials, the Tribunal came to the conclusion that the

monthly dependency could be fixed at Rs. 400. The Tribunal applying the multiplier of 20 years concluded that she would be entitled to the

compensation of Rs. 96,000. After calculating this amount, learned Tribunal has deducted Rs. 25,000 towards uncertainty of life. While computing

this calculation it is seen that the Tribunal has taken into consideration that the claimant No. 1 was given a job as mazdoor in the same department.

Furthermore, there is no apportionment of the amount towards all the other important heads like loss of consortium, loss of love and affection and

loss of expectancy of life, etc.

6. This court, in Tata Engineering and Locomotive Co. Ltd. and Another Vs. Vasanthi alias Anantha Lakshmi and Others, , while dealing with

similar situation would hold that merely because one of the claimants was given job subsequently by the department concerned, that cannot be

taken as a guiding factor for computing the compensation. In the instant case, no doubt it is true, PW 1 had admitted in her chief examination that

she was employed as mazdoor and she was getting about Rs. 700 as salary. Though she had admitted that employment was given on

compassionate grounds, it cannot be definitely said that it was given towards compensation. It all depends upon the qualification of the person

concerned. The deceased was working as a telegraph man. PW 1 would say at that time that the deceased who has passed S.S.L.C. examination

was preparing for the departmental examinations. These details would show that there are some future prospects for the deceased getting

promotion and higher emoluments. Merely because the claimant No. 1 is getting monthly salary as indicated earlier, the said amount cannot form

part of the compensation to be given to the claimants. It is also to be noted in this context that the Corporation did not admit its liability to pay

compensation and it is not as if the employment is given by the department concerned to the claimant No.1 as a matter of compensation for the death of her husband. Therefore, getting employment and receiving salary by the claimant No. 1 cannot be said to be a guiding factor in assessing

the damages to be given to the claimants. In the light of the above principles, as enunciated by this court in the decision cited supra, we have to see

the materials available on records to assess the quantum towards the compensation. No doubt it is true that the take home salary as per Exh. P4 is

Rs. 720 and PW 1''s evidence also would show that he was getting only Rs. 720 per month after deductions. But in my view that alone cannot be

taken into consideration for assessing monthly dependency. The Supreme Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, ,

held that the gross income as well as the future prospects of life have to be taken into consideration for computing the monthly dependency.

Admittedly, the deceased was the only breadwinner of his family. He died in the accident in his prime period of life at the age of 31. Exh. P3 would

show that he has put in service as a telegraph man for eight years. So definitely he has got a long service as telegraph man. He may even get

promotions in the same department in the light of the above factors and keeping in view that Exh. P4 would show that the gross salary of the

deceased was about Rs. 2,500 and had future promotion chances, I am of the view that the monthly dependency could be fixed at Rs. 900. As

per the Schedule and the annuity table, the maximum multiplier for the age of the deceased is 18, the proper multiplier for the deceased who was

aged about 31 years would be 18. Adoption of 20 years multiplier by the Tribunal may not be appropriate as the Supreme Court would hold that

the longevity theory would not be proper assessment. However, 18 years being the maximum multiplier, in my view, would be appropriate. If the

monthly dependency of Rs. 900 is adopted, it works out to Rs. 900 x 12 x 18 = Rs. 1,94,400. It is also noticed in the Tribunal''s order that though

the compensation is assessed at Rs. 96,000 on the basis of the monthly dependency of Rs. 400, Rs. 25,000 towards uncertainty of life was

deducted. In my opinion, when the multiplier theory is adopted, the question of deduction towards uncertainty of life does not arise, since already

out of the gross salary towards personal expenses of the deceased, considerable amount has been deducted and the monthly dependency was

assessed on that basis as Rs. 900. As indicated earlier, there is no amount provided towards other heads. In the light of the above situation, I feel that the order of the Tribunal could be suitably modified in the following manner:

Rs.

Towards loss of monthly dependency

(Rs. 900 x 12 x 18) 1,94,400

Loss of consortium 10,000

Loss of love and affection 10,000

Loss of expectancy of life 10,000

Funeral expenses 600

Total 2,25,000

7. In the result, the appeal is allowed with the above modification.

