

(2008) 03 MAD CK 0061

Madras High Court

Case No: C.M.A. No. 343 of 2002

The Managing Director, Tamil
Nadu State Transport
Corporation (Villupuram
Division-I) Limited

APPELLANT

Vs

S. Bernathu Mary and Others

RESPONDENT

Date of Decision: March 4, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Hon'ble Judges: R. Banumathi, J

Bench: Single Bench

Advocate: S. Geetha, for the Appellant; R. Babu, for R. Muralidharan, for the Respondent

Judgement

R. Banumathi, J.

Being aggrieved by the award of compensation of Rs. 5,73,496/- for the death of the deceased Yesudoss in a road

traffic accident on 10.09.1997, State Transport Corporation (STC) has preferred this Appeal.

2. Brief facts which are relevant for disposal of this Appeal are as follows:

On 10.09.1997 - 3.45 P.M. the deceased Yesudoss had gone to J.K.R. Lorry booking office, Mandharakuppam from his native place through his

bi-cycle towards west to east on the left side mud road in Virudhachalam to Cuddalore Main road. While the deceased coming near

Mandharakuppam Vasavi Petrol Bunk, the Appellant-Corporation bus bearing registration No. TN-32-N 0528 driven by its driver in a rash and

negligent manner dashed against the deceased. Due to the accident the deceased sustained multiple and grievous injuries and died on the spot. At

the time of accident the deceased was aged 31 years and he was working in Neyveli Lignite Corporation and was getting salary of Rs. 5,000/- per

month. Alleging that the accident was due to rash and negligent driving of the bus driver, the Claimants who are mother, brother and sisters of the

deceased Yesudoss have filed Claim Petition u/s 166 of M.V. Act claiming compensation of Rs. 8,00,000/-.

3. Opposing the Claim, STC has filed counter stating that the bus was driven in a careful manner and while the bus going near Vasavi Petrol Bunk

at Mandarakuppam, two cycles were coming parallelly in the opposite direction and the riders were talking with each other and the cyclists

crossed the road. After seeing them crossing the road, the driver of the bus applied sudden brake to avoid the accident. In spite of best efforts

taken by the driver of STC bus, the cyclists hit against the bus. Since the accident was due to lack of carelessness and negligence on the part of the

cyclists, STC is not liable to pay any compensation.

4. Before the Tribunal, the third Claimant was examined as P.W.1. Eye witness was examined as P.W.2. Exs. P.1 to P.13 were marked. The

driver on duty was examined as R.W.1. No documents were marked on the side of the Respondents. Upon consideration of oral and

documentary evidence, Tribunal has held that the accident was due to rash and negligent driving of the bus driver. The Tribunal has negated the

defence plea of contributory negligence. Taking the income of the deceased at Rs. 4,136/- and adopting multiplier 17, Tribunal has calculated the

loss of dependency at Rs. 5,62,496/-. Adding conventional damages, the Tribunal has awarded total compensation of Rs. 5,73,496/-.

5. The learned Counsel Ms. S. Geetha, appearing for the Appellant-Corporation has submitted that there was contributory negligence on the part

of the deceased which the Tribunal erred in not analysing in a proper perspective. It was further submitted that the deceased was aged 31 years

and a bachelor. The learned Counsel appearing for the Appellant-Corporation has further submitted that based on the age of the mother, the

Tribunal ought to have adopted the multiplier "12" and not "17" and the compensation awarded by the Tribunal is very much on the higher side.

6. The learned Counsel Mr. R. Babu, appearing for the Respondents-Claimants 5 and 6 has submitted that the compensation awarded by the

Tribunal is just and reasonable and the same need not be interfered with.

7. Though the Appellant-Corporation has taken the plea of contributory negligence, no evidence was adduced to substantiate the same. On the

interested testimony of bus driver-R.W.1, contributory negligence alleged by the STC cannot be said to be established.

8. In this Appeal the manner of accident and as to who was responsible for the accident is not seriously challenged. Therefore, it is not necessary

to narrate the entire facts in detail as to how the accident had occurred, who is responsible for the accident and who is liable to pay the

compensation. It is for the reason the Tribunal has recorded the findings in favour of the Claimant. Further, these findings are not under challenge.

Only the quantum of compensation is in dispute.

9. The third Claimant Xavier-brother of the deceased was examined as P.W. 1. In his evidence, P.W. 1 has stated that the deceased Yesudoss

was working as Industrial worker in Neyveli Lignite Corporation and was earning Rs. 4,500 - 5000/- per month. Ex. P.7 is the salary slip for

January, 1997. Ex. P.8 is the salary slip for May, 1996 from which it is seen that in 1996 the deceased was getting the monthly salary of Rs.

2020/-. Ex. P.9 is the salary slip for February 1997 from which it is seen that the deceased was getting salary of Rs. 2170/-. Ex. P.7 is the salary

slip for January 1997 which would show that the deceased was getting the monthly salary of Rs. 4,136/- at the time of accident. From the

evidence of P.W.1 and by perusal of Exs. P.7 to P.9, it is seen that at the time of accident the deceased was getting the monthly salary of

Rs.4,136/-. The Tribunal has rightly taken the monthly income of the deceased at Rs. 4,136/-. Deducting 1/3rd for his personal expenses, the

Tribunal has rightly calculated the annual loss of dependency at Rs. 33,088/-.

10. At the time of accident, the deceased was aged 31 years. Based on the Second schedule, the Tribunal has adopted the multiplier 17 which is

applicable for the age group of 30-35 years. The learned Counsel appearing for the Appellant-Corporation has submitted that the Tribunal erred in adopting the multiplier based on the age of the deceased. It was further submitted that the deceased being a bachelor, the Tribunal ought to have adopted the multiplier based on the age of the mother of the deceased.

11. Placing reliance upon Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, and The New India Assurance Company

Limited Vs. Smt. Kalpana and Others, , the learned Counsel for the Appellant-Corporation has submitted that the Tribunal ought to have adopted the multiplier "12" which is the maximum multiplier applicable in the cases where deceased being a bachelor.

12. Placing reliance upon 2006 (4) CTC 245 K. Jeyagopal and Anr. v. Nachiammal and Anr. the learned Counsel for the Appellant-Corporation

has submitted that in the said case the deceased was aged 28 years and the Tribunal has adopted multiplier "18" and the same was maintained by

this Court. The learned Counsel for the Claimants has submitted that the deceased being 31 years, Tribunal has rightly adopted the multiplier "17"

and there is no reason to interfere with the multiplier "17" as adopted by the Tribunal.

13. It is fairly well settled that the selection of multiplier cannot always depend on the age of the deceased where the dependants are the parents,

then the age of younger of the parent will determine the multiplier. Choice of multiplier has to be made by the Court using its experience and having

due regard to the particular facts of each case to award compensation which is just and reasonable.

14. In the case of Chellammal v. Kailasam 2006 ACJ 854 (SC) wherein the Honourable Supreme Court has relied upon the multiplier provided in

the Second Schedule to the Act for increasing the multiplier. In case of Jyoti Kaul and Others Vs. State of M.P. and Another, and in case of

United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., , the Supreme Court leaned in favour of adopting multiplier as

indicated in the Second Schedule.

15. At the time of accident, the fourth Claimant-mother was aged 47 years. As per Second schedule to M.V. Act, for the age group of 45-50

years, multiplier "13" to be adopted. Adopting multiplier "13" the annual loss of dependency is calculated at Rs.4,30,144/- (Rs.33,088/- x 13).

16. The Tribunal has awarded Rs. 2,000/- for funeral expenses and the same is enhanced to Rs. 5,000/-. The Tribunal has awarded Rs. 5,000/-

for loss of estate and the same is maintained. The fourth Claimant, aged 47 years has lost her elder son and lost the love and affection of her elder

son in the evening of her life. Like wise, the Claimants 1,3 and 4 who are the brother and sisters of the deceased have also lost their love and

affection of the deceased. For loss of love and affection, an amount of Rs. 37,500/- is awarded. (Rs. 12,500/- to each of the Claimants 1,3 and

4).

17. The compensation amount of Rs. 5,73,496/- is reduced to Rs. 4,77,644/- as under:

Loss of dependency Rs. 4,30,144/-

Funeral expenses Rs. 5,000/-

Loss of estate Rs. 5,000/-

Loss of love and affection Rs. 37,500/-

Total.... Rs. 4,77,644/-

The above compensation of Rs.4,77,644/- is to be apportioned amongst the Claimants 1,2 and 4 equally as ordered by the Tribunal. Since the

Second Claimant is dead the compensation amount payable to her is payable to her legal representatives of the deceased Second Claimant.

18. In the result. The compensation amount of Rs. 5,73,496/- awarded by the Tribunal in M.C.O.P. No. 193 of 1998 dated 20.4.2001 on the file

of Additional Subordinate Judge, Motor Accident Claims Tribunal, Virudhachalam is reduced to Rs. 4,77,644/- and this C.M.A. is partly allowed.

The compensation amount is payable with interest at the rate of 9% p.a. from the date of Petition till the date of deposit.

The compensation amount of Rs. 4,77,644/- is to be apportioned amongst the Claimants 1,2 and 4 equally as ordered by the Tribunal.

The Claimants are entitled to withdraw the entire compensation amount payable to them along with accrued interest.

The excess amount lying in the credit of M.C.O.P. No. 193/1998 shall be refunded to the Appellant-Corporation along with accrued interest.

There is no order as to costs in this Appeal.