

(2013) 10 MAD CK 0111

Madras High Court

Case No: C.M.A. No. 1302 of 2003

S.K. Latha, Monika and Rajammal

APPELLANT

Vs

The Managing Director Pallavan
Transport Corporation

RESPONDENT

Date of Decision: Oct. 25, 2013

Hon'ble Judges: C.S. Karnan, J

Bench: Single Bench

Advocate: S. Udayakumar, for the Appellant; S. Sivakumar, for the Respondent

Final Decision: Partly Allowed

Judgement

C.S. Karnan, J.

The appellants/claimants have preferred the present appeal against the judgment and decree dated 27.07.2001, made in M.C.O.P. No. 146 of 1997, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpattu. The short facts of the case are as follows:-

The claimants, who are the wife, minor daughter and mother of the deceased Gubendiran, had filed a claim petition in M.C.O.P. No. 146 of 1997, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpattu, claiming a sum of Rs. 20,00,000/- as compensation from the respondent for the death of the said Gubendiran in a motor vehicle accident.

2. It was submitted that on 19.09.1996, at about 12.30 p.m., when the deceased Gubendiran was proceeding on his TVS50 motorcycle bearing registration No. TSG 5772, from Tiruvanmiyur to Kelambakkam, on the extreme left of the Old Mahabalipuram Road, near Amirthanjan Company at Ekkattur Village, the respondent's Corporation bus bearing registration No. TN01 N1605, coming in the opposite direction at a high speed and in a rash and negligent manner, dashed against the motorcycle and caused the accident. As a result, the deceased sustained grievous injuries and was admitted at Royapettah Government Hospital. But, in spite

of treatment, the deceased succumbed to his injuries. At the time of accident, the deceased Gubendiran was working as a driver in Indian Airlines, Meenambakkam, and was earning Rs. 12,186.46 per month. Hence, the claimants had filed the claim petition against the respondent, who is the owner of the bus bearing registration No. TN01 N1605.

3. The respondent Transport Corporation, in their counter affidavit, had submitted that the accident had not been caused due to any rash and negligent driving by the driver of the bus as alleged in the claim. It was submitted that the driver of the bus, on seeing the motorcyclist, coming in the opposite direction, at a high speed and in a rash and negligent manner, had stopped the bus on the extreme left of the road. But, in spite of it, the motorcyclist had dashed his motorcycle on the right side of the bus and caused the accident. It was submitted that the claim was excessive.

4. On considering the averments of both sides, the Tribunal had framed three issues namely:

- i. Due to whose negligence was the accident caused?
- ii. What is the quantum of compensation, which the claimants are entitled to get? and
- iii. To what other relief are the claimants entitled to get?

5. On the claimants' side three witnesses were examined as P.Ws. 1 to 3 and six documents were marked as Exs. P1 to P6 namely copy of FIR, copy of charge sheet, copy of postmortem report, copy of legal heir certificate and salary certificate. On the respondent's side one witness was examined as R.W. 1 and no document was marked.

6. P.W. 2 Thiru. Sundaram, eye-witness of the accident, had adduced evidence that on 19.09.1996, at about 11.30 a.m., when he and his employer were proceeding on a motorcycle, he had seen the deceased proceeding ahead of them in TVS50 motorcycle, on the extreme left of the road and that the respondent's bus on route No. 21H, coming in the opposite direction at a high speed and driven in a rash and negligent manner had dashed against the motorcyclist proceeding ahead and that the motorcyclist had sustained head injuries and died subsequently. On scrutiny of Ex. P1, it is seen that the complaint regarding the accident had been given by the brother of the deceased Gubendiran. The averments made in the FIR are on similar lines to the evidence of P.W. 1 regarding manner of accident.

7. R.W. 1 driver of the respondent's bus had adduced evidence that on the date of accident, while he was driving the bus opposite to Amirthanjan Company, he had seen a motorcyclist coming in the TVS50 in the opposite direction in a rash and negligent manner and that on seeing this, he had stopped the bus on the extreme left of the road, but in spite of it, the motorcyclist had dashed the motorcycle against the bus and caused the accident.

8. On scrutiny of Ex. P2, it is seen that the police, after investigation, had filed the final report as against the driver of the respondent's bus. Hence, the Tribunal opined that if the driver of the bus had really stopped the bus, as alleged by R.W. 1, the deceased Gubendiran would only have sustained simple injuries and not grievous injuries. Hence, the Tribunal, on scrutiny of Ex. P1 and evidences of P.W. 2 and R.W. 1 held that the accident had been caused by the rash and negligent driving of the driver of the respondent's bus.

9. P.W. 1 wife of the deceased Gubendiran had adduced evidence that her husband was aged 32 years at the time of his death and that he was employed as a driver with Indian Airlines and earning Rs. 14,000/- per month.

10. P.W. 3 Thiru. Natarajan, employer at Indian Airlines, had adduced evidence that the deceased Gubendiran was working as a driver at Indian Airlines and that his last drawn pay was Rs. 13,745.96 per month.

11. The Tribunal, on scrutiny of Ex. P3, held that the deceased was aged 32 years at the time of accident. The Tribunal, on scrutiny of oral and documentary evidence, awarded a sum of Rs. 2,000/- for transport expenses, Rs. 2,000/- was awarded for funeral expenses, Rs. 5,000/- was awarded as compensation to the first claimant under the head of loss of consortium. Further, the Tribunal, on scrutiny of Exs. P4 and P6, observed that the deceased Gubendiran was earning Rs. 4,617/- per month. After deducting Rs. 1,539/- for the personal expenses of the deceased, the Tribunal observed that the deceased could have contributed a sum of Rs. 3,078/- to his family every month. The Tribunal, on adopting a multiplier of 17, awarded a sum of Rs. 6,27,912/- as compensation to the claimants under the head of loss of income ($3,078 \times 12 \times 17$). In total, the Tribunal awarded a sum of Rs. 6,36,912/- as compensation to the claimants and directed the respondent to deposit the said sum together with interest at the rate of 9% per annum from the date of filing the claim petition till the date of payment of compensation, with costs, within a period of two months, from the date of its order.

12. Not being satisfied by the said Award passed by the Tribunal, the claimants have preferred the present civil miscellaneous appeal.

13. The learned counsel appearing for the appellants has contended in the appeal that the Tribunal erred in not appreciating Ex. P5 salary certificate issued by Indian Airlines, while fixing the income of the deceased. It is contended that the Tribunal ought to have considered the total gross salary of Rs. 13,745.96, while fixing the quantum and as such erred in taking only the basic salary of deceased for assessment of compensation. Further, it is contended that the compensation awarded for loss of consortium was meagre and it is also contended that the Tribunal failed to award any compensation for loss of love and affection to the other two claimants. It is also contended that the Tribunal failed to consider the future promotion prospects of the deceased, while fixing quantum of compensation.

Hence, it is prayed for grant of additional compensation of Rs. 8,50,000/-.

14. The learned counsel appearing for the Transport Corporation has argued that the claimants had produced salary certificate before the Tribunal, which had been marked as Ex. P6. The salary certificate had been issued on 21.06.2001 and the accident had taken place on 19.09.1996. Therefore, the said salary certificate has not been issued for the relevant period. In order to prove the income of the deceased, the last drawn pay salary for the month of August 1996 should only be taken into the income of the deceased as Rs. 4,617/- which consists of basic pay and dearness and the same had been awarded to the claimant. As such, there is no lacuna in the said award. The very competent counsel has further argued that in the said accident, two vehicles had been involved and the deceased had ridden his motorcycle in a negligent manner and dashed against the transport corporation bus. As such, contributory negligence has to be attributed to the motorcyclist as well.

15. Per contra, the learned counsel appearing for the appellants has submitted that at the time of filing the claim petition, the claimant had mentioned that the salary of the deceased as Rs. 12,186/- which was the gross salary. Even after deducting statutory deductions, the gross pay cannot be taken to be less than Rs. 10,000/- and this factor had not been considered by the Tribunal. Further, the learned counsel has submitted that the first claimant is a young widow, the second claimant is aged about three years and the third claimant is widowed mother of the deceased and all are depending upon the income of the deceased, who was the sole breadwinner of the family.

16. The very competent counsel for the appellant has placed reliance upon a decision of the Hon"ble Supreme Court in [Vimal Kanwar and Others Vs. Kishore Dan and Others](#), , the head notes of the same reads as follows: "INCOME-Assessment-Salaried Income-Deductions-Provident Fund, Pension and Insurance, if can be termed as "Pecuniary Advantage" liable for deduction-Deceased aged 28 years, a B.E. degree holder, working as Assistant Engineer in Public Works Department, earning Rs. 8,920 p.m.-Tribunal taking monthly income at Rs. 8,000 p.m. deducted Rs. 1,000 towards GPF, Pension & Insurance-Held, not proper-GPF, Pension & Insurance receivable by Claimants on one's death have no correlation with amount receivable under statute upon accidental death-Such amounts will not come within periphery of MV Act to be termed as "Pecuniary Advantage" liable for deduction-Helen C. Rebello (SC) followed."

17. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However, the quantum of compensation is on the lower side. The Tribunal had not indicated the gross salary and also the nett. salary after deduction of statutory deductions. However, the claimant had mentioned the

salary of the deceased as Rs. 12,186/- at the time of filing the claim petition. The claimant had not furnished the details of the statutory deductions. Under these circumstances, this Court fixes the income of the deceased as Rs. 7,500/- per month and awards a sum of Rs. 10,20,000/- as compensation under the head of loss of income ($7,500 \times \frac{2}{3} \times 12 \times 17$), Rs. 10,000/- is awarded for the first claimant under the head of loss of consortium, Rs. 10,000/- is awarded to each of the second and third claimants under the head of loss of love and affection and Rs. 10,000/- is awarded for funeral expenses. In total, this Court awards a sum of Rs. 10,60,000/- as compensation to the claimants. After subtracting the initial compensation of a sum of Rs. 6,36,912/- this Court grants Rs. 4,23,088/- as additional compensation as it is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

18. This Court directs the respondent Transport Corporation to execute this Court's Judgment, by way of depositing the compensation amount to the credit of M.C.O.P. No. 146 of 1997, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpattu, within a period of eight weeks from the date of receipt of a copy of this Judgment.

19. After such a deposit having been made, all the claimants are at liberty to withdraw their apportioned share amount, with proportionate interest thereon, as per the ratio, fixed by the Tribunal, lying in the credit of M.C.O.P. No. 146 of 1997, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpattu after receiving a memo, along with a copy of this Judgment. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 27.07.2001, made in M.C.O.P. No. 146 of 1997, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Chengelpattu, is modified. No costs.