

(2011) 07 MAD CK 0263

Madras High Court (Madurai Bench)

Case No: Civil Miscellaneous Appeal (MD) No. 882 of 2011

National Insurance Company
Ltd.

APPELLANT

Vs

V. Padmavathy and Others

RESPONDENT

Date of Decision: July 20, 2011

Hon'ble Judges: P. Jyothimani, J; M. Duraiswamy, J

Bench: Division Bench

Advocate: P. Malini, for the Appellant; P.T.S. Narendravasan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Duraiswamy, J.

Challenging the award passed in MCOP No. 1042 of 2003 on the file of the Additional Sub Court, Motor Accident Claims Tribunal, Tanjore, the Insurance company has filed the above appeal, questioning the quantum of compensation awarded by the Tribunal.

2. The Respondents 1 to 4/Claimants filed M.C.O.P. No. 1042 of 2003, claiming a total compensation of Rs. 50 lakhs for the death of one Murugaraj, who died in a road accident. On 09.04.2003 at about 4 p.m., the said Murugaraj was travelling as a pillion rider in a Bajaj Boxer CT vehicle bearing registration No. TN49 v. 8232. At that time, a Tractor bearing Registration No, TN 49 X 0279, which came in a rash and negligent manner, dashed against the two wheeler and in the said accident, the said Murugaraj died on the spot. At the time of accident, he was 30 years old. The first Respondent is the wife of the deceased and she was aged 22 years at the time of accident. The second Respondent is the minor daughter of the deceased and the third and fourth Respondents are the parents of the deceased.

3. The learned Counsel appearing on behalf of the Appellant Insurance Company contended that the award of Rs. 12,81,000/- passed by the Tribunal for the death of

deceased Murugaraj is on the higher side and the same is liable to be reduced.

4. Countering the submissions made by the learned Counsel for the Appellant, the learned Counsel for the Respondents 1 to 4/claimants, submitted that the Tribunal ought to have awarded a higher compensation, taking into consideration the age of the deceased, his income and also the future prospects of the deceased. Further, the learned Counsel for the Respondents 1 to 4 also submitted that the Tribunal ought to have deducted only 1/4th from the income of the deceased towards his personal expenditure as laid down by the Apex Court in [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#) .

5. On a careful consideration of the materials available on record and the submissions made on either side, it could be seen that the deceased was aged 30 years at the time of accident and he was working as a Ledger Clerk in the Tamil Nadu Telecommunication and Co-operative society, Trichy and earning a sum of Rs. 7675/- per month as per Ex.P12, salary certificate. The Tribunal deducted 1/3rd towards his personal expenditure from the monthly income of the deceased and adopted 17 as multiplier and after taking into consideration the future prospects of the deceased, fixed Rs. 7,000/- as monthly pecuniary loss to the family. The Tribunal also awarded a sum of Rs. 50,000/- towards loss of consortium and loss of love and affection to the Respondents, Rs. 2,000/- towards transportation and, Rs. 5,000/- towards funeral expenses. The Tribunal awarded a total compensation at Rs. 12,81,000/- together with interest at the rate of 7.5%.

6. In [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#) , the Apex Court had held that if the deceased had a permanent job and was below 40 years of age, as a rule of thumb, an addition of 50% from the actual salary has to be added to the income of the deceased. In the case on hand, it is not in dispute that the deceased was aged 30 years and also it is not in dispute that he had a permanent job, working as a Ledger Clerk in the Tamil Nadu Telecommunication and Co-operative Society. Therefore, applying the principles laid down in the judgment of the Apex Court, 50% of the actual salary have to be added towards future prospects. If 50% of the actual salary is added, it comes to Rs. 11513/- (Rs. 7675 + Rs. 3838 = Rs. 11513/-)

7. It is also held by the Apex Court in the decision cited supra that if the number of dependants are 4 to 6, 1/4th of the income could be deducted towards personal expenses of the deceased. But, the Tribunal deducted 1/3rd towards the personal expenses. It is not in dispute that there are four dependants to the deceased. Therefore, applying the principles laid down by the Apex Court only the have to be deducted towards personal expenses and if 1/4th is deducted from the salary of the deceased, i.e. Rs. 11,513/- it comes to Rs. 8635 (Rs. 11513-2878 = Rs. 8635/-).

8. The Tribunal applied 17 as multiplier as per the decision of the Apex Court. In the case on hand, the deceased was 30 years and by adopting 17 as multiplier, the total

pecuniary loss to the family comes to Rs. 8635/- x 12 x 17 = Rs. 17,61,540/-. The Tribunal also awarded a sum of Rs. 50,000/- towards loss of consortium and loss of love and affection to the first Respondent. Further, the Tribunal awarded a sum of Rs. 2,000/- towards transportation and Rs. 5,000/- towards funeral expenses. Since the Tribunal awarded just and proper compensation towards loss of consortium, loss of love and affection, transportation and for funeral expenses, We confirm the compensation awarded by the Tribunal against these heads.

9. Though the Respondents 1 to 4/claimants have not filed any appeal as against the award passed by the Tribunal for enhancement of the compensation, by adopting the principles laid down by the Apex Court in [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), the claimants are entitled to enhanced compensation. Therefore, the compensation awarded by the Tribunal is enhanced to Rs. 18,18,540/- from Rs. 12,81,000/-.

10. Therefore, the Respondents 1 to 4/claimants are entitled to the enhanced compensation of Rs. 18,18,540/- together with interest at the rate of 7.5%.

(i) Out of the enhanced amount of Rs. 18,18,540/-, the Respondents 1 and 2/claimants 1 and 2 are entitled to Rs. 6,00,000/- each with proportionate interest and costs.

(ii) the Respondents 3 and 4 are entitled to a sum of Rs. 3,09,270/- each with proportionate interest and costs.

(iii) as far as the minor daughter is concerned, the said amount of Rs. 6,00,000/- is directed to be deposited in fixed deposit in any one of the Nationalised Bank initially for a period of three years, renewable thereafter, till she attains majority and the natural guardian/first Respondent is directed to withdraw the accrued interest once in three months directly from the bank.

11. Accordingly, the judgment and decree of the Tribunal made in MCOP No. 1042 of 2003 by the Additional Sub Judge/Motor Accident Claims Tribunal, Tanjore, are modified as stated above and the Civil Miscellaneous Appeal is disposed of as stated above. No. costs. Consequently connected miscellaneous petition is closed.