

Kannika, Thenmozhi and Pandian Ilankannan Vs Venkatraman and National Insurance Company Ltd.

Court: Madras High Court (Madurai Bench)

Date of Decision: Nov. 22, 2011

Acts Referred: Motor Vehicles Act, 1988 & Section 163(A)

Hon'ble Judges: T. Mathivanan, J

Bench: Single Bench

Advocate: T. Selvakumaran, for the Appellant; R. Srinivasan, for the Respondent

Final Decision: Dismissed

Judgement

Honourable Mr. Justice T. Mathivanan

1. Being dissatisfied with the award of Rs. 6,14,400/-, dated 19.03.2009 and made in MCOP No. 1361 of 2007 on the file of the learned Motor

Accident Claims Tribunal (Additional District Court, Fast Track Court No. 2), Tirunelveli, the claimants have preferred the appeal in C.M.A. No.

1062 of 2009. Challenging the same award, the second respondent/Insurance Company has preferred the appeal in C.M.A(MD) No. 1223 of

2011.

2. The first claimant is the mother of the deceased Sathish. Whereas the claimants 2 and 3 are his sister and brother. They have filed the claim

petition in MCOP No. 1361 of 2007, on the file of the learned Motor Accidents Claims Tribunal, (Additional District and Sessions Judge, Fast

Track Court No. 2) Tirunelveli, claiming a sum of Rs. 20,00,000/- for the death of the deceased Sathish, in a road traffic accident said to have

been taken place on 05.08.2007.

3. It is alleged that on 05.08.2007, at about 10.45 a.m., the deceased Sathish was thrown out of his motor-cycle bearing registration No. TN 72-

Q- 1621, when it was rammed by a Maruthi Van bearing registration No. TN-07-B- 3537, near IRT Polytechnic, on Tirunelveli-Nagercoil Main

Road, while he was proceeding to Kalakkadu from Tirunelveli.

4. The deceased was aged about 28 years, at the time of accident and he was working as Grade-I Police Constable in the Armed Force at

Palayamkottai. At the time of his death, he was earning a sum of Rs. 8,048/- per month.

5. The second respondent, in the claim petition, who is the appellant in CMA(MD) No. 1223 of 2011 has alone contested the claim on various

grounds. The owner of the vehicle, who is the first respondent, in the claim petition has not chosen to contest the claim, as he remained ex-parte.

6. The learned Tribunal, on evaluating the evidence both oral and documentary, has totally awarded a sum of Rs. 6,14,400/-, directing the

respondents 1 and 2 jointly and severally to pay this amount to the claimants with interest at the rate of 7.5% per annum from the date of claim

petition.

7. The claimants have filed the appeal in CMA(MD) No. 1062 of 2009 for enhancement of compensation. On the other hand, the second

respondent/Insurance Company has filed the appeal in CMA(MD) No. 1223 of 2011 for the modification of the award.

8. Heard Mr. T. Selvakumaran, learned Counsel for the claimants as well as Mr. R. Srinivasan, learned Counsel for the Insurance Company.

9. On perusal of the award, the learned Tribunal has assessed and determined the age of the deceased as 28 years, at the time of accident. The

first claimant, the mother of the deceased was aged about 52 years and therefore, as envisaged under Schedule II to Section 163A of the Motor

Vehicles Act 1988, the learned Tribunal has chosen to adopt the multiplier 11" to arrive at the quantum of compensation.

10. As seen from Ex.A-11, Salary Certificate, the gross salary of the deceased as on 26.07.2007 is Rs. 8,048/-. After deduction of Rs. 1,293/-,

he was getting a sum of Rs. 6,755/-.

11. It is significant to note here that the learned Tribunal has not taken the gross salary of the deceased for arriving at the quantum. Instead, the

carry home salary of Rs. 6,755/- alone was taken into account to arrive at the quantum.

12. On the basis of the monthly income of Rs. 6,755/-, the learned Tribunal has assessed the quantum of compensation in the following manner:-

Heads Amount [Rs.]

Loss of dependency of 5,94,400-00

the family

Funeral Expenses 5,000-00

Loss of Estate 10,000-00

Transportation 5,000-00

In Total 6,14,400-00

13. The learned Tribunal has also directed the respondents 1 and 2 to pay this amount jointly and severally with interest at the rate of 7.5% p.a.

14. Mr. R. Srinivasan, the learned Counsel for the Insurance Company has submitted that since the deceased was a bachelor and was aged about

27 years at the time of his death, 50% deduction is to be given, instead of 1/3rd towards living and personal expenses, as decided by the Apex

Court in Sarla Verma's case [2009 (2) TN MAC 1 (SC)].

15. He has also added that though an argument was advanced in this regard, the learned Tribunal had lost its sight upon this fact and without giving

50% of the deduction from the multiplicand, it had opted to give 1/3rd, which was in total negation of the decision of the Apex Court in Sarla

Verma's case.

16. On the other hand, Mr. T. Selvakumaran, the learned Counsel for the claimants has submitted that it is established through Ex.P.11, Salary

Certificate that the deceased was getting a sum of Rs. 8,048/- towards his gross salary, and as decided in Sarla Verma vs. Delhi Transport

Corporation, [2009 (2) TN MAC 1 SC], the actual income of the deceased, less income tax should be the starting point for calculating the

quantum of compensation.

17. He has also submitted that since the deceased was aged about 28 years, he has come under the age group of below 40 years and therefore,

50% of his actual salary is to be added with his gross salary towards future prospects.

18. The Hon"ble Apex Court in Sarala Verma vs. Delhi Transport Corporation [[2009 (2) TN MAC 1 SC], after referring the decision in Smt.

Sarla Dixit and another Vs. Balwant Yadav and others, , Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , has

held that in view of imponderables uncertainties, we are in favour adopting as a rule of Thumb, an addition of 50% of actual salary to actual

salary/income of the deceased towards future prospects, where deceased had a permanent job and was below 40 years.

19. On coming to the instant case on hand, the deceased was having permanent job and was also below 40 years, at the time of accident. Hence,

without any hesitation, the decision in Sarla Verma"s can be followed in this case. As evident from Ex.A.11, salary certificate, the gross salary of

the deceased is Rs. 8,048/-, and based on this his annual income is calculated at Rs. 96,576/-.

20. It is apparent that this annual income of the deceased is not in the taxable range. However, the words "actual salary" should be "actual salary

less tax". Hence, as submitted by Mr. T. Selvakumar, the learned Counsel for the appellant, a sum of Rs. 200/- can be given deduction towards

professional tax from the annual income of the deceased. On giving such deduction, the remaining balance would be Rs. 96,376/-. Of which 50%

of the actual salary towards future prospects would be Rs. 48,188/-. After giving deduction of Rs. 100/- towards professional tax, the remaining

balance would be Rs. 48,088/-. Accordingly, the annual multiplicand comes to Rs. 1,44,464/-. Since, the deceased was bachelor, 50% deduction

is to be given towards his personal and living expenses. After giving 50% deduction, the remaining balance would be Rs. 72,232/-. Taking into

consideration of the age of the mother at 52 years, the multiplier 11" could be applied. On application of the multiplier of "11", the loss of income

of the family would be Rs. 7,94,552/-. Hence, the award of the Tribunal viz., Rs. 6,14,400/- has been enhanced in the following manner:-

Heads Amount[Rs.]

Loss of income of the 7,94,552-00

family

Loss of love and affection 20,000-00

Transportation 5,000-00

Funeral Expenses 5,000-00

In aggregate 8,24,552-00

21. Accordingly, the claimants 1 to 3 are entitled to get this amount from the hands of the respondents 1 and 2 and the second respondent

Insurance Company is directed to deposit this amount with interest at the rate of 7.5% per annum from the date of claim petition, within a period of

two months from the date of receipt of a copy of this order, if not deposited earlier. On such deposit being made, the claimants 2 and 3 are

permitted to withdraw a sum of Rs. 1,25,000/- each, with the proportionate interest and costs and the first claimant is permitted to withdraw a sum

of Rs. 5,74,552/- with the proportionate interest and costs.

22. With these observations, the appeal in C.M.A. No. 1062 of 2009 is allowed. The award of Rs. 6,14,400/- passed by the learned tribunal is

enhanced to Rs. 8,24,552/-. Connected miscellaneous petition is closed. There is no order as to costs. In view of the order passed in CMA. No.

1062 of 2009, the appeal in CMA. No. 1223 of 2011 is dismissed. Connected miscellaneous petition is also closed. There is no order as to costs.