

(2009) 06 MAD CK 0250

Madras High Court (Madurai Bench)

Case No: C.M.A. (MD) No. 1121 of 2007

Sivanammal, Sumathi, Uma
Maheswari and Sivakumar

APPELLANT

Vs

C. Murugesan and The Branch
Manager, National Insurance
Company Ltd., Tallakulam
Branch

RESPONDENT

Date of Decision: June 30, 2009

Hon'ble Judges: N. Kirubakaran, J

Bench: Single Bench

Advocate: K. Murugesan, for the Appellant; R. Srinivasan, for R2, for the Respondent

Final Decision: Allowed

Judgement

N. Kirubakaran, J.

The claimants are the appellants before this Court praying for enhancement of the award rendered by the Tribunal. The claim of the appellants before the Tribunal was Rs. 7,00,000/-(Rupees Seven Lakhs only). However, the Tribunal awarded only a sum of Rs. 1,24,000/-(Rupees One Lakhs and Twenty Four Thousand only).

2. Heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the second respondent.

3. In an accident occurred on 03-11-2001, one Mr. M. Rajkanna died. The first appellant is the mother, the second appellant is the married sister, the third appellant is the unmarried sister and the fourth appellant is the minor brother. There is no dispute with regard to manner of accident and liability as found by the Tribunal.

4. There is no appeal by the Insurance Company. Hence, the question of considering the liability does not arise. It is only the question of quantum. The appellants/petitioners filed the appeal aggrieved by the awarding of lesser amount.

5. According to the claimant, the deceased Rajkanna was doing Conch(Sangu)business and finance business in Rameswaram and he was earning about Rs. 6,000/-per month(Rupees Six Thousand only). In proof of which Exs.P.10 and P.11 were produced before the Tribunal to show that he was doing the aforesaid business. The deceased was aged about 22 years. The Tribunal took into consideration of Ex.P4, Post-Mortem Report and arrived at the age at 22 years. However, no evidence, according to the Tribunal, was produced to prove of that he was earning about Rs. 6,000/- per month and taking into consideration the age 22 years, the Tribunal fixed his monthly income at Rs. 1,500/-(Rupees One Thousand only).

6. According to the learned Counsel for the appellants, his business was proved by Exs.P.10 and P.11. When that is the position, the Tribunal erred in fixing a sum of Rs. 1,500/- towards monthly income of the deceased. He relied upon the judgment of this Court rendered by Honourable Justice R. Sudhakar in the matter of the Managing Director, Tamil Nadu State Transport Corporation Ltd., Erode v. Padhmavathi and two Ors. reported in 2009 (1) TN MAC 450 and submitted that the Tribunal should not have fixed Rs. 1,500/- and in view of the judgment, the monthly income should be at Rs. 6,000/-. In the said judgment, the Tribunal fixed the monthly income of a Barber, who died in an accident, at Rs. 3,000/- per month based on the evidence of the wife of the deceased. On appeal this Court fixed the monthly income at Rs. 4,500/- stating that Rs. 3,000/- was fixed during the year 1995, as reported in 2002 ACJ 2330, (B. Anandhi v. Latha) whereas in the Barber case, the accident occurred in the year 2006. Considering the time gap between the year 1995-2006 the learned single Judge fixed the monthly income at Rs. 4,500/- instead of Rs. 3,000/- fixed by the Tribunal. However, the learned Counsel for the respondent submitted that there is no documentary proof to show that the deceased would earn at Rs. 6,000/- per month. Hence, the monthly income arrived at Rs. 1,500/- is fair and reasonable.

7. The learned Counsel for the respondent relied upon the decision of Honourable Apex Court reported in CDJ 2009 SC 1040 (R.K. Malik and Anr. v. Kiran Pal and Ors.) wherein it was held that the notional income of Rs. 15,000/- per annum should be taken into account for the purpose of calculating the compensation.

8. PW.1 who is the sister (second appellant herein) of the deceased, deposed before the Tribunal that her brother was doing conch business and finance business and he was earning the said amount. That was confirmed by PW.2 who is not connected with her family. Apart from that, to prove his avocation, Exs.P.10 and P.11 were produced before the Tribunal.

9. In the case cited by the learned Counsel for the appellant reported in 2009 (1) TN MAC 450, the Managing Director, Tamil Nadu State Transport Corporation Ltd., Erode v. Padhmavathi and two Ors., the monthly income was increased from Rs. 2,000/-per month to Rs. 4,500/- per month. Keeping the time gap between the

earlier judgment rendered in *B. Anandhi v. Latha* 2002 ACJ 2330 and the accident that took place in the year 2006 (Barber case), it was fixed at Rs. 4,500/- stating that the wages during the period got varied. Applying the said principle, even during the year 2001, he was earning at Rs. 6,000/- according to the appellant. It is crucial to note that as per Second Schedule of Motor Vehicles Act, even a non earning member's notional income was fixed at Rs. 1,500/- per month. Whereas, in this case, the deceased's avocation was proved under Exs.P10 and P11 and by the oral testimony of PW.1 and PW2. In that event, the Tribunal should have fixed higher amount. The accident occurred in the year 2001. Considering the raise in individual's earning capacity, inflation in view of this Court the monthly income should be at Rs. 4,500/- per month. Accordingly, the monthly income of the deceased is fixed at Rs. 4,500/-.

10. The first appellant is the mother of the deceased and the second and third appellants are the sister's of the deceased and fourth appellant is the brother of the deceased. For applying the proper multiplier, the age of the mother or the age of the deceased, whichever is higher should be taken into account. In this case, the age of the mother is 50 and the proper multiplier should be 13 under the Second Schedule of Motor Vehicles Act. Whereas, the Tribunal adopted the multiplier of 11. Hence, this Court adopts multiplier 13. If the monthly income of the deceased is fixed at Rs. 4,500/- since he was a bachelor at the time of accident and 50% has to be deducted towards his personal expenses. If 50% is deducted, his contribution to the family is Rs. 2,250/-. If the multiplier "13" is adopted the total contribution will be Rs. 3,51,000/-(Rs.2,250 x 13x12) (Rupees Three Lakhs and Fifty One Thousand only).

11. The learned Counsel for the appellant relied upon the judgment in *Sarla Verma and Anr. v. Delhi Transport Corporation and Anr.* reported in 2009 ACJ 1298. The said judgment is for the purpose of multiplier stating that proper multiplier is 13. Whereas, the Tribunal adopted the multiplier 11. As far as the loss of love and affection in respect of the first appellant, the Tribunal awarded a sum of Rs. 5,000/-(Rupees Five Thousand only). However, the amount is very meagre and accordingly, Rs. 5,000/- is enhanced to Rs. 10,000/- to the first appellant(Rupees Ten Thousand only) and for the appellants 2 to 4 each a sum of Rs. 5,000/- was awarded by the Tribunal and the same is confirmed totally a sum of Rs. 15,000/-(Rupees Fifteen Thousand only). Towards funeral expenses, a sum of Rs. 5,000/-(Rupees Five Thousand only) is awarded by the Tribunal and the same is very reasonable. Towards loss of estate, the learned Counsel for the second respondent fairly submitted that an amount of Rs. 25,000/- could be awarded.

12. The learned Counsel for the appellant relied upon the judgment of the Honourable Apex Court in the matter of *Divisional Controller, KSRTC v. Mahadeva Shetty and Anr.* reported in (2003) 7 SCC 197, wherein it has been held that in the case of death, the basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses etc, and loss to

the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Further, another judgment of the Karnataka High Court in North East Karnataka Road Transport Corporation v. Bapugouda Vasangouda and Ors. reported in 2006 ACJ 2553, held that in the case of fatal accident and the Principles of assessment in the case of Bachelor/Spinster, the compensation for loss to estate should not be a conventional figure and 10% of amount earmarked for personal expenses could be taken as personal expenses. Hence he prayed for 10% of the amount earmarked for his personal expenses. Even as per the Honourable Supreme Court in the matter of Divisional Controller, KSRTC v. Mahadeva Shetty and Anr. reported in (2003) 7 SCC 197, wherein it was held that the loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses etc and loss to the estate. As stated by the Honourable Apex Court, the object is only to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. The amount given towards loss of income and other heads alone would be sufficient to take care of the above headings. Hence, no separate amount need to be granted. In any event, since the learned Counsel for the second respondent made concession and taken into account a sum of Rs. 2,500/- awarded towards loss of estate. Accordingly, the award of the Tribunal is modified as follows:

(i) For Loss of Income	Rs. 3,51,000.00
(ii) For Loss of Love & Affection for the first appellant	Rs. 10,000.00
(iii) For Loss of Love & Affection for the appellants 2 & 3	Rs. 15,000.00
(iv) For Funeral Expenses	Rs. 5,000.00
(v) For loss to Estate	Rs. 2,500.00

Total	Rs. 3,83,500.00

13. The Tribunal rightly awarded 7.5% interest for the award amount and the same is accordingly confirmed.

14. Hence, the appeal is allowed and enhanced the award amount from Rs. 1,24,000/-(Rupees One Lakhs Twenty Four Thousand only) to Rs. 3,83,500/-(Three Lakhs Eighty Three thousand Five Hundred only) along with 7.5% from the date of the appeal till the date of realization. The second respondent/Insurance Company is hereby directed to deposit the amount within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the Tribunal is hereby directed to pay the amount to the claimants/appellants within a period of four weeks thereafter. The appellants are directed to pay the Court fee for the enhanced amount. No costs.

15. It is to be appreciated that Mr. R. Srinivasan learned Counsel for the second respondent has fairly put forth the facts without any hesitation and he is also made certain concessions to the appellants, which have to be followed by other Bar members.