

## The New India Assurance Co. Ltd. Vs Gowsalya Ramasamy and Others

**Court:** Madras High Court

**Date of Decision:** Nov. 23, 2010

**Hon'ble Judges:** C.T. Selvam, J

**Bench:** Single Bench

**Advocate:** N. Viajayaraghavan, for the Appellant; M. Palani, for Respondents 1 to 3, for the Respondent

**Final Decision:** Dismissed

### Judgement

C.T. Selvam, J.

This appeal arises against the judgment and decree dated 24.11.2005 made in M.C.O.P. No. 812 of 2004, on the file of the Motor Accidents Claims Tribunal, (Principal District Judge) Erode.

2. The facts necessary for the disposal of this Civil Miscellaneous Appeal are as follows:

The Insurance company is the Appellant herein. One Ramaswamy who was an additional Superintendent of Police meet his death on 04.04.2004

at about 11.30a.m. On the said day, he was driving his car when a lorry bearing registration No. TN-57-7389 insured with the Appellant

corporation dashed against the car resulting in the said Ramaswamy suffering multiple grievous injuries and dying on the spot. His legal heirs

comprising wife and two major children raised a claim petition informing of the deceased being aged 57 years at the time of his death of his

promotional opportunities and sought compensation in a sum of Rs. 30,00,000/-.

3. Before the tribunal, the Petitioners examined four witnesses and marked the following exhibits:

Ex.A1 - Copy of FIR

Ex.A2 - Copy of Rough Sketch

Ex.A3 - Copy of Observation Mahazar

Ex.A4 - Copy of Motor Vehicle Inspector Report

for the vehicle bearing registration

No.TN-30-D-9900

Ex.A5 - Copy of Motor Vehicle Inspector Report

for the vehicle bearing registration

No.TN-57-7389

Ex.A6 - Copy of Post-mortem Certificate

Ex.A7 - Copy of charge sheet

Ex.A8 - Copy of Judgment in STC.No.1142 of 2004

Ex.A9 - Legalheirship certificate

Ex.A10 - Certificate issued by the Superintendent

of Police

Ex.A11 - Official Memorandum issued by the Office

of Superintendent of Police, Namakkal

Ex.A12 - Attested xerox copy of service book of the

deceased M.Ramasamy

Ex.A13 - Attested xerox copy of the letter issued by

Siva Compulink Ltd., Chennai to P.W.4

Ex.A14 - Attested xerox copy of Salary certificate

issued by Siva Compling Ltd. Chennai

Ex.A15 - Original of Ex.A14

Ex.A16 - Permission letter given by Siva Compulink Ltd.

Chennai to P.W.4

None were examined on behalf of the Respondent, nor were any exhibits marked. On consideration of material before it, the Tribunal found that

the rash and negligent driving of the lorry insured by the Appellant corporation has caused the accident and directed payment of compensation in a

sum of Rs. 12,03,568/-. Taking the salary of the deceased as exhibited from the records at Rs. 18,649/-the tribunal deducted 1/3rd thereof

towards his personal expenses. Applying the multiplier of "8" it arrived at the loss of dependency at Rs. 11,93,568/-. A further sum of Rs.

10,000/-was awarded towards funeral expenses. The Tribunal directed payment together with interest at 7.5% per annum. Apportionment amount

of compensation between the claimants also was directed. It negated the submissions of the claimants regarding the possibility of the deceased

earning a sum of Rs. 25,000/-per month post retirement which was 19 months away from the date of death. Though such was the earning of PW4,

a retired Deputy Superintendent of Police, the tribunal found, there is nothing to show that the deceased had already applied to any private

company for employment or what his probable income would be post retirement.

4. Heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondents 1 to 3.

5. In appeal, neither the accident, negligence or the liability to pay compensation is disputed. The quantum of compensation is disputed by

informing that as the deceased had only 19 months of service left, the multiplier adopted ought not to have been "8" but ought to have been "6" as

such was the multiplier fixed in a case similar to the present one. In the decision in K. Rengasamy and Anr. v. Revathi and Ors. in 2008(5) MLJ

580, it has been held as follows:

The salary of the deceased as per Exhibit P.11 is found to be a sum of Rs. 24,400/-per month and it is the evidence of P.W.3 that the deceased is

entitled for further promotion and revision of pay structure accordingly and as such, considering the fact that his gross monthly income would have

shot up at least by 30% than what he was earning at the time of his death, the Court fixed an amount of Rs. 24,400/-and divided by 2, it would

come toRs.28,200/-and after deducting 1/3rd for the personal expenses of the deceased, the monthly income would be a sum of Rs. 18,800/-.

The deceased has got about 5 years and6 months more service as on the date of his death and as such, a service multiplier of "6" could be taken in

the matter and as such, the sum of Rs. 18,800/-, when multiplied by 6,it would come to Rs. 13,53,600/-and the same could be rounded off to Rs.

13,53,000/-. The Tribunal has granted only a sum of Rs. 5,000/-by way of loss of consortium. Considering the age of the deceased at the time of

the accident and the age of the widow, we are inclined to enhance the loss of consortium to Rs. 13,000/-. Similarly, we are inclined to enhance the

amount awarded by way of love and affection from Rs. 5,000/-to 60,000/-, in as much as the second Respondent is the unmarried daughter of the

deceased and the third Respondent is also in his young age. We are also inclined to enhance the funeral expenses fromRs.5,000/-to Rs. 10,000/-.

Therefore, the compensation altogether would come to a sum of Rs. 14,36,000/-and we are of the view that the Respondents would be entitled to

get the said sum as compensation and the said amount appears to be the proper amount of compensation in the facts and circumstances of the

case.

6. The said case was one wherein the deceased had 5 years and 6 months of service left and the court had considered the possibility of the

deceased getting further promotion and increase of income at 30%. Having done so, the court felt it appropriate to apply the multiplier of "6". In

the present case, we merely will follow the decision of the apex court in the Sarala Varma"s case. Therein the apex court has held that in the case

of a person in permanent employment, the salary component could be enhanced taking into consideration the future prospects. However, the same

should not be done when the deceased has passed the age of "50".

7. We also find that given the age of the deceased in the present case viz., 57 years the appropriate multiplier to be applied would be "9" as

indicated in Sarala Varma and Ors. v. Delhi Transport Corporation and Anr. reported in 2009(2) TNMAC 1(SC). Though no compensation has

been afforded by the Tribunal for loss of love and affection on the reasoning that the children were major nor as any amount been awarded

towards loss of consortium which really is all the more necessary at an advanced age (the wife being aged 50 years as on the date of accident). As

no appeal or cross objection has been filed by the claimant/Respondent, we merely confirm the findings of the tribunal.

8. The appeal shall stand dismissed. No costs. It is informed that the entire amount has been deposited by the insurance company and 50% of the

amount had been withdrawn. The Respondents are at liberty to withdraw the balance amount on due application. No costs.