

(2010) 11 MAD CK 0340

Madras High Court

Case No: C.M.A. No. 26 of 2008

The New India Assurance Co.
Ltd.

APPELLANT

Vs

Gowsalya Ramasamy and Others

RESPONDENT

Date of Decision: Nov. 23, 2010

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

Bench: Single Bench

Advocate: N. Vijayaraghavan, 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 met 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.