

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and

The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal No.748 of 2016
and

C.M.P.Nos.6119 of 2016 and 1813 of 2017

The Branch Manager
The United India Insurance Co. Ltd.,
No.64, Armenian Street
Parrys, Chennai - 600 001 ... Appellant/3rd respondent

Vs

1.Tmt.Tamil Selvi
(Rep. by her husband & NF Raman)...1st respondent/claimant

2.The Managing Director
Tamil Nadu State Transport Corporation
(Division-1), Kumbakonam-612 001

3.P.Vinothini ...2nd &3rd Respondents/
1st & 2nd Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.09.2015, passed in M.C.O.P.No.276 of 2013, by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court), Nagapattinam.

For Appellant : Ms.C.Harini
for M/s.M.B.Gopalan Associates
For 1st Respondent: Mr.R.Murugabharathi

J U D G M E N T
(Made by S.Manikumar,J)

In the accident, which occurred on 24.06.2013, involving a Transport Corporation Bus bearing Registration No.TN-68 N-0344 and a trailer lorry bearing Registration No.TN-04 AB-8417, among others, first respondent travelled as a passenger, sustained

grievous injuries. In this regard, a case in Crime No.229/2013 was registered under Sections 279 and 337 IPC against the driver of trailer lorry bearing Registration No.TN-04 AB-8417, which carried iron materials. She was unconscious and taken to Panruti Government Hospital. Thereafter, referred to Pondicherry Mahathma Gandhi Hospital, treated in the intensive car unit between 24.06.2013 and 27.06.2013. For further treatment, admitted in Apollo Hospitals, Chennai, from 23.07.2013 to 16.09.2013. Thereafter, she took treatment as outpatient, surgery was performed in the head.

2. Contending inter alia that there was 100% disablement, a claim in M.C.O.P.No.276/2013 has been made on her behalf, by her husband. Besides the owner of trailer lorry, the Managing Director, Tamil Nadu State Transport Corporation (Division-I), Kumbakonam and insurer of the trailer lorry viz. United India Insurance Company Limited, Chennai, have been arrayed as respondents.

3. Before the Tribunal, on behalf of the first respondent/injured, husband has adduced evidence. PW2 is a doctor. As many as 31 exhibits have been marked on the side of the claimant to substantiate the claim. RW1 is the driver of the Transport Corporation Bus. RW2 is the Private Investigator for the insurance company.

4. On evaluation of pleadings and evidence, the Tribunal held that the driver of the trailer lorry bearing Registration No.TN-04 AB-8417, insured with United India Insurance Company Limited, Chennai was negligent in causing the accident. Fixing the monthly income as Rs.6,000/-, taking note of the gravity of injuries particularly in the head, extent of disablement assessed at 100% by PW2-Doctor and considering the medical expenses of Rs.18,09,950/- supported by Exs.P7, P8, P28 to 21 and P31, the Tribunal quantified the compensation of Rs.31,77,650/- as hereunder:

Permanent disability	: Rs.11,52,000/-
Medical Expenses (as per Exs.P7, P8, 18, 19 20, 21 and P31)	: Rs.18,09,950/-
Transportation Expenses (as per Exs.9, 10 and 22)	: Rs. 68,700/-
Attendant charges	: Rs. 25,000/-
Frustration and loss of enjoyment	: Rs. 50,000/-
Total	: Rs.31,77,650/-

Going through the judgment, we notice that the Tribunal has made an arithmetical error in the calculation. The actual compensation would be Rs.31,05,650/- instead of Rs.31,77,650/-.

5. At the time of accident, age of the injured was 42 years. The Tribunal fixed the monthly income of the injured as Rs.6,000/- and chosen to apply '16' multiplier. Loss of future earning has been estimated as Rs.72,000/- x 16 = 11,52,000/. Based on Exs.P7, P8, P19 to 21 and P31 - Medical Bills, the Tribunal has awarded Rs.18,09,950/- for medical expenses. Based on Exs.P9, 10 and 22, the Tribunal has awarded Rs.68,700/- for transportation. Attendant charges of Rs.25,000/- has been granted. That apart, the Tribunal has awarded a sum of Rs.50,000/- for mental agony and loss of enjoyment. Altogether, the Tribunal has awarded Rs.31,77,650/- with interest at the rate of 7.5% per annum from the date of claim petition till realisation and costs.

6. Being aggrieved by the finding fixing negligence on the driver of the trailer lorry bearing Registration No.TN-04 AB-8417 and the quantum of compensation, United India Insurance Company Limited, Chennai has filed the instant appeal. Though Ms.C.Harini, learned counsel for the appellant/insurance company submitted that the Tribunal erred in fixing entire negligence on the driver of the trailer bearing Registration No. TN-04 AB-8417 and consequently fastening liability, going through the material on record, this court is of the view that the manner of accident attributing negligence on the driver of the trailer lorry has been substantiated by adducing oral and documentary evidence. Ex.P1-FIR has been registered against the driver of the lorry. Perusal of the award shows that even the private Investigator -RW2, has not examined driver of the trailer, insured with appellant/insurance company.

7. Per contra, driver of the Transport Corporation bus, examined as RW1, has categorically denied negligence attributed against him. On evaluation of pleadings and evidence, the Tribunal has rightly held that the driver of the trailer lorry alone was negligent in causing the accident.

8. Nature of injuries, period of treatment, expenses incurred, disablement suffered has been amply proved by marking medical records, stated supra. PW2-Doctor, who clinically examined the injured, has deposed that the first respondent suffered 100% disablement. Medical records support the same. Added further, before the Tribunal, the injured was represented by her husband and guardian. Huge medical expenses of Rs.18,09,950/- has been incurred. Treatment given to the injured, has not yielded the desired result and ultimately, she suffered 100%.

9. Insofar as determination of monthly income of the deceased is concerned, that this Court deems it fit to consider a decision of the Hon'ble Apex Court in Arun Kumar Agrawal & Anr. Vs. National Insurance Co. Ltd. & Ors., reported in 2010(9) SCC 218, wherein, considering the services, which the husband and family stand to lose, due to the death of a house wife, as per Kemp on Negligence, at paragraph Nos.23 to 27, held as follows:

"23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean 2 etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

24. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

25. In Lata Wadhwa v. State of Bihar (supra), this Court considered the various issues raised in the writ petitions filed by the petitioners including the one relating to payment of compensation to the victims of fire accident which occurred on 3.3.1989 resulting in

the death of 60 persons and injuries to 113. By an interim order dated 15.12.1993, this Court requested former 2 Chief Justice of India, Shri Justice Y.V. Chandrachud to look into various issues including the amount of compensation payable to the victims. Although, the petitioners filed objection to the report submitted by Shri Justice Y.V. Chandrachud, the Court overruled the same and accepted the report. On the issue of payment of compensation to housewife, the Court observed: So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000 per annum in cases of some and Rs.10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000 per month and Rs.36,000 per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be recalculated, taking the value of services rendered per annum to be Rs.36,000 and thereafter, applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000 instead of Rs.25,000 given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000 per annum and the multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000 per annum, cannot be held to be just and, we, therefore, enhance the 2 same to Rs.20,000 per annum. In their case, therefore, the total amount of compensation should be redetermined, taking the value of services rendered at Rs.20,000 per annum and then after applying the multiplier, as already applied and thereafter, adding Rs.50,000 towards the conventional figure. (emphasis supplied)

26. The judgment of Lata Wadhwa's case was referred to with approval in M.S. Grewal and another v.

Deep Chand Sood and others (2001) 8 SCC 151 for confirming the award of compensation of Rs.5 lacs in a case involving death of school children by drowning due to negligence of teachers of the school. In Municipal Corporation of Greater Bombay v. Laxman Iyer and another (2003) 8 SCC 731, a two-Judge Bench while deciding the issue of award of compensation under Sections 110-A and 110-B of the Motor Vehicles Act, 1939, referred to the judgments in Lata Wadhwa's case and M.S. Grewal's case.

27. In A.Rajam v. M.Manikya Reddy, 1989 ACJ 542 (Andhra Pradesh HC), M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word 'services' in cases relating to award of compensation to the dependants of a deceased wife/mother. Some of the observations made in that judgment are extracted below: The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife. While estimating the 'services' of the housewife, a narrow meaning should not be given to the meaning of the word 'services' but it should be construed broadly and one has to take into account the loss of 'personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."

At paragraph No.32, the Hon'ble Apex Court further held that, "the gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse

for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others, U.P. S.R.T.C. v. Trilok Chandra, Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another and also take guidance from the judgment in Lata Wadhwa's case."

10. In Arun Kumar Agrawal's case, though the legal representatives claimed that she earned Rs.50,000/- per month by painting and handicrafts, the tribunal therein fixed the monthly income as Rs.5,000/- for computing the loss of contribution to the family and awarded Rs.6,00,000/- as compensation. On appeal, the High Court reduced the same. When the correctness of the above was tested, the Hon'ble Supreme Court by considering the various principles, The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), gratuitous service rendered by the wife/mother and also by observing that gender equality has to be maintained in assessing compensation for house wives, victims of road accident, restored the original compensation awarded by the claims tribunal.

11. Though the above referred decisions, relate to fatal accident, principles laid down therein can be made applicable to an injured person, who suffered 100% disablement. With the extent of disablement, she cannot extend even the gratuitous service to the family, which would be constrained to engage a servant to do the household work. Besides she requires an attendant, for the rest, of her lifetime. In the light of the above discussions and decisions, we are of the view that the Tribunal has not committed any mistake in fixing the notional income of the injured as Rs.6,000/- per month, applying multiplier '16' and thus arriving at a compensation of Rs.11,52,000/- under the head loss of earning. Quantum of compensation awarded under other heads except Rs.50,000/- under the head pain and suffering and loss of amenities, is reasonable. There is no award for loss of earning during the period of treatment and conventional damages. There is no award for extra nourishment. Amount, if any in excess, owing to wrong calculation can be adjusted against the above heads. Going through the award, compensation of Rs.31,77,650/- with interest

at the rate of 7.5% per annum, awarded to the injured/first respondent from the date of claim till deposit cannot be said to be grossly excessive, warranting interference.

12. Appeal filed challenging the finding fixing negligence and quantum, is dismissed. However, there shall be no order as to cost. Consequently, C.M.P.Nos.6119 of 2016 filed for interim stay of the award is dismissed. C.M.P.No.1813 of 2017, filed to withdraw the deposited amount of Rs.18,09,950/- in MCOP No.176/2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagapattinam, is ordered. Appellant/insurance company is directed to deposit the balance amount of compensation with interest to the credit of MCOP No.176/2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagapattinam, within a period of six weeks from the date of receipt of a copy of this judgment.

-s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ASR

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Nagapattinam

+1 cc to M/s.M.B.Gopalan Associates sr 18384

+1 cc to Mr.R.Murugabharathi Advocate sr 18381

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