THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.04.2017
CORAM :
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.(MD)No.635 of 2011

The Managing Director,
Tamil Nadu State Transport Ltd,
New Railway Station Road,
Kumbakonam
... Appellant/Respondent

Vs.

1.Chellappan
2.Saroja
3.Revathi
4.Rajendran ... Respondents/Petitioners

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in MCOP.No.33 of 2009, dated 22.04.2010 on the file of the Motor Accident Claims Tribunal/I Additional District and Sessions Judge (PCR), Thanjavur.

For Appellant : Mr.M. Prakash
For Respondent : Mr.S. Deenadayalan

Judgment Reserved on : 05.04.2017
Judgment Pronounced on : 13.04.2017

JUDGMENT
(Judgment of the Court was delivered by **P.VELMURUGAN,J.**)

The Civil Miscellaneous Appeal is directed against the Judgment and Decree passed in MCOP.No.33 of 2009, dated 22.04.2010 on the file of the Motor Accident Claims Tribunal/ I Additional District and Sessions Judge (PCR), Thanjavur.

2.The case of the claimants in the claim petition is that on 03.09.2008, at about 01.45 p.m, the deceased Ragupathy was riding his Bajaj Discover from Pudupatti to Pudhur Village and when he was nearing Naduvur North street, Periyar Statue, the Tamil Nadu State Transport Corporation bus belonging to the respondent bearing registration No.TN 49 N 0933, which is self insured, came in the opposite direction and the driver of the bus had driven the bus in a rash and negligent manner and dashed against the Bajaj Discover of the deceased. The accident occurred only due to the rash and negligent driving of the driver of the Transport Corporation bus. Due to the accident, the deceased sustained multiple injuries and immediately he was taken to Vinodhagan hospital, where he died on 04.08.2008. During the time of accident, the deceased was aged about 27 years and was working at Singapore in Westile Dormitory Holcom construction PTC Ltd as Process Maintenance and Construction worker and was earning a sum of Rs. 40,000/- per month. The claimants 1,2,3 and 4 are the father, mother, sister and brother of the deceased respectively. The deceased had been working in Singapore for about 7 years. Therefore, the claimants had filed the claim petition for compensation a sum of Rs. 50,00,000/-. Since, the respondent bus belongs to the State Transport Express Corporation, which is a self insured vehicle, the respondent is liable to pay the compensation to the claimants.

3. The case of the respondent is that the accident occurred not due to the rash and negligent driving of the driver of the Transport Corporation. But the accident occured only due to the rash and negligent riding of rider - deceased of Bajaj Discover. At the time of the accident, when bus was proceeding in Naduvur valaivu Road, the deceased was riding his two wheeler in a drunken state, suddenly came to the centre of road and dashed against the bus and sustained injuries. Therefore, the deceased alone is responsible for the accident and the respondent is not liable to pay any compensation to the claimants.

4. In order to prove the case of the claimants, on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P.11 were marked and on the side of the respondents, R.W.1 was examined and no document was marked.

5. The Tribunal, after considering all the facts and circumstances of the case, oral and documentary evidence of either parties has awarded a sum of Rs. 16,80,000/- under following heads.

HEAD	AMOUNT AWRDED BY THE TRIBUNAL(Rs)
Loss of income	16,64,000/-
Loss of estate	12,000/-
Funeral expenses	4,000/-
Total	16,80,000/-
Claim restricted to	16,80,000/-

6. Aggrieved by the said award passed by the Tribunal, the respondent, Transport Corporation has filed this Civil Miscellaneous Appeal

7. Heard both sides.

8. The learned counsel for the appellant would submit that the accident occcurred not due to the rash and negligent driving of the driver of the bus. The deceased was in an inebriated state and so the accident occurred only due to the rash and negligent riding of the deceased. The deceased had completed only 8th standard and it is unbelievable that the deceased was working in Singapore and earning Rs. 40,000/- per month. The documents produced by the claimants are not genuine and not proved. In the absence of the proof of income of the deceased, the Tribunal has awarded Rs.16,80,000/- which is highly excessive and therefore, the award is liable to be set aside.

9. The counsel for the respondents/claimants would submit that the accident occurred only due to the rash and negligent driving of the driver of the Transport Corporation and was not due the rash and negligent riding of the deceased. Further it is submitted that, there is no proof to show that the deceased was in an inebriated state. In the absence of any medical certificate, the contention of the appellant has to be rejected. The Tribunal after considering all the facts and circumstances of the case and the documents produced by the claimants, has correctly awarded the compensation to the claimants. Therefore, the award passed by the Tribunal is just and reasonable.

10. On perusal of the records, the following points arose for consideration.

1. *Whether the accident was due to the rash and negligent driving of the driver of the appellant/respondent Transport Corporation?*
2. *Whether the award passed by the Tribunal is just and reasonable?*

<u>Point No.1</u>

11. In this case accident was admitted and dispute is regarding the manner of accident. In order to prove the manner of the accident, P.W.2 was examined as an eyewitness and he had spoken about the manner of the accident and a case was registered against the driver of the appellant/respondent Transport corporation. Though the respondent driver was examined as R.W.1 and stated that the deceased was riding the motorcycle in an inebriated state, Postmortem Certificate does not show that during the accident, the deceased consumed alcohol and no medical evidence to prove the same. P.W.2 who is the passenger of the bus has clearly spoken about the manner of the accident. Further, R.W.1 stated that he joined in the appellant/respondent Transport Corporation one year prior to the accident and hence, from the oral and documentary evidence, this Court finds that the accident occurred due to rash and negligent driving of the driver of the respondent bus and since, the respondent bus is a self insured

vehicle, the Tribunal has come to the correct conclusion that the respondent alone is liable to pay compensation.

Accordingly Point No.1 is answered.

Point No.2

12. As far the quantum of the award is concerned, after considering the claim petition, counter affidavit and also oral and documentary evidence let in by both the parties, the Tribunal, fixed monthly income of the deceased as Rs. 39,000/-per month and by adopting 13 multiplier, awarded Rs.16,80,000/- under various heads. Perusal of Ex.A.5 the Identity Card, Ex.A.6 Work Permit card, valid only from 2007 to 2009. Ex.A.8 visa for the period from 06.06.2002 to 04.09.2003 and from 22.07.2003 to 22.10.2003 would clearly show that the deceased went to Singapore only two times on short visits but not for job and no work order has been produced by the claimants to substantiate their contention. Ex.A.9 is the letter addressed Holcan Construction PTE, Ltd, Singapore, requesting the details of the wage and income earned by the deceased and in Ex.A.11, it is stated that Period of pay certificate is January to July 2008.

13. On a careful perusal of the documents, the Ex.A.11 is stated to be the pay certificates of the deceased, it is not found to be authenticated documents. Though they produced the visa Ex.A.8, it shows that type of visa is as Single Journey and Period of Stay is as Short Visit. The Passport in respect of his visit to Singapore for work had not been produced. No documents for terms and conditions of the contract has been produced. Therefore, it is clear that the visa has not been issued for the purpose of job. The claimants have not proved the employment and monthly income of the deceased as the manner known to law.

14. The learned counsel for the appellant submitted that there cannot be two spell of income. But, the learned counsel for the respondents/claimants submitted that there can be two spell of income as per the decision of this Court, in Shanthi Selvam Vs. K. Annamalai reported in, 2012 (2) TN MAC 769 (DB). Perusal of the said decision in the above case, documents have been produced to prove the avocation of the deceased. However, in this case the claimants have failed to prove that the deceased was working at Singapore and earning Rs.39,000/- per month. Therefore, the said decision does not help the respondents herein.

In our considered view, the award of compensation under this head appears to be very higher side and is not supported by any documentary evidence. It is, in our view, based on assumptions and presumptions to which we do not concur.

15.On perusal of the materials available on record, the deceased had completed only 8th standard and he had been stated to be worked as a Process Maintenance and Construction worker at Singapore and earning Rs.40,000/- per month. However, no authenticated document was produced that the deceased was employed in any public or private sector permanently. In the absence of any such documents and considering his educational qualifications and facts and circumstances of the case, only a notional income can be fixed to the deceased. In this regard it if worthwhile to refer the decision of Division Bench of Kerala High Court, in the case of Vahisa and others Vs. C.I Lincy and others, reported in 2017 ACJ P.669. The relevant portion of the judgment is extracted below

> " 9.In the decision of Valsamma v. Binu Jose, 2014 ACJ 997 (Kerala), this court has held that income of a person in a foreign country which is not a permanent employment cannot be taken into consideration for the purpose of assessing compensation under the head of loss of dependency and the income will have to be assessed in the context of Indian standards which such person if he is employed in India will be getting. Considering the circumstances, the amount of Rs. 6,000/- fixed by the Tribunal as his monthly income can not be said low and it is reasonable as well."

In this case, the qualification of the deceased is only 8th standard,if he does any construction work in India, he would get Rs. 6,000/- per month as wage. Accordingly, this Court fixed Rs. 6,000/- per month as notional income to the deceased. With regard to the age of the deceased, no birth certificate was produced, hence, based on the postmortem certificate, age of the deceased at the time of accident is considered as 25. However, the deceased died as bachelor, the average age of his parents has to be taken into consideration for adopting multiplier for calculating loss of income. In this regard it is pertinent to refer the decision in Bajaj Alliance General Insurance Com.Ltd Vs. Bipin Laxmichand Mehta and others reported in 2017 ACJ 30, the Bombay High Court has held as follows:

> "37. We may note that the Apex court in the case of Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Another (2015) 2 SCC 180. was required to deal with a similar situation where the deceased was 19 years old. The Hon'ble Court while calculating the compensation applied the multiplier as per the age of the parents of the deceased. The Court held:
>
> "11. .....Therefore, we have no doubt in ascertaining the future income of the deceased at Rs. 25,000/- p.m. i.e. Rs. 3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi and applying the appropriate

multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Sarla Verma case, we arrive at a total loss of dependency at Rs. 26,00,000/- [(Rs. 3,00,000 minus 1/3 X Rs. 3,00,000)X 13]".

38. The Apex Court in the case of National Insurance Company Limited v. Shyam Singh and Others (2011) 7 SCC 65 was required to deal with a similar situation where the aged parents were sole dependents of their young deceased son. After consideration and following the case of Ramesh Singh v. Satbir Singh: (2008) 2 SCC 667 the Apex court held that the multiplier that would apply would be after considering the age of the parents of the deceased. The Court has held in Para 9 and 10:

"9. This Court in the case of Ramesh Singh v. Satbir Singh, (2008) 2 SCC 667, *after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:*

*"6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. v. Charlie:*AIR 2005 SC 2157, *it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the trial court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.*

7. The learned Counsel relying on the Second Schedule of the Act contended that the deceased being about 16 or 17 years of age, a multiplier of 16 or 17 should have been granted. It is undoubtedly true that Section 163-A was brought on the statute book to shorten the period of litigation. The burden to prove the negligence or fault on the part of driver and other allied burdens under Section 140 or Section 166 were really cumbersome and time consuming. Therefore as a part of social justice, a system was introduced via Section 163-A wherein such burden was avoided and thereby a speedy remedy was provided. The relief under Section 163-A has been held not to be additional but alternate. The Schedule provided has been threadbare discussed in various pronouncements including Deepal Girishbhai Soni v. United India Insurance Co. Ltd.: AIR 2004 SC 2107. *The Second Schedule is to be used not only for referring to age of victim but also*

other factors relevant therefor. Complicated questions of facts and law arising in accident cases cannot be answered all times by relying on mathematical equations. In fact in U.P.SRTC v. Trilok Chandra: (1996) 4 SCC 362, *Ahmadi, J. (as the Chief Justice then was) has pointed out the shortcomings in the said Schedule and has held that the Schedule can only be used as a guide.* ***It was also held that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. If a young man is killed in the accident leaving behind aged parents who may not survive long enough to match with a high multiplier provided by the Second Schedule, then the Court has to offset such high multiplier and balance the same with the short life expectancy of the claimants.*** *That precisely has happened in this case. Age of the parents was held as a relevant factor in case of minor's death in recent decision in Oriental Insurance Co. Ltd. v. Syed Ibrahim.*: AIR 2008 SC 103. *In our considered opinion, the courts below rightly struck the said balance."*
10. In our view, the dictum laid down in Ramesh Singh case is applicable to the present case on all fours...... "
(Emphasis supplied)

39. Thus, what is evident from the above decisions is that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. In the present case, the age of the deceased at the relevant time was 20 and the father and mother were aged 54 and 51 years at the time of the accident and 60 and 57 years when the evidence was recorded. Keeping in mind the above decisions, we are of the view that the Tribunal erred in applying the multiplier of '17', by considering the age of the deceased. In the facts of the present case, according to us, the multiplier which ought to be applied is '11', considering the average age of the first and second respondent i.e. 54 and 51 i.e. 52 years.”

In this case also ages as mentioned in the Claim Application, age of the father of the deceased is 50 and age of the mother of the deceased is 45. Considering the average age of the first and second respondents i.e 50 and 45 i.e 48 years. Considering the above said decision and the age of the parents, multiplier 13 can be adopted. Accordingly, the loss of income of the deceased would come to Rs.6000X13X12=Rs.9,36,000/-. As per the judgment in ***Rajesh and Others Vs. Rajbir Singh and others reported in 2013 ACJ 1403 (SC),*** the Hon'ble Supreme Court has held that even in a case where persons are not having any permanent income, future prospects will have to be taken into consideration and in the age group upto 40, future prospects has to be taken as 50% and age between 40 and 50, future prospects has to be taken as 30%.

Accordingly, future prospects would come to Rs.1800X13X12 =Rs.2,80,800/-.

16. In view of the law laid down by the Hon'ble Apex Court in Saralaverma's case reported in 2009 ACJ 1298(SC) and upheld by a larger Bench of the Hon'ble Apex Court in the case of Reshma Kumari, reported in 2013 ACJ 1253 (SC), in case of a bachelor, half of the income is required to be deducted towards personal expenses of the deceased. In this case deceased was a bachelor at the time of the accident, so 50 % of the income towards personal expenses of the deceased is deducted and accordingly the loss of income would come to Rs.4,68,000/- and future prospects would come to Rs.1,40,400/-.

17.In so far as the other heads of compensation are concerned, the Tribunal had awarded Rs.4,000/- for funeral expenses, but this Court awards Rs.25,000/- towards funeral expenses. Even though the Tribunal has not awarded any amount towards transportation, this Court awards Rs.10,000/- towards transportation. We award Rs.2,00,000/- for loss of love and affection and Rs.5,000/- for damages for closed and articles. Therefore, we are of the considered view that the claimants are entitled the award of compensation as follows:

HEAD	AMOUNT CLAIMED BY THE CLAIMANT (Rs.)	AMOUNT AWRDED BY THE TRIBUNAL (Rs)	AMOUNT AWARDED BY THIS COURT (Rs.)
Loss of income		16,64,000/-	4,68,000/-
Loss of future prospects			1,40,400/-
Transportation	10,000/-	-	10,000/-
Extra Nourishment	50,000/-	-	-
Loss of estate	-	12,000/-	-
Damages for clothing and articles	10,000/-	-	5,000/-
Compensation love and affection	20,00,000/-	-	2,00,000/-
Compensation for continuing permanent disability	-	-	-
Compensation for loss of earning power	30,00,000/-	-	-
Attendant Charges	-	-	-
Funeral expenses	50,000/-	4,000/-	25,000/-
Total	51,20,000/-	16,80,000/-	8,48,400/-
Claim restricted to	50,00,000/-		8,48,400/-

18. *In the result,* this Civil Miscellaneous Appeal in C.M.A.(MD)No.635 of 2011 is partly allowed and the compensation awarded by the Tribunal is modified as shown above. The appellant Tamil Nadu State Transport Corporation is directed to deposit the compensation with interest at 7.5% per annum from the date of petition, if already not deposited, if already deposited any amount less the amount already deposited, along with proportionate interest and cost to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this order. The claimant are entitled to the modified compensation, in which the 2nd claimant being the mother as well as the first class heir is entitled to Rs.5,48,400/-, 1st claimant father of the deceased is entitled to Rs.1,50,000/-, 3rd claimant unmarried sister of the deceased is entitled to Rs.1,00,000/- and the 4th Claimant unmarried brother of the deceased is entitled to Rs.50,000/-. Since the accident occurred in the year of 2008, the claimants are permitted to withdraw the entire amount that would be deposited by the appellant Tamil Nadu State Transport Corporation. The claimants are permitted to withdraw their share with award amount less the amount already withdrawn if any, with proportionate interest and cost, through RTGS by filing necessary Application before the Tribunal. If already deposited, the respondent is permitted to withdraw the excess amount in accordance with law. No Costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal/
   I Additional District and Sessions Judge (PCR),
   Thanjavur.

2. The Record Keeper,
   V.R. Section, Madurai Bench of
   Madras High Court, Madurai.

+1cc to M. Prakash, Advocate Sr.No.51821
+1cc to Mr.S. Deenadayalan, Advocate Sr.No.51834

arul/dsk

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