

Sardhar Vs. Annadurai

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Court : Chennai

Decided On : Jun-20-2013

Judge : G.M.Akbar Ali

Appellant : Sardhar

Respondent : Annadurai

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

20. 06.2013 CORAM: THE HONOURABLE MR. JUSTICE G.M. AKBAR ALI
C.M.A.No.385 of 2013 1.Sardhar 2.Noorunnisha .. Appellants / Claimants /vs/
1.Annadurai 2.Karthikeyan 3.United India Insurance Co. Ltd., 1170, Mettur Road,
2nd floor, Muthaiah Complex, Erode Town, Erode District .. Respondents /
Respondents PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, to fix the entire liability on the insurer in the Judgment
and Decree dated 26.4.2007 made in M.C.O.P.No.306 of 2004 on the file of the
Motor Accident Claims Tribunal/Sub Court, Bhavani. For Appellants ::
Mr.Ma.P.Thangavel For Respondents :: R1-Exparte in the Lower Court No
Appearance for R2 Mr.T.Ravichandran for R3

JUDGMENT

By consent of both the counsel, this appeal is taken up for final disposal at the stage of admission itself.

2. The Civil Miscellaneous Appeal has been filed by the Claimants seeking enhancement of compensation and also questioning the apportionment of negligence, thereby reducing the liability on the part of the Insurance company to 50%.

3. According to the claimants, they filed a claim petition before the Motor Accidents Claims Tribunal (Sub Court), Bhavani, claiming compensation for the death of one Reekhan, aged about 22 years, Bachelor, who was working as a Marketing Manager in Premier Milk Dairy at Gobichettipalayam and was earning a sum of Rs.9,000/- per month, including all allowances.

4. According to the claimants, on 14.09.2004, at about 3.30 p.m, the deceased was travelling along with one Murali in a Motorcycle, bearing Reg.No.TN33L8751 on Bhavani to Salem National Highways road and at the time, a DCM Toyota Van, bearing Reg.No.TN28W5225 driven by its driver in a rash and negligent manner, hit against the motorcycle, in which the deceased was travelling. As a result, both the occupants of the motorcycle sustained multiple grievous injuries. Due to the injuries, the deceased Reekhan died on the spot. Therefore, the claimants had claimed a sum of Rs.15,00,000/-, as compensation.

5. The claim was resisted by the second respondent/Insurance Company in all aspects, including the negligence as well as the quantum.

6. However, the learned Motor Accidents Claims Tribunal (Sub Judge), Bhavani initially held that the accident occurred due to the rash and negligent act of the driver of the vehicle, owned by the first respondent and insured with the second respondent. But in the same breath, the Tribunal also observed that the rider of the motorcycle, in which the deceased was a pillion rider, did not possess driving license and therefore, reduced the liability to 50%.

7. As far as the quantum is concerned, the Tribunal has not taken into consideration the salary slip, but proceeded to fix the monthly income on the basis

of notional income of Rs.3,000/- and applied the unit theory and deducted Rs.1,250/-. The Tribunal adopted 13 multiplier and arrived at a figure of Rs.2,73,000/-,(1250 x 12 x 13) towards loss of income for the parents. Further, the Tribunal has granted a sum of Rs.75,000/- each towards loss of love and affection to the appellants/claimants and a sum of Rs.5,000/- has been awarded for funeral expenses and a sum of Rs.2,000/- has been awarded for transportation charges and thus, a total compensation of Rs.4,30,000/- was awarded by the Tribunal and out of which, the Insurance Company was ordered to pay only a sum of Rs.2,15,000/-, as 50% contributory negligence was fixed on its part. Aggrieved by which, the claimants have preferred the appeal before this Court.

8. Mr.Ma.P.Thangavel, the learned counsel for the appellants/claimants submitted that the Tribunal has not taken into consideration the income of the deceased at Rs.6,000/-, which was proved by documentary as well as oral evidence.

9. The learned counsel further pointed out that the action of the Tribunal in fixing a notional amount as salary for an earning member is a misconceived one as per various decisions laid down in 2012(2) TN MAC321(SC) [Amrit Bhanu Shali and others v. National Insurance Company Limited and others) and 2013(2) CTC680in (Reshma Kumari and others v. Madan Mohan and another) and also as per the principles laid down in 2013 SCC in (Rajesh and others v. Rajbir Singh and others). Therefore the learned Counsel contended that the Tribunal ought to have given due weightage to future prospects at 50% and multiplier must have been on the basis of the age of the deceased and thus ought to have granted a just and reasonable compensation.

10. On the other hand, Mr.T.Ravichandran, learned counsel for the third respondent/Insurance Company submitted at the outset that the appeal itself is restricted to Rs.2,00,000/- and therefore the liability alone is to be examined and there is no room for enhancement of compensation.

11. Further, the learned counsel pointed out that it is not proved that the deceased was earning a fixed income and future prospects cannot be looked into and only age of the parents has to be taken into consideration.

12. Heard the learned counsel on either side and perused the materials available on record.

13. This appeal is preferred for an additional amount of Rs.2,00,000/-, which amount has been disallowed by the Tribunal, after granting the compensation of Rs.4,30,000/-, due to apportioning the negligence between the drivers of the ill fated vehicles.

14. As stated earlier, the Tribunal initially found that the negligence was on the part of the offending vehicle, which was insured with the third respondent. However, while granting compensation, the Tribunal has made an observation that the driving license of the rider of the motor cycle was not produced and held that thereby each of them were equally negligent. Further the Tribunal, on account of the above stand, apportioned the blame equally between the drivers and thus reduced the amount of compensation to Rs.2,15,000/-.

15. As far as this aspect is concerned, this Court is of the view that the approach of the Tribunal is wrong and once it fixed the negligence on the part of the driver of the first respondent, it should not have again deviated and reduced the liability on the Insurance Company.

16. However, as far as the quantum of compensation is concerned, it has again and again been reiterated that the Tribunal and the High Court have to grant just and reasonable compensation, as the entire legislation is a social welfare measure.

17. This Court cannot ignore the various principles laid down in Sarla Verma case reported in 2009(2)TN MAC1(SC) and reported in 2012(2) TN MAC321(SC) in Amrit Bhanu Shali & others v. National Insurance Company Limited & others and unreported judgment of the Supreme Court in Civil Appeal No.3860 of 2013 dated April 12, 2013 in Rajesh & Others v. Rajbir Singh and others.

18. All the above decisions reiterate the principle of just and reasonable compensation and Sarla Verma's case has relied on all the principles on which the compensation has to be calculated. Paras 17 and 18 of the 2012(2) TN

MAC321(SC) is extracted hereunder:- 17.The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased, whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation. 18.In the case of Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC1(SC), this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13.

19. As far as the income is concerned, the decision laid down in Sarla Verma's case insists that 50% of the future prospects has to be calculated as per the salary of fixed income group. However, the unreported judgment dated April 12, 2013 [Rajesh & Others v. Rajbir Singh and others]. of the three Judges of the Hon'ble Supreme Court, as held in paragraph No.11 and 12 are extracted hereunder: ".11.Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years. 12.In Sarla Verma's case(supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case which the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

20. Therefore, the principle to be applied even for a self employed person or one who has fixed wages is that provision for future prospects has to be calculated as per the ratio laid down above.

21. In *Amrit Bhanu Shali & others v. National Insurance Co. Ltd., & others*[2012(2)TN MAC (SC)], the Hon'ble Supreme Court has again reiterated which of the multiplier is to be applied in the case of a death of a bachelor. Some of the Tribunals and High Courts are applying the multiplier based on the age of the parents. However, in the case cited supra, *Amirt Bhanu Shali and others v. National Insurance Co. Ltd. & others*, the Paragraphs 17 and 18 are extracted hereunder:- 17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

18. In the case of *Sarla Verma v. Delhi Transport Corporation*, 2009(2) TN MAC1(SC), this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and brining it down to the multiplier of 13.

22. In the case of *Reshma Kumari and others v. Madan Mohan and another*, it is held in para No.40 which is extracted hereunder:

40. In what we have discussed above, we sum up our conclusion as follows: (i) In the Applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in *Sarla Verma and others v. Delhi Transport Corporation and another*, 2009 (2) TN MAC1(SC), read with Para 42 of that judgment. (ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163-A under which the claim for compensation has been made, multiplier

of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma, should be follows. (iii) As a result of the above, while considering the Claim Applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act. (iv) The Claims Tribunals shall follow the steps and Guidelines stated in Para 19 of Sarla Verma, for determination of compensation in cases of death. (v) While making addition to income for future prospects, the Tribunals shall follow Paragraph 24 of the Judgment in Sarla Verma. (vi) Insofar as deduction for Personal and Living Expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in Paragraphs 30, 31 and 32 of the judgment in Sarla Verma, subject to the observations made by us in Para 38 above. (vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration.

23. Therefore, this Court is bound to follow the principles laid down by the Hon'ble Supreme Court and the decisions cited supra. If the above principles are adopted in the present case, the compensation has to be assessed on actual salary along with future prospects of 50% and the multiplier applied is to be only 18, as the age of the deceased was only 22 years.

24. As per the salary certificate, the deceased was earning a fixed salary of Rs.5000/-. Therefore, 50% (i.e. Rs.2500/-) has to be added for future prospects, that amounts to Rs.7,500/-. Thus the salary for computation of compensation would be Rs.7,500/- and 50% has to be deducted for the personal expenses, which would be Rs.3,750/-. As the multiplier, based on the age of the deceased, is 18, loss of income would be $\text{Rs.}3750/- \times 12 \times 18 = \text{Rs.}8,10,000/-$ Further, a sum of Rs.50,000/- is awarded towards Loss of love and affection (each Rs.25,000/-) and towards funeral expenses is awarded a sum of Rs.5,000/- and for transport charges is awarded as sum of Rs.5,000/-. Total compensation arrived at would be Rs.8,70,000/- and the break up of the compensation amount is as follows: Loss of Income : Rs. 8,10,000.00 Loss of love and affection : Rs. 50,000.00 Transport charges : Rs. 5,000.00 Funeral expenses : Rs. 5,000.00 ----- Total :

Rs. 8,70,000.00 ----- 25. It is submitted that the appellant has valued the appeal at Rs.2,00,000/- and paid the Court fee for the same. Since this Court awards a sum of Rs.8,70,000/- as compensation, the appellants are directed to pay the deficit Court fee, if any, within a period of four weeks and only on payment of such Court fee, the Registry is directed to draft the decree.

26. The Civil Miscellaneous Appeal is partly allowed and the respondents are directed to deposit the enhanced compensation amount, less the amount if any, already deposited by them, with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants/ claimants are permitted to withdraw the enhanced compensation equally. ari/kj /sr To The Motor Accident Claims Tribunal Sub Court Bhavani

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