

Parameswari and Others Vs. A. Kumar and Others

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Court : Chennai

Decided On : Oct-30-2012

Reported in : 2013(1)TNMAC439

Judge : The Honourable Mrs. Justice R. Banumathi & R. Subbiah

Appeal No. : Civil Miscellaneous Appeal Nos.3051 of 2010 & 2761 of 2012

Appellant : Parameswari and Others

Respondent : A. Kumar and Others

Advocate for Pet/Ap. : For the Petitioners: A.K. Kumarasamy, Advocate. For the Respondents: Ms. N.B. Surekha, Advocate.

Judgement :

(Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award made in M.C.O.P. No.385 of 2008 dated 09.12.2009 on the file of Motor Accident Claims Tribunal (II Additional Sub Court), Erode.)

COMMON JUDGMENT:

R. BANUMATHI, J.

Being dissatisfied with the quantum of compensation of Rs.25,95,000/- awarded for the death of Annadurai in a road traffic accident on 29.05.2008, the Claimants

have preferred C.M.A.No.3051 of 2010 praying for enhancement of compensation. Being aggrieved by the award of compensation, Insurance Company has preferred C.M.A.No.2761 of 2012. Since both the appeals arise out of the same Award, both the appeals were heard together and disposed of by this common judgment.

2. Brief facts are that on 29.05.2008, deceased Annadurai was travelling in Maruthi Omni van bearing registration No.TN-33 AW 7689 in Mettur-Bhavani Main Road proceeding from north to south. When the van nearing Kuttamuniappan Kovil, Thandavapuram bus stop, the driver of the van drove the same in a rash and negligent manner and dashed against the back side of parked lorry bearing registration No.HR-55 G 9268. Due to the impact, Annadurai and other occupants of the van sustained grievous injuries and one Sundaram died on the spot. Immediately, after the accident, Annadurai was admitted in Senthil Neuro Hospital, Erode and succumbed to the injuries on 31.5.2008. Deceased Annadurai was aged 43 years at the time of accident and was working as LIC agent and was getting commission of Rs.55,000/- per month. Apart from working as LIC agent, Annadurai was running 10 Power looms and also running Cable T.V. Services and was earning Rs.10,000/- per month from Power Looms and Rs.3000/- from Cable T.V. Services. Thus Annadurai was earning total income of Rs.68,000/- per month. Regarding the accident, a criminal case was registered against Maruthi Omni van driver in Crime No.231 of 2008 under Sections 279, 337 and 304(A) I.P.C. of Bhavani Police Station. Alleging that the accident was due to rash and negligent driving of the van driver, Claimants who are wife, children and mother of the deceased have filed Claim Petition claiming compensation of Rs.1,00,00,000/-.

3. Resisting the Claim Petition, Insurance Company has filed the counter contending that the lorry bearing registration No.HR-55 G 9268 was parked in the middle of eastern portion of the road and in the absence of danger light or other signal, the driver of the van hit against the lorry and thus the driver of the lorry was responsible for the accident. It was averred that the driver of Maruthi Omni van had no effective driving licence to drive the van which is a taxi and hence, the Insurance Company is not liable to pay compensation to the Claimants. Insurance Company also denied the occupation and income, monthly contribution to the family and age of the deceased and contended that the quantum of compensation

of Rs.1,00,00,000/- claimed by the Claimants is on the higher side.

4. Before the Tribunal 1st Claimant-Parameswari examined herself as P.W.1. The co-occupant of Maruthi Omni van viz., Nandakumar was examined as P.W.2. The Administrative Officer of Life Insurance Corporation, Perundurai Branch viz., Krishnaraju was examined as P.W.3. Exs.P1 to P15 were marked on the side of Claimant. No oral and documentary evidence was adduced on the side of Insurance Company.

5. Upon consideration of evidence of P.W.2 and Exs.P1-FIR registered against Maruthi Omni van driver and also P2-rough sketch, Tribunal held that the accident occurred due to rash and negligent driving of the van driver and that driver and the owner of Maruthi Omni van and its insurer are liable to pay compensation to the Claimants.

Insofar as quantum of compensation, Tribunal held that as per Exs.P12 to P14, deceased would have got commission of Rs.14,73,351/- for three years viz., 2005-2006, 2006-2007 and 2007-2008 and calculated the annual income at Rs.4,91,117/-. Taking the monthly income at Rs.40,926/- and adopting multiplier "15", Tribunal has calculated the total loss of income at Rs.73,66,680/-. Deducting one-third for personal expenses i.e. Rs.24,55,560/-, Tribunal has calculated the loss of income at Rs.49,11,120/-. Tribunal observed that since the deceased Annadurai was LIC Agent, after his death, his legal heirs are entitled to receive the commission amount from the policies till its maturity and held that Claimants have not suffered any loss of earning for the death of Annadurai. However, Tribunal held that had Annadurai been alive, he would have developed his LIC agency and would have earned more commission amount and that Claimants have suffered financial loss and that Tribunal awarded lump sum compensation of Rs.25,00,000/- for 'loss of dependency'. Adding conventional damages i.e. Rs.75,000/- for 'loss of love and affection' and Rs.20,000/- for 'funeral expenses', Tribunal has awarded total compensation of Rs.25,95,000/-.

6. P.W.2-Nandakumar had clearly spoken about the manner of accident and that the accident was due to rash and negligent driving of the van driver. Exs.P1 is the F.I.R. registered against the van driver. Evidence of P.W.2 and registration of

Ex.P1-FIR against the van driver are unassailable. P.W.2 - one of the occupant of the Maruthi van bearing registration No.TN-33 AW 7689 and being an eye-witness, his evidence stands on higher footing and much credence to be attached to his evidence. In the counter, even though, Insurance Company averred that the accident occurred only due to the lorry bearing registration No.HR-55 G 9268, no oral and documentary evidence was adduced to rebut the evidence adduced by the Claimants. Conclusion of the Tribunal as to rash and negligent driving of the Maruthi Omni van is based on evidence and the same is not under challenge. Insurance company has preferred appeal in C.M.A.No.2761 of 2012 mainly challenging the quantum of compensation awarded by the Tribunal.

7. In her evidence, P.W.1-Parameswari stated that her husband was a post graduate and obtained M.A. Degree and was working as LIC agent and was getting annual commission of Rs.6,67,842/-. In her evidence, P.W.1 stated that apart from doing L.I.C. Agency work, her husband was running Power looms and also Cable T.V. Services. From the said two business, her husband was earning Rs.10,000/- and Rs.3,000/- respectively per month.

8. To show that deceased Annadurai was an L.I.C. Agent, Claimants examined P.W.3-Krishnaraju, Administrative Officer in Life Insurance Corporation, Perundurai Branch. In his evidence, P.W.3 stated that at the time of accident, Annadurai was working as L.I.C. Agent in their Branch and was earning more commission. P.W.3 further stated that after deducting the income tax, during 2005-2006, Annadurai was paid commission of Rs.3,34,990/-. Like wise in 2006-2007, he was paid commission of Rs.6,00,667.60 and in 2007-2008 at Rs.6,67,842.82. Exs.P12 to P14 are the statement showing details of commission paid to Annadurai by the Life Insurance Corporation.

9. Observing that as per Exs.P12 to P14, though deceased Annadurai was paid total commission of Rs.14,73,351/- for the years 2005-2006, 2006-2007 and 2007-2008 respectively, after his death his legal heirs are entitled to get the commission from the Life Insurance Corporation and that Claimants have not suffered any loss of earning for the death of deceased Annadurai. However, taking the future prospects of the deceased and also the family background, Tribunal has awarded

lump sum compensation of Rs.25,00,000/- for 'loss of dependency'.

10. Ms.N.B.Sureka, learned counsel for Insurance Company contended that Tribunal failed to consider that deceased having received more than Rs.4,00,000/- per annum should have been an income tax assessee. But no document has been produced to prove that deceased was an income tax assessee. Learned counsel would contend that Tribunal erred in fixing the pecuniary loss at Rs.25,00,000/- on assumption.

11. Per contra, Mr.A.K.Kumarasamy, learned counsel for Claimants contended that Tribunal having found that the Claimants are entitled to Rs.49,11,120/- towards loss of income, erred in granting Rs.25,00,000/- only without considering the future prospects of the deceased who was worked as agent in LIC. It was further contended that Tribunal erred in not considering the other income derived from the business and prayed for enhancement of compensation.

12. It is admitted by both sides that after the death of deceased Annadurai, his family members are receiving the respective commission on the policies from the Life Insurance Corporation. By perusal of Ex.P12, it is seen that during 2005-2006, Annadurai was getting gross commission of Rs.3,72,944.90 and TDS of Rs.38,040/- has been deducted and the net commission of Rs.3,34,904.90 was paid to him. Likewise, by perusal of Ex.P13, it is seen that during 2006-2007, Annadurai was paid net commission of Rs.5,39,393.60 after deducting TDS of Rs.61,267/-. It is seen from Ex.P14, the total gross commission for the year 2007-2008 is Rs.6,67,842.82 and a sum of Rs.68,788/- was deducted towards TDS and the net commission of Rs.5,99,054.82 was paid to deceased Annadurai. Based Exs.P12 to P14, Tribunal has taken the total income for 2005-2006, 2006-2007 and 2007-2008 at Rs.14,73,351/- and calculated the average at Rs.4,91,117/- per annum ($\text{Rs.14,73,351} \div 3 = \text{Rs.4,91,117/-}$). Taking the annual income at Rs.4,91,117/-, Tribunal has calculated the monthly income of the deceased at Rs.40,926/-. Though the family continue to get the said commission amount, Tribunal held that after the death of Annadurai since the renewal commission being paid to the family members, Claimants have not suffered any pecuniary loss for the death of Annadurai. However, considering the future prospects of deceased

and also the family circumstances, Tribunal has awarded lump sum compensation of Rs.25,00,000/- towards loss of dependency. In fatal case, awarding of lump sum compensation for loss of income is not fair. Court/Tribunal ought to have give detailed calculation for loss of dependency. Therefore, the said method adopted by the Tribunal is not sustainable and warrants interference.

13. The point falling for consideration is what is the loss of income to the family. Even though the renewal commission is now being paid to the family members of deceased Annadurai, the fact remains that deceased was getting good commission. From Exs.P12 to P14, it is seen that over the years the commission amount paid to deceased was on the increasing trend. Had he been alive the deceased would have done more business and there would have been increase in his commission.

14. Following the ratio laid down in Sarla Verma's case, (2009) 6 SCC 121 and Santosh Devi's case, 2012 ACJ 1428 and considering the future prospects of the deceased Annadurai and also the fact that had he been alive, there would have been increase in his commission for joining more policyholder in LIC. We deem it appropriate to fix the notional monthly commission for future policies at Rs.25,000/-. Deducting 15% for income tax i.e. Rs.3,750/-, the monthly commission is fixed at Rs.21,250/-. Deducting one-third for personal expenses i.e. Rs.7,083/-, the monthly contribution to the family is calculated at Rs.14,167/- per month i.e. Rs.1,70,004/- rounded of to Rs.1,70,000/- per annum. At the time of accident, deceased was aged 43 years. As per Second Schedule to M.V. Act, for the age group 40-45, the proper multiplier to be adopted is "15", which the Tribunal has rightly adopted. Taking the annual contribution to the family at Rs.1,70,000/- and adopting multiplier "15", the future "loss of dependency" is calculated at Rs.25,50,000/- ($\text{Rs.1,70,000} \times 15 = \text{Rs.25,50,000/-}$), rounded off to Rs.25,00,000/-.

15. Insofar as conventional damages, Tribunal has awarded Rs.75,000/- for "loss of love and affection". Rs.20,000/- was awarded for "funeral expenses". Tribunal has not awarded any amount for "loss of consortium". However, considering that an amount of Rs.75,000/- has been awarded for loss of love and affection, no further compensation need be awarded for loss of consortium. Thus the total

compensation of Rs.25,95,000/- awarded by the Tribunal is maintained. Tribunal has awarded interest at the rate of 7.5% and the same is maintained. The compensation amount of Rs.25,95,000/- is to be apportioned amongst the Claimants 1 to 5 as ordered by the Tribunal.

16. In the result, the compensation of Rs.25,95,000/- awarded by the Tribunal in M.C.O.P.No.385 of 2008 dated 09.12.2009 on the file of II Additional Sub-Court, Erode is confirmed and both the appeals are dismissed.

It is stated before us that Insurance Company has deposited 50% of the compensation amount awarded. Claimants 1 and 5 are permitted to withdraw their respective share of compensation from out of the deposited amount immediately after the receipt of copy of this judgment.

Insurance Company is directed to deposit the remaining 50% of compensation within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Claimants 1 and 5 are permitted to withdraw their respective share along with proportionate interest.

Claimants 2 and 3 are said to have attained majority and Claimants 2 and 3 are permitted to withdraw their respective share after filing necessary application before the Tribunal getting themselves declared as major. The share in respect of minor 4th Claimant is ordered to be invested in anyone of the nationalised bank till he attains majority. 1st Claimant-mother is permitted to withdraw the accrued interest once in three months directly from the bank.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs in these appeals.

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