

Supreme Court of India

Yerramma & Ors vs G. Krishnamurthy & Anr on 28 August, 1947

Author: V G Gowda

Bench: Dipak Misra, V. Gopala Gowda

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7705 OF 2014  
(Arising out of SLP(C) NO. 4895 OF 2014)

YERRAMMA & ORS.

...APPELLANTS

Vs.

G. KRISHNAMURTHY & ANR.

...RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

This appeal has been filed by the appellants against the impugned judgment and order dated 05.06.2013 passed in M.F.A. No. 21576 of 2012 by the High Court of Karnataka, Circuit Bench at Dharwad, wherein the High Court has partly allowed the appeal filed by the appellants.

The necessary relevant facts are stated hereunder to appreciate the case with a view to ascertain whether the appellants are entitled for relief as prayed in this appeal. On 20.5.2011, the deceased Gavisiddappa was proceeding on a motor cycle bearing registration No.KA034/K-3530 towards S.P. Circle, when the State Road Transport Corporation bus which was going ahead of him took a right turn to enter the bus depot without giving the right turn indication. The motor cycle of Gavisiddappa collided with the bus while the bus was taking a right turn. Due to the impact caused by this collision of the bus with the motorcycle, the deceased sustained fatal injuries and succumbed to the same while on the way to the hospital.

At the time of the accident, the deceased was working as an ASI in the Kudithini Police Station and was drawing a salary of Rs. 26,000/- per month. The deceased was the only earning member of the family for their livelihood.

The appellants herein, the wife, 3 minor children and the mother of the deceased Gavisiddappa, filed a Claim Petition against the respondents before the MACT-XII, Bellary, vide MVC No.685 of 2011. The Tribunal calculated the compensation amount under all heads at Rs.21,30,632/-. The Tribunal also apportioned the contributory negligence at 25% on the part of the deceased and 75% on the driver of the respondent-Corporation. Thus, after 25% deduction from the amount of the total compensation, the Tribunal awarded an amount of Rs.15,97,974/- payable by the respondents to the appellants vide order dated 29.12.2011.

Being aggrieved by the award passed by the Tribunal, the appellants filed an M.F.A. No.21576 of 2012 on 05.04.2012 before the High Court of Karnataka, Circuit Bench at Dharwad. After considering the facts, evidence on record and circumstances of the case, the High Court was of the view that the net income of the deceased at the time of his death was Rs.21,168/- per month. As the claimants were 5 in number, the High Court held that Rs.5292/- i.e. 1/4th of the income had to be deducted towards personal expenses of the deceased (as per Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.[1]). Therefore, the remaining amount comes to Rs.15,876/- per month. The High Court applied the multiplier of 11 and re-determined the loss of dependency of the appellants at Rs.20,95,632/- as the age of the deceased at the time of his death was 53 years. It further awarded a sum of Rs.45,000/- towards conventional heads i.e. loss of consortium, loss of estate, loss of love and affection, and transportation of the dead body. Thus, the total compensation amount was determined by the High Court at Rs.21,40,632/-. The High Court has affirmed the apportionment of contributory negligence as determined by the Tribunal and accordingly, deducted 25% from the above compensation. A final amount of Rs.16,05,474/- was awarded to the appellants by the High Court as against Rs.15,97,974/- awarded by the Tribunal. Thus, the High Court partly allowed the appeal by enhancing the compensation by a sum of Rs.7,500/-.

Aggrieved by the above impugned judgment and order passed by the High Court of Karnataka, Circuit Bench at Dharwad, the appellants preferred an appeal before this Court for setting aside the same and for enhancement of compensation by awarding just and reasonable compensation.

Mr. C.B. Gururaj, the learned counsel for the appellants contended that the judgment of this court in Juju Kuruvila & Ors. v. Kunjamma Mohan & Ors.[2] is applicable to the facts of the present case. In the above case, Joy Kuruvila(the deceased) had a head-on collision with a bus approaching from the opposite side. Joy Kuruvila sustained serious injuries and died on the way to the hospital. The Tribunal found that the accident occurred due to the rash and negligent driving of the bus driver. It apportioned the contributory negligence between the driver and the deceased in the ratio of 75:25%. On the basis of the pleadings & evidence on record, in the above said case this Court has held thus on the negligence of the driver of the bus:-

“20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

20.6. The post mortem report, Ext. A-5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal and his stomach was half-full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext.A-5 clearly suggests that the deceased had taken liquor but on the basis of the same,

no definite finding can be given that the deceased was driving the car rashly and negligently at the time of the accident. The mere suspicion based on Ext. B-2 “scene mahazar” and Ext. A-5 post-mortem report cannot take the place of evidence, particularly, when the direct evidence like PW3 (independent eyewitness), Ext. B-1 (FI statement) are on record” Thus in our view, the contributory negligence apportioned by the Tribunal, which is affirmed by the High Court at 75% on the respondent-Corporation bus driver and 25% on the part of the deceased is erroneous not only with reference to the plea urged by the respondents before the Tribunal and the High Court but also keeping in view the legal principles laid down by this Court on this aspect in the above referred case.

The observations made by this Court in the case of Juju Kuruvila (supra) certainly apply to the fact situation on hand. Based on the evidence recorded in the present case, we are of the opinion that there is no contributory negligence on the part of the deceased but on the other hand the negligence is on the part of the driver of the respondent-Corporation bus.

After thorough consideration of the facts and legal evidence on record in the present case, we are of the view that the collision between the motor vehicles occurred when the respondent-Corporation bus was turning to its right side without showing the turn indicator to enter the bus depot. The driver of the offending vehicle of the respondent-Corporation bus was negligent by not giving the right turn indicator and causing the accident. The driver of the respondent-Corporation bus should have been aware of the fact that he was driving the heavy passenger motor vehicle, and that it was necessary for him to take extra care & caution of the other vehicles on the road while taking the turn to enter the depot. Had the driver of the offending vehicle taken sufficient caution and care, slowed down and allowed reasonable provision for other vehicles on the left side of the road to pass smoothly, the accident could have been averted.

Hence, we are of the view that the Tribunal and the High Court have erred in the apportionment of negligence at 25% on the part of the deceased and 75% on the part of the driver of the respondent-Corporation bus without evidence adduced in this regard by the respondent. But on the other hand, legal evidence produced on record by the appellants in this case would show that the accident was caused on account of the negligence on the part of the driver of the offending vehicle of the respondent-Corporation. Therefore, the erroneous finding recorded by the Tribunal & concurring with the same by the High Court on the question of contributory negligence of the deceased is liable to be set aside. Accordingly, we set aside the same as it is not only erroneous but contrary to law laid down by this Court in the case of Juju Kurivila (Supra).

In our considered view, since the deceased at the time of his death was approximately 53 years of age, therefore, as per law laid down by this Court in the Sarla Verma case (supra), 30% of actual salary for future prospects of the deceased cannot be taken for the purpose of awarding compensation under loss of dependency in favour of the appellants.

Further, with regard to gross annual income of the deceased, to determine the loss of dependency of the appellants, we refer to the case of National Insurance Co. Ltd. v. Indira Srivastava[3], wherein this Court has held as under:-

“19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

20. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Ed.) has been defined as under : "The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated :

'INCOME' signifies 'what comes in' (per Selborne, C., *Jones v. Ogle*, 42 LJ Ch.336). 'It is as large a word as can be used' to denote a person's receipts '(per Jessel, M.R. *Re Huggins*, 51 LJ Ch.938.) income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. AIR 1921 Mad 427 (SB). Ref. 124 IC 511 : 1930 MWN 29 : 31 MLW 438 AIR 1930 Mad 626 : 58 MLJ 337."

The Tribunal on examining the salary slip of the deceased for the month of April, 2011 determined the salary of the deceased at Rs.21,168/- per month after deducting towards P.T. and other statutory deductions. Therefore, the Tribunal arrived at Rs.21,168/- per month as the salary of the deceased. The High Court in its impugned judgment and order affirmed the same. We are of the view, that on the facts and circumstances of this case, the net salary of the deceased taken by the Tribunal and the High Court for determination of loss of dependency is erroneous as it is not in accordance with the principles laid down by this Court in this regard. Therefore the same is liable to be set aside as it has to be properly determined by taking gross income of the deceased. It is clear that the gross income of the deceased at the time of his death as per his salary slip was Rs.26,000/- per month. Therefore, we are of the view that a just and reasonable compensation under the head of loss of dependency has not been determined by the courts below. Thus, the impugned judgment and order of the High Court is vitiated both on account of erroneous finding and error in law. The gross salary drawn by the deceased at the time of his death was Rs.26,000/- per month. The High Court and the Tribunal have taken the net salary at Rs.21,168/- per month, thereby the Courts below have erred in making deductions from the gross salary of the deceased towards P.T. of Rs.200/- and other statutory deductions and therefore, arriving at Rs.21,168/- per month as the net salary of the deceased is erroneous in law. Therefore, we are of the view that both the Tribunal and the High Court have erred in not following the rules laid down by this Court in *Indira Srivastava's* (supra) in not taking gross income of the deceased to determine the loss of dependency.

The gross salary drawn by the deceased at the time of his death as per salary slip produced on record was Rs.26,000/- per month and after deducting 10% towards income tax, net income comes to Rs.23,400/- per month. Thus, the annual income of the deceased would be Rs.2,80,800/-.

Deducting 1/4th of this amount towards his personal expenses by applying the principle as laid down by this Court in Sarla Verma case (supra), the balance amount comes to Rs.2,10,600/-[(2,80,800/- – Rs.70,200/- (1/4th of Rs.2,80,800/-)]. Therefore, the loss of dependency of the appellants by applying the appropriate multiplier of 11, according to the rules laid down by this Court in the Sarla Verma comes to Rs.23,16,600/- (Rs.2,10,600/- X

11).

Further, the High Court has erred in not following the rules as laid down by this Court in awarding compensation under other conventional heads as mentioned hereunder. We are of the view that the appellants are entitled to Rs.1,00,000/- for loss of consortium, Rs.1,00,000/- for loss of love and affection as per the rule laid down by this Court in Rajesh & Ors. v. Rajbir Singh & Ors.[4], Rs.10,000/- for funeral expenses as per the rules laid down by this Court in Amrit Bhanu Shali & Ors. v. National Insurance Co. Ltd. & Ors.[5] and Rs.1,00,000/- for loss of estate.

The computation made by both the Tribunal and the High Court after deducting the amount out of the compensation under the head of loss of dependency towards contributory negligence and not taking gross income of the deceased as laid down by this Court in Indira Srivastava's case (supra) has rendered the determination of the compensation under the head of loss of dependency bad in law. Further, the quantification of compensation from all other heads as indicated in the preceding paragraph by us as both the Tribunal and the High Court have erred in not following rule laid down by this Court on this aspect in the catena of cases referred to supra. Therefore, we set aside the same and award the compensation as per the calculations made in the penultimate paragraph of this judgment.

As regards to awarding of interest on the compensation, the courts below have erred in awarding only 6% interest p.a. on the compensation awarded instead of 9% p.a. by applying the decision of this Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy[6]. Therefore, we have to award the interest @9% p.a. on the compensation determined in this appeal.

In the result, the appellants shall be entitled to compensation under the following heads:

Loss of Life	Rs.23,16,600/-
Funeral Expenses	Rs. 10,000/-
Loss of love and affection	Rs. 1,00,000/-
Loss of estate	Rs. 1,00,000/-
Loss of consortium	Rs. 1,00,000/-
Total :	Rs.26,26,600/-

Thus, the total compensation payable to the appellants by the respondent- Transport Corporation will be Rs.26,26,600/- with interest @ 9% from the date of filing of the application till the date of payment.

In view of the reasons stated as above, we allow this appeal in the above said terms. The compensation awarded shall be apportioned amongst the appellants in terms of the award passed by the Tribunal. The respondent- Transport Corporation shall either pay the amount of compensation by way of demand draft/drafts in favour of the appellants or deposit the same with interest as awarded, before the Motor Accidents Claims Tribunal after deducting the amount already paid to the appellants within six weeks from the date of receipt of the copy of this judgment. No costs.

.....J.

[DIPAK MISRA] .....J.

[V.GOPALA GOWDA] New Delhi, August 28, 2014.

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[1] [2] (2009)6 SCC 121 [3] [4] (2013)9 SCC 166 [5] [6] (2008) 2 SCC 763 [7] [8] (2013) 9 SCC 54  
[9] [10] (2012) 11 SCC 738 [11] [12] (2011) 14 SCC 481