

(2009) 09 MAD CK 0149

Madras High Court

Case No: C.M.A. No. 535 of 2003

The Managing Director, Tamil
Nadu State Transport
Corporation, (Kumbakonam
division II) Ltd.

APPELLANT

Vs

Saroja and Others

RESPONDENT

Date of Decision: Sept. 7, 2009

Hon'ble Judges: P.P.S. Janarthana Raja, J

Bench: Single Bench

Advocate: D. Geetha, for the Appellant; C.H. Pandian, for the Respondent

Final Decision: Dismissed

Judgement

P.P.S. Janarthana Raja, J.

The appeal is preferred by the Transport Corporation-appellant against the Judgment and Decree dated 28.02.2002 made in M.C.O.P. No. 337/2000 by the Motor Accidents Claims Tribunal (Sub Court) Nammakkal.

2. Background facts in a nutshell are as follows:

On 18.12.1999 at about 20.30 hrs., while the deceased Alaguraj was standing near a Tea Shop at Maickelnaickenpatti bus stop, a bus bearing Registration No. TN-45-N-1442 belonging to the appellant-Transport Corporation came in a rash and negligent manner by its driver and dashed against the said deceased. Due to the same, the deceased sustained head injury and multiple injuries all over the body and died on the spot. The claimants are the wife, children and mother of the deceased. They claimed a sum of Rs. 5,00,000/- as compensation. The appellant-Transport Corporation resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the bus driver or not?

2. What is the compensation the claimant is entitled to? If so, what is the amount and from whom?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation and awarded a compensation of Rs. 4,05,000/- with interest at 9% per annum from the date of petition and the details of the same are as under:

Loss of income	Rs. 3,60,000/-
Loss of consortium	Rs. 10,000/-
Loss of love and affection to the minor children	Rs. 30,000/-
Loss of love and affection to the mother	Rs. 5,000/-

Total ...	Rs. 4,05,000/-

Aggrieved by that award, the Transport Corporation has filed the present appeal.

3. The learned Counsel appearing for the appellant/Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the respondents/claimants submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel. P.W.1 is the first claimant/wife of the deceased. P.W.2 is one Devarajan, who is eyewitness to the accident. On the side of the claimants, P.W.1 & P.W.2 were examined and documents Exs.P1 to P4 were marked. Ex.P.1 is the copy of the First Information Report. Ex.P.2 is the attested copy of Postmortem report. Ex.P.3 is the attested copy of the Motor Vehicles Inspector's Report. Ex.P.4 is the copy of the charge sheet. On the side of the appellant-Transport Corporation, no one was examined and no document was marked to support their claim. After considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the bus and the finding is based on valid materials and evidence.

6. In the case of *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.* reported in (2009) 4 MLJ 997, the Apex Court has considered the relevant factors to be taken into consideration before awarding compensation and held as follows:

7. Before considering the questions arising for decision, it would be appropriate to recall the relevant principles relating to assessment of compensation in cases of death. Earlier, there used to be considerable variation and inconsistency in the decisions of Courts Tribunals on account of some adopting the Nance method enunciated in *Nance v. British Columbia Electric Rly. Co. Ltd.* (1951) AC 601 and some adopting the Davies method enunciated in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) AC 601. The difference between the two methods was considered and explained by this Court in [General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others](#), . After exhaustive consideration, this Court preferred the Davies method to Nance method. We extract below the principles laid down in *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas* (supra).

In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent as a result of the death. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have live or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of year's purchase.

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45 - and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible.

In [U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others](#), this Court, while reiterating the preference to Davies method followed in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (supra), stated thus:

In the method adopted by Viscount Simon in the case of Nance also, first the annual dependency is worked out and then multiplied by the estimated useful life of the deceased. This is generally determined on the basis of longevity. But then, proper discounting on various factors having a bearing on the uncertainties of life, such as, premature death of the deceased or the dependent, remarriage, accelerated payment and increased earning by wise and prudent investments, etc., would become necessary. It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the life span taken. That is the reason why courts in India as well as England preferred the Davies formula as being simple and more realistic. However, as observed earlier and as pointed out in Susamma Thomas case, usually English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when tribunals/courts began to use a hybrid method of using Nance method without making deduction for imponderables.... Under the formula Advocated by Lord Wright in Davies, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier.
(emphasis supplied)

8. In the case of [Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another](#), the Apex Court has held as follows:

13. Section 168 of the Act enjoins the Tribunal to make an award determining "the amount of compensation which appears to be just". However, the objective factors,

which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression "which appears to be just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation.

14. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependants of the deceased and the compensation to be awarded to them. In a nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

15. In *Kerala SRTC v. Susamma Thomas, M.N. Venkatachaliah, J. (as His Lordship then was)* had observed that: (SCC p.181, para 5)

5. ...The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales".

At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

18. The question as to what factors should be kept in view for calculating pecuniary loss to a dependant came up for consideration before a three-Judge Bench of this Court in *Gobald Motor Service Ltd. v. R.M.K. Veluswami*, with reference to a case under the Fatal Accidents Act, 1855, wherein, *K. Subba Rao, J. (as His Lordship then was)* speaking for the Bench observed thus: (AIR p.1)

In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained.

19. Taking note of the afore extracted observations in Gobald Motor Service Ltd. in Susamma Thomas it was observed that: (Susamma Thomas case, SCC p.182, para 9)

9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

20. Thus, for arriving at a just compensation, it is necessary to ascertain the net income of the deceased available for the support of himself and his dependants at the time of his death and the amount, which he was accustomed to spend upon himself. This exercise has to be on the basis of the data, brought on record by the claimant, which again cannot be accurately ascertained and necessarily involves an element of estimate or it may partly be even a conjecture. The figure arrived at by deducting from the net income of the deceased such part of income as he was spending upon himself, provides a datum, to convert it into a lump sum, by capitalising it by an appropriate multiplier (when multiplier method is adopted). An appropriate multiplier is again determined by taking into consideration several imponderable factors. Since in the present case there is no dispute in regard to the multiplier, we deem it unnecessary to dilate on the issue.

After considering the principles enunciated in the judgments cited supra, let me consider the facts of the present case.

7. At the time of accident, the deceased Alaguraj was aged about 30 years. He was a Centering Contractor for building construction and was earning a sum of Rs. 5,000/- per month. A case has been registered against the driver of the bus as Cr. No. 140/99 on the file of the Kattuputhur Police Station. P.W.2 is one Mr. Devarajan, who is eyewitness to the accident and in his evidence, he stated that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation. Further deposed that he has given a complaint about the accident. It is further to be noted that the driver of the bus was not examined on the side of the appellant. Ex.P.1 is the First Information Report. Ex.P.2 is the postmortem report. Ex.P.3 is the Motor Vehicles Inspector's report. Ex.P.4 is the copy of the charge sheet. From the above exhibits, it is clear that the accident had occurred only due to the rash and negligent driving of the appellant/Transport Corporation bus driver. P.W.1 is the wife of the deceased and in her evidence, she stated that the deceased was aged about 30 years at the time of accident. So, the Tribunal fixed the age of the deceased at 30 years. In the claim petition, it is stated that the deceased was earning a sum of Rs. 5,000/- per month, but there is no

document to substantiate the same. After considering the facts and circumstances of the case, the Tribunal has fixed the monthly income of the deceased Rs. 2,500/- and determined the annual income at Rs. 30,000/- (Rs.2,500 x 12), in which, after deducting 1/3rd of the amount towards personal expenses i.e. Rs. 10,000/-, the contribution to the family comes to Rs. 20,000/- (30000-10000). After considering the age of the deceased at 30 years, the Tribunal adopted the multiplier of "18" and determined the loss of income at Rs. 3,60,000/- (Rs.20,000 x 18). The Tribunal has correctly fixed the monthly income as well as the annual income of the deceased and also correctly adopted the multiplier of "18" as per the schedule. The learned Counsel appearing for the appellant/Transport corporation is also unable to find out any error or illegality against the compensation towards loss of income fixed by the Tribunal. Therefore, awarded Rs. 3,60,000/- by the Tribunal towards loss of income is very reasonable and the same is hereby confirmed. The Tribunal awarded a sum of Rs. 10,000/- towards loss of consortium to the first claimant. Considering the age of wife at 27 years at the time accident, it is just, fair and reasonable and the same is hereby confirmed. Further, the Tribunal awarded a sum of Rs. 30,000/- towards loss of love and affection to the minor children, who lost their father. Considering Rs. 10,000/- for each children, Rs. 30,000/- towards loss of love and affection to the minor children is very reasonable and the same is hereby confirmed. The Tribunal awarded a sum of Rs. 5,000/- towards loss of love and affection to the mother/fifth claimant, which is also reasonable and the same is hereby confirmed. Further, the Tribunal awarded interest at 9%. Considering the date of accident i.e. 18.12.1999, the interest of 9% is reasonable and the same is hereby confirmed. In these circumstances, I do not find any illegality or infirmity and warranting interference with the award passed by the Tribunal and the finding rendered by the Tribunal is based on the oral and documentary evidence and the same is in accordance with law.

8. The learned Counsel appearing for the appellant-Transport Corporation has submitted that already entire award amount has been deposited as per order of this Court. In these circumstances, first and fifth claimants being the wife as well as the mother of the deceased respectively are permitted to withdraw their respective shares as fixed by the Tribunal after deducting the amount, if any, already withdrawn on making proper application. In respect of the minors' shares i.e. second, third and fourth respondents shall continue to be in the deposit till they attain the majority as per the order of this court dated 01.04.2003. The first claimant is also permitted to withdraw the interest accrued in the deposit of the minors' shares once in three months on making proper application.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.