(2010) 10 MAD CK 0243

Madras High Court (Madurai Bench)

Case No: C.M.A. No. 611 of 2005

The Branch Manager, National Insurance Co. Ltd.		APPELLANT
	Vs	
Glory Renjitha Bai and Others		RESPONDENT

Date of Decision: Oct. 7, 2010

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

Bench: Single Bench

Advocate: S. Kumar, for Uma Ramanathan, for the Appellant; S. Meenakshi Sundaram, for R1 to R3, for the Respondent

Final Decision: Dismissed

Judgement

P.P.S. Janarthana Raja, J.

The appeal is preferred by the Insurance Company against the judgment and decree made in MCOP No. 18 of 2003 dated 08.10.2004 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Nagercoil.

2. Background facts in a nutshell are as follows:

The deceased-Amoss met with motor traffic accident that took place on 06.04.2002 at about 6.00 p.m. The deceased, along with some others were proceeding to Keezhamanakudy for taking coconut husk, in a Tempo bearing Registration No. TN-69-8263, from West to East direction. When the said Tempo crossed the Sengatti Bridge, the driver of the Tempo drove it in a rash and negligent manner at high speed. Due to the same, The deceased, who was sitting on the back side of the Tempo, lost balance and fell down on the left side of the road, and the left back wheel of the Tempo ran over him, and he died on the spot. The claimants are the wife, two minor children and mother of the deceased. They claimed a compensation of Rs. 5,00,000/- before the Tribunal. The fifth respondent is the owner of the said Tempo. The Tempo was insured with the appellant / Insurance Company, who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident took place due to the rash and negligent driving of the driver of the Tempo belonging to the fifth respondent or not ?

2. Whether the claimants are entitled to compensation? If so to what extent?

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 Tempo belonging to the fifth respondent and awarded a sum of Rs. 4,77,000/- as compensation with interest at 9% p.a. from the date of petition. The details of the compensation are as follows:

	Rupees
Loss of income	4,50,000/-
Mental agony	10,000/-
Loss of love and affection	10,000/-
Loss of consortium	5,000/-
Funeral expenses	2,000/-
Total...	4,77,000/-

Aggrieved by that award, the appellant / Insurance Company has filed the present appeal.

3. Learned counsel for the appellant / Insurance Company vehemently contended that the Insurance Company is not liable to pay any compensation to the claimants on the ground that the driver of the Tempo did not possess valid driving license at the time of accident. Further, it is submitted that the deceased was not a loadman and he was a gratuitous passenger and he had not travelled in the cabin. Therefore, the Insurance Company is not liable to pay any compensation to the claimants and only the owner of the vehicle is liable to pay the compensation. Alternatively, it is submitted that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel for the respondents 1 to 3 / claimants has submitted that the Tribunal had considered all the materials and evidence available on record and awarded the compensation which is just, fair and reasonable. Hence the order passed by the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel and perused the materials available on record. On the side of the claimants, P.W.1 and P.W.2 were examined and documents Ex.P1 to P10 were

marked. On the side of the Insurance Company, one Alphonse, the official of the Insurance Company, has been examined as R.W.1 and documents Ex.R1 and R2 were marked. P.W.1 is the wife of the deceased. P.W.2 is the eye-witness of the accident. Ex.P1 is the copy of First Information Report. Ex.P2 is the copy of Observation Mahazar. Ex.P3 is the copy of rough sketch. Ex.P4 is the copy of Motor Vehicle Inspection Report. Ex.P5 is the copy of Charge Sheet. Ex.P6 is the copy of Post Mortem Report. Ex.P7 is the copy of Death Certificate of the deceased. Ex.P8 is the Legal Heirship Certificate. Ex.P9 is the certificate issued by the School with regard to the date of birth of the second respondent. Ex.P10 is the certificate issued by the school with regard to the date of birth of the third respondent. Ex.R1 is the Acknowledgement Card for having received notice from the Insurance Company, by the first respondent and Ex.P2 is the Postal Receipt for the same. After considering the above 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 Tempo belonging to the fifth respondent. It is also further seen that the deceased was not a gratuitous passenger and he was a loadman. The Tribunal has also given a categorical finding to that effect. In respect of the driving license, the Tribunal has given a categorical finding that there is no evidence on record to show that the driver of the vehicle did not possess valid driving license at the time of accident. After taking into consideration of the above, the Tribunal fixed the liability on the Insurance Company. The findings given by the Tribunal are questions of fact and the same are based on valid materials and evidence, and hence they are confirmed.

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)

7. 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.

8. The deceased was 40 years old at the time of accident. Even though in the claim petition it is stated that the deceased was 33 years old at the time of accident, in the evidence of P.W.1, it is stated that the deceased was 40 years old at the time of accident. In Ex.P6-Post Mortem Report, it is stated that the age of the deceased was 40 years approximately. Hence the Tribunal was of the view that the age of the deceased would be between 40 and 45 years. It was claimed that the deceased was earning a sum of Rs. 4,500/- per month. Therefore, the Tribunal was of the view that the deceased would have earned Rs. 150/-per month and he would have earned for a period of 25 days in a month, and accordingly calculated the loss of monthly income at Rs. 3,750/-. Out of the said sum, 1/3rd of the amount was deducted towards personal expenses and the balance sum of Rs. 2,500/- was taken as the monthly contribution of the deceased to the family, and accordingly calculated the annual contribution at Rs. 30,000/-(Rs. 2,500/- x 12). After taking into consideration the age of the deceased, i.e. between 40 to 45 years, the Tribunal adopted the multiplier of 15 and determined the loss of income at Rs. 4,50,000/-(Rs. 30,000/- x 15). The Tribunal has correctly fixed the monthly income, annual income and also the age of the deceased and adopted the correct multiplier in accordance with the Schedule, and arrived at Rs. 4,50,000/- towards loss of income. The amount awarded towards loss of income is also very reasonable and hence it is confirmed. The Tribunal has awarded a sum of Rs. 10,000/- towards mental agony, Rs. 10,000/- towards loss of love and affection to the two minor daughters and the mother of the deceased, Rs. 5,000/- towards loss of consortium to the wife of the deceased and Rs. 2,000/- towards funeral expenses. The amounts awarded towards these heads are very reasonable and hence they are confirmed. The Tribunal has awarded interest rate at 9% p.a., from the date of petition. Taking into consideration the date of accident, date of award and also the prevailing rate of interest during the relevant time, the rate of interest fixed by the Tribunal at 9% p.a. is very reasonable and hence the same is confirmed. I do not find any error or illegality in the order of the Tribunal so as to warrant interference. It is based on valid materials and evidence and it is not a perverse order. Therefore, the order passed by the Tribunal is in accordance with law and hence the same is confirmed.

9. Under the circumstances, it is stated by the counsel for the Insurance Company that the Insurance Company has already deposited the entire compensation awarded by the Tribunal by order of this Court dated 01.07.2005 and the respondents 1 and 4 were permitted to withdraw 50% of their proportionate shares with accrued interest. In respect of the 2nd and third respondents, their shares were deposited in a fixed deposit in a Nationalised Bank. The respondents 1 and 4 are permitted to withdraw the entire balance of their proportionate shares from the deposit, on making proper application. Now it is stated that the second and third respondents have attained the age of majority. Therefore, the second and third respondents are also permitted to withdraw their shares on making proper application.

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