

(2009) 09 MAD CK 0251

Madras High Court

Case No: C.M.A.NPD. No. 354 of 2009 and M.P. No's. 1, 2 and 3 of 2009

The Managing Director, Tamil
Nadu State Transport
Corporation, Villupuram (Ltd.),
Vellore Region

APPELLANT

Vs

Shameem Bi and Abdul Rahman

RESPONDENT

Date of Decision: Sept. 14, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304(A)

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

Bench: Single Bench

Advocate: B. Vijayalakshmi, for the Appellant; L.K. Manjunath, for the Respondent

Final Decision: Dismissed

Judgement

P.P.S. Janarthana Raja, J.

By consent, the main appeal itself is taken up for final disposal at the time of admission.

2.The appeal is preferred by the appellant-Transport Corporation against award dated 29.01.2008 made in MCOP No. 656 of 2006 by the Motor Accident Claims Tribunal, Chief Judicial Magistrate No. I, Krishnagiri at Dharmapuri.

3. Background facts in a nutshell are as follows:

The deceased Amanullah met with motor vehicle accident that took place on 21.07.2004 at about 3.30 p.m. While the deceased was proceeding in his bicycle on M.C. Road near Govindapuram, the bus belonging to the appellant-Transport Corporation bearing registration No. TN-27-N-0882, which came from opposite direction, driven by its driver in a rash and negligent manner and dashed against the deceased. Due to which, the deceased fell down and front wheel of the said bus

was ran over the deceased and died on the spot. The claimants are the mother and father of the deceased. They claimed a sum of Rs. 38,94,000/- as compensation, but restricted their claim to Rs. 7,50,000/- before the Tribunal. The appellant-Transport Corporation has 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 driver of the appellant-Transport Corporation or not?
2. Whether the claimants are entitled to any claim?
3. If so, how much?

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. 4,73,000/- with interest at 7.5% per annum from the date of petition and the details of the same are as under:

Loss of income	Rs. 4,48,000/-
Funeral expenses	Rs. 5,000/-
Loss of love and affection (each Rs. 10000)	Rs. 20,000/-

Total...	Rs. 4,73,000/-

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

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

5. 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.

6. Heard the counsel. On the side of the claimants, the second respondent herein, who is the father of the deceased, was examined as P.W.1. PW2-one Pathanathan is the eye witness to the occurrence. Documents Exs.P1 and P2 were marked. On the side of the respondents no one was examined and no documents were marked to substantiate their claim. Ex.P1 is the copy of the First Information Report. Ex.P2 is the copy of post mortem Report. 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 appellant-Transport Corporation and the finding is based on valid materials and evidence.

7. 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.

9. At the time of the accident, the deceased-Amanullah was aged about 22 years. He was a bachelor engaged in old iron business. PW1, who is the father of the deceased has deposed that at the time of the accident the deceased was earning Rs. 5,500/- per month. PW2, who is an eye witness to the occurrence deposed that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation and a case has been registered in Crime No. 652 of 2004 of Jolarpettai Police Station under Sections 279 and 304A IPC. Though PW1-the father of the deceased deposed that the deceased was earning Rs. 5,500/- per month, no document has been produced to substantiate his claim. Hence, the Tribunal has fixed the monthly income of the deceased at Rs. 3,500/- per month/-

and the annual income at Rs. 42,000/- (Rs.3,500/- x 12). In this appeal, the claimants are parents of the deceased. Therefore, the age of the parents should be taken into consideration for adopting the multiplier. In the case of New India Assurance Company Limited v. Shanti Pathak and Ors. reported in 2007 ACJ 2188, the Apex Court has held that where the claimants are parents of the deceased, the choice of multiplier would depend upon the age of the claimants and not that of the deceased and in paragraph 6 it has been held as follows:

6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted with. The monthly contribution was fixed at Rs. 3500. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of the deceased was about 65 years at the time of the accident and age of the father was more than 65 years. Taking into account the monthly contribution at Rs. 3500 as held by the Tribunal and the High Court, the entitlement of the claim would be Rs. 2,10,000. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.

In this case, the age of the first respondent-mother was 40 years at the time of the accident. If the age of the mother is taken into consideration, the correct multiplier that should be adopted in this case is 16. Out of the said sum of Rs. 42,000/-, if 1/3rd sum of Rs. 14,000/- (Rs.42,000 x 1/3) is deducted towards personal expenses of the deceased, the annual contribution of the deceased to his family works out to Rs. 28,000/- (Rs.42,000/- - Rs. 14,000/-). Considering the age of the mother of the deceased as 40 years at the time of the accident, the Tribunal has adopted the multiplier of 16 as per the schedule II and awarded a sum of Rs. 4,48,000/- (Rs.28,000 x 16) towards loss of income. Following the decision of the Apex Court, the Tribunal is correct in adopting the multiplier of 16. Hence, the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/- towards funeral expenses, which I feel is very reasonable and the same is confirmed. The Tribunal has also awarded a sum of Rs. 20,000/- i.e. Rs. 10,000/- each to the claimants, towards loss of love and affection. The claimants are father and mother. They lost their only son. Hence, the amount awarded under this head is also very reasonable and the same is confirmed. The Tribunal has awarded interest at the rate of 7.5% per annum, which I feel is very reasonable and the same is confirmed. The finding is based on valid materials and evidence. There is no error or illegality in the order of the Tribunal so as to warrant interference by this Court. It is a question of fact. It is not a perverse order. It is in accordance with law and therefore, the award passed by the Tribunal is confirmed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, M.P. Nos. 1, 2 and 3 of 2009 are also dismissed.