

(2010) 11 MAD CK 0273

Madras High Court (Madurai Bench)

Case No: C.M.A. (MD) No. 1555 of 2010 and M.P. (MD) No. 1 of 2010

The Managing Director, Tamil
Nadu State Express Transport
Corporation Limited

APPELLANT

Vs

Shanmugathai, R. Arumugam
and The Branch Manager, The
Oriental Insurance Company
Limited

RESPONDENT

Date of Decision: Nov. 8, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304A, 337

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

Bench: Single Bench

Advocate: M. Prakash, for the Appellant;

Final Decision: Dismissed

Judgement

P.P.S. Janarthana Raja, J.

This appeal is preferred by the Appellant-Transport Corporation against the judgment and Decree dated 19.10.2006 made in M.C.O.P No. 730 of 2005 on the file of the Motor Accidents Claims Tribunal cum II Additional District Court, Tirunelveli.

2. Background facts in a nutshell are as follows:

The deceased-Esakkipandi met with motor vehicle accident that took place on 08.11.2001 at about 11.30 p.m. The said deceased was travelling as a passenger in a bus, bearing Registration No. TN-01-N-6445 belonging to the Appellant-Transport Corporation. When the bus was nearing Sengurichi Village in Ulundurpet to Villupuram Road from south to north direction in Chennai-Trichi National Highways, the same was driven by its driver in a rash and negligent manner and also at high speed and hit against a lorry, which was coming from the opposite direction,

bearing Registration No. TMN-7849. Due to the impact, the deceased as well as two other passengers died. The claimant is the mother of the deceased. She 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. Who is responsible for the accident?
2. Whether the claimant is entitled to compensation, if so, to what amount?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to rash and negligent driving of the driver of the bus belonging to the Appellant-Transport Corporation and awarded a compensation of Rs. 1,42,000/- with interest at 6% p.a. from the date of the claim petition. The details of the compensation are as under:

Heads	Amount
Loss of dependency	Rs. 1,32,000/-
Mental agony	Rs. 10,000/-

Total...	Rs. 1,42,000/-

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

3. Learned Counsel appearing for the Appellant/Transport Corporation has questioned only the quantum of compensation awarded by the Tribunal and vehemently contended that the amount awarded by the Tribunal is excessive, exorbitant and also without any basis and justification. Therefore, the award passed by the Tribunal is not in accordance with law and hence the same should be set aside.

4. Heard the counsel for the Appellant-Transport Corporation and perused the materials available on record. On the side of the claimant, P. Ws.1 and 2 were examined and documents Exs.P1 to P7 were marked. On behalf of the Appellant-Transport Corporation one Rajkumar, the driver of the bus was examined as R.W.1 and no document was marked to substantiate their claim. P.W.1-Shanmugthai, is the mother of the deceased. P.W.2 Kaliamoorthy, is the eyewitness to the accident. Ex.P.1 is the true copy of the First Information Report. Ex.P.2 is the true copy of the Post Mortem Report. Ex.P.3 is the true copy of the Charge-Sheet. Exs.P4 and P5 are the true copies of the Motor Vehicle Inspector's Reports. Ex.P6 is the xerox copy of the Insurance Policy. Ex.P7 is the xerox copy of the Rough Sketch. 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 bus. The finding of the Tribunal is based on valid materials and evidence and it is a question of fact. Hence the same is

confirmed.

5. 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 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.

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 years' 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 there from 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)

6. 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*², 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*⁴, 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 the accident, the deceased-Esakkipandi was aged about 25 years. P.W.1, the mother of the deceased, in her evidence has stated that the deceased was an agricultural coolie and also a milk vendor, and he was earning a sum of Rs. 4,500/-per month. Further in her evidence, she stated that only the driver of the bus caused the accident and the driver was also charge-sheeted by Ulundurpet Police Station in Crime No. 594/2001 under Sections 279, 337 and 304(A) IPC. In the present case the Tribunal has adopted the multiplier of "11" on the basis of the age of the claimant, i.e., the mother of the deceased. The mother of the deceased was aged about 52 years at the time of the accident. In respect of the income, the Tribunal has fixed the monthly income of the deceased at Rs. 3,000/-per month. Out of the said sum, the Tribunal deducted 2/3rd of the amount i.e., Rs. 2,000/-towards monthly contribution of the deceased to the family, and the balance sum of Rs. 1,000/-was taken as the monthly income of the deceased, and determined the

annual contribution at Rs. 12,000/-. After considering the age of the mother of the deceased, the Tribunal has adopted the multiplier of "11" and determined the loss of dependency at Rs. 1,32,000/-(Rs. 12,000X11). Considering the oral and documentary evidence, this Court is of the view that the Tribunal is correct in determining the annual income by applying the correct multiplier of "11" on the basis of the age of the mother of the deceased. The amount awarded by the Tribunal towards loss of dependency is also very reasonable and hence the same is confirmed. Further the Tribunal has awarded a sum of Rs. 10,000/-towards mental agony, which is also very reasonable and hence the same is confirmed. The Tribunal has awarded interest at 6% p.a. After taking into consideration of the date of accident, date of award and also prevailing rate of interest during that period, I feel that the interest rate awarded by the Tribunal is reasonable and hence the same is confirmed. The findings of the Tribunal are based on valid materials and evidence. I do not find any error or illegality in the order of the Tribunal warranting interference. It is a question of fact. It is not a perverse order. Learned Counsel appearing for the Appellant-Transport Corporation is also unable to give any material evidence of compelling reason to take a contrary view. Under the circumstances, this is not a fit case for admission and the award passed by the Tribunal is in accordance with law and hence the same is confirmed.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.