

Elammal and Others Vs The Managing Director, Metropolitan Transport Corporation Ltd.

Court: Madras High Court

Date of Decision: Oct. 6, 2009

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

Bench: Single Bench

Advocate: J. Mahalingam, in CMA. 608/03 and A. Babu, in CMA1792/03, for the Appellant; J. Mahalingam in CMA. 1792/03 and A. Babu in CMA. No. 608/03, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.

C.M.A. Nos. 608 of 2003 and 1792 of 2003 are filed by claimants and the Transport Corporation

respectively against the award dated 14.11.2002 made in MCOP No. 884 of 1999 by the Motor Accident Claims Tribunal (V Judge, Court of

Small Causes) Chennai.

2. The Transport Corporation as well as the claimants have filed the above appeals. Hence, they are taken up together and disposed of by a

common judgment.

3. Background facts in a nutshell are as follows:

The deceased-Padmanabhan met with motor vehicle accident that took place on 07.10.1998 at about 10.00 p.m. While the deceased was

proceeding in his by-cycle at East Coast Road, Muttukkadu from north to South by eastern side edge of the road, the M.T.C. bus bearing

registration No. TN-01-N-2095, which came in the same direction and driven by its driver in a rash and negligent manner, dashed against the

deceased from back side due to which the deceased died on the spot. The claimants are wife, three sons, two daughters and mother. They claimed

a sum of Rs. 6,00,000/- 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. Who is responsible for payment of compensation?

What is the compensation the claimant is entitled to?

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 appellant-Transport Corporation and awarded a compensation of Rs. 3,52,000/- with interest at 9% per annum from the date of

petition and the details of the same are as under:

Loss of income Rs. 3,12,000/-

Funeral expenses Rs. 10,000/-

Loss of consortium, loss of

happy life and loss of love and

affection Rs. 30,000/-

Total... Rs. 3,52,000/-

Aggrieved by that award, the Transport Corporation as well as the claimant have filed the present appeals.

4. The learned Counsel appearing for the claimants-appellants in CMA. No. 608/03 and respondents in 1792/03 submitted that the compensation

awarded by the Tribunal is very low and meagre and the Tribunal ought to have awarded compensation as claimed by the claimants and the

Tribunal has not followed the principles of assessment before passing the award and the amount awarded by the Tribunal is very low and meagre

and seeks to enhance the compensation.

5. The learned Counsel appearing for the respondent-Transport Corporation in CMA No. 608/03 and appellant in CMA.1792/03 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 that therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

6. Heard the learned Counsel for the parties. On the side of the claimants, P.Ws. 1 to 3 were examined and documents Exs. P1 to P5 were

marked. On the side of the appellant-Transport Corporation, Rws. 1 and 2 were examined and Ex. R1 was marked to support their claim. P.W. 1

is the claimant. PW 2 is an eye-witness. PW 3 is co-worker. Ex. P1 is the First Information Report. Ex. P2 is the copy of rough sketch. Ex. P3 is

the copy of charge sheet. Ex. P4 is the post-mortem certificate. Ex. P5 is the legal heirship certificate. RW1 is the Conductor of the bus. RW2 is

the Investigation Officer, Transport Department. Ex.R1 is the Inspection Report. 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

Transport Corporation is responsible for payment of compensation 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 there from 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 there from 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 there from 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

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 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 was aged about 47 years. In Ex.P4-Post Mortem Certificate, the age of the deceased was mentioned

as 48 years. No document was produced to prove the correct age of the deceased-Padmanabhan. Hence, the Tribunal has taken the age of the

deceased as below 50 years at the time of the accident. PW1, the wife of the deceased deposed that at the time of the accident, her husband was

running Nirmala Tiffin Tea Stall and was earning Rs. 200/- to Rs. 250/- per day. PW2, who is an eye-witness to the accident and PW3, who was

working in the Tiffin stall of the deceased deposed that the accident had occurred only due to rash and negligent driving of the driver of the bus.

Though PW1, the wife of the deceased deposed that her husband was earning Rs. 200/- to 250/- per day, no document was marked to

substantiate her claim. Hence, the Tribunal was of the view that the deceased would have earned not less than Rs. 200/- per day and after

deducting personal expenses, he would have contributed a sum of Rs. 2000/- to his family. Taking into consideration the age of the deceased as

below 50 years, the Tribunal adopted the multiplier of 13 and awarded a sum of Rs. 3,12,000/- (Rs. 2000 x 12 x 13) towards loss of income. The

learned Counsel appearing for the claimants vehemently contended that PW1 and PW3 have clearly stated in their deposition that the deceased

was earning Rs. 250/- per day. Further, it is stated that apart from the deceased, his wife, five children and mother, i.e. totally seven persons, are in

the family and he cannot manage the family with Rs. 2000/- per month and hence, the monthly income fixed by the Tribunal is very low. After

taking into consideration the facts and circumstances of the case and the family members of the deceased, I feel that it would be reasonable to

award the monthly income of the deceased at Rs. 4,000/- per month. Out of the said sum, if 1/4 sum of Rs. 1000/- is deducted towards personal

expenses, the balance sum of Rs. 3,000/- is taken as contribution to the family of the deceased. The learned Counsel appearing for the Transport

Corporation vehemently contended that 1/3 should be deducted towards personal expenses instead of 1/4. Per contra, the learned Counsel

appearing for the claimants relied on the decision in the case of National Insurance Company Ltd. Vs. Meghji Naran Soratiya and Others, wherein

the Apex Court, in view of large number of claimants, has deducted 1/4 for personal expenses of the deceased and assessed the dependency and

in paragraph 16, it has been held as follows:

16. The learned Counsel for the insurer submitted that in view of the admissions and evidence that deceased was getting a salary of Rs. 3,000/-,

the Tribunal ought not to take the income at a figure more than Rs. 3,000 per month. But having regard to the fact that the claimants had produced

evidence to show that the deceased had passed B.A. and was studying for securing a M.A degree, we are of the view that the Tribunal was

justified in assuming a higher income at the time of death instead of actual earning at the time of his death. But the amount assessed as income

cannot be a fancy figure. It should be realistic and should be close to the actual earning (vide General Manager, Kerala State Road Transport

Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . On the facts

and circumstances, we are of the view that income should be taken as Rs. 4,000/- per month (Rs. 48,000 per annum). Only one-fourth of the

income (instead of the standard one-third) has to be deducted towards personal and living expenses of the deceased, having regard to his larger

family. Thus the contribution to the family would have been Rs. 36,000 per annum. By applying a multiplier of 17, the loss of dependency would

be Rs. 6,12,000/-. By adding Rs. 5000/- each under the heads of loss to estate, loss of consortium and funeral expenses, the total compensation

would be Rs. 6,27,000. As the rate of interest awarded (15 per cent per annum) is excessive, we reduce it to 9 per cent per annum.

Following the above decision of the Apex Court and taking into consideration the larger family, i.e. 7 members, I feel that it would be reasonable

to deduct 1/4 towards personal expenses i.e. Rs. 1,000/- (Rs. 4,000 x 1/4) and the balance 3/4 of Rs. 3,000/- is taken as the monthly income of

the deceased and the annual income works out to Rs. 36,000/- (Rs. 3,000 x 12). Considering the age of the deceased, the Tribunal is correct in

adopting the multiplier as 13. If multiplier 13 is adopted, the loss of income works out to Rs. 4,68,000/- (Rs. 36,000 x 13) as against Rs.

3,12,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 10,000/- towards Funeral expenses, which, I feel, is very reasonable

and the same is confirmed. The Tribunal has awarded a sum of Rs. 30,000/- towards loss of love and affection. The claimants are wife, five

children and mother of the deceased. Therefore, the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal

has not awarded any amount towards loss of consortium and loss of estate. The age of the wife-claimant was 40 years at the time of the accident.

Hence, it would be reasonable to award a sum of Rs. 7,500/- towards loss of consortium. It is also reasonable to award a sum of Rs. 7500/-

towards loss of estate. The Tribunal has awarded interest at 9% per annum. The date of the accident is 07.10.1998. Keeping in view the prevailing

rate of interest, it is modified to 7.5% p.a. instead of 9% p.a. The details of the enhanced compensation as per the above discussion are as under:

Loss of income Rs. 4,68,000/-

Funeral expenses Rs. 10,000/-

Loss of love and affection Rs. 30,000/-

Loss of consortium Rs. 7,500/-

Loss of estate Rs. 7,500/-

Total Rs. 5,23,000/-

Less: Already awarded

amount Rs. 3,52,000/-

Enhanced amount Rs. 71,000/-

Therefore, the claimants are entitled to the enhanced compensation of Rs. 71,000/- with interest at 7.5% from the date of petition.

10. The learned Counsel appearing for the Transport Corporation submitted that already entire award amount with accrued interest thereon, has

been deposited by order of this Court dated 04.08.2003. The Transport Corporation is directed to deposit the enhanced compensation of Rs.

71,000/- with interest at 7.5% from the date of petition within a period of six weeks from the date of receipt of a copy of this order. The learned

Counsel appearing for the claimants submitted that the claimants, who were minors at the time of filing of the petition, have attained majority. In

such circumstances, the claimants are permitted to withdraw their respective shares and accrued interest thereon and also enhanced compensation

with interest at 7.5% p.a. from the date of petition as apportioned by the Tribunal after adjusting the amount, if any, already withdrawn on proper

application.

11. With the above modification, these Civil Miscellaneous Appeals are disposed of. No costs.