Branch Manager, New India Assurance Co. Ltd. Vs Prema and Others

Court: Madras High Court (Madurai Bench)

Date of Decision: Nov. 2, 2010

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

Bench: Single Bench

Advocate: M. Ramaratnam, for the Appellant; No appearance, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.
This appeal is preferred by the Insurance Company against the judgment and decree made in MACTOP

No.263 of 2001 dated 05.12.2002 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Tenkasi.

2. Background facts in a nutshell are as follows:

The deceased-Muthukumar met with motor traffic accident that took place on 05.09.2001 at about 11.45 p.m. The deceased was carrying out

mobile Tiffin Centre. After finishing the tiffin business, the deceased was on his way to home to Krishnapuram pushing his mobile vehicle in which

he used to keep vessels, stoves and other related business materials. When he approached near Kadayanallur Petrol Bunk, a mini-lorry bearing

Registration No.TN-72-B-2412 came in a rash and negligent manner and also at high speed and hit the deceased. Due to the said impact, the

deceased sustained multiple injuries all over the body. Immediately after the accident, he was given first aid in the Kadayanallur Government

Hospital and he was referred to Tirunelveli Medical College for further treatment. Later he died in the hospital. The claimants are the wife,

daughter, son, mother and brother of the deceased. They claimed a sum of Rs.10,00,000/- before the Tribunal. The said mini-lorry was insured

with the appellant / Insurance Company, who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Who is responsible for the accident?

2. Whether the claimants are entitled to compensation? If so to what 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 mini-lorry and awarded a sum of Rs.5,90,000/- as compensation with interest at 9% p.a. from the date of petition. The details of the compensation are as under:

Rupees

Loss of income 5,76,000/-

Loss of love and affection 5,000/-

Funeral expenses 5,000/-

Mental agony 4,000/-

Total.... 5,90,000/-

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

3. Learned Counsel for the appellant / Insurance Company questioned only the quantum of compensation awarded by the Tribunal and 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. In spite of notice served and the names of the respondents were also printed in the cause-list, there is no representation on behalf of the

respondents.

5. Heard the counsel on either side and perused the materials available on record. On the side of the claimants, P.W.1 and P.W.2 were examined

and documents Exs.P1 to P8 were marked. On the side of the Insurance Company, no witness was examined and no document was marked.

P.W.1 is the wife of the deceased. P.W.2 is one Balasubramanian. Ex.P1 is the copy of F.I.R. Ex.P2 is the copy of Post Mortem Report. Ex.P3 is

the copy of Rough Sketch. Ex.P4 is the copy of Motor Vehicle Inspection Report. Ex.P5 is the copy of Observation Mahazar. Ex.P6 is the copy

of Charge Sheet. Ex.P7 is the Newspaper Advertisement. Ex.P8 is the Salary Certificate. 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

mini-lorry. The finding given by the Tribunal is based on valid materials and evidence, and it is a question of fact. Hence the same is 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 35 years old at the time of accident. In the evidence of P.W.1, it is stated that the deceased was running a Mobile Tiffin

Centre and he was earning a sum of Rs.10,000/- per month. Ex.P2 is the Post Mortem Report of the deceased in which it is stated that the age of

the deceased was 39 years old. Therefore, the Tribunal fixed the age of the deceased as 39 years at the time of accident. In respect of the income

of the deceased, since there is no concrete evidence available on record to prove that the deceased was earning Rs.10,000/- per month, the

Tribunal fixed the monthly income at Rs.3900/- on the basis that the deceased would have earned Rs.130/- per day for a period of 30 days in a month. The Tribunal adopted the unit method and fixed 2 units for an adult and 1 unit for the child and calculated 10 units for the entire family of

the deceased. Therefore, for 1 unit, the amount works out to Rs.390/- (Rs.3900/- divided by 10). Therefore, for the deceased, the amount works

out to Rs.780/- (for 2 units). Thereafter, the Tribunal added a sum of Rs.120/- towards personal expenses of the deceased, and arrived at

Rs.900/-. Thereafter the Tribunal deducted the said sum of Rs.900/- from the monthly income i.e. Rs.3900/- and arrived at Rs.3000/- as the

monthly contribution of the deceased to the family and calculated the annual contribution at Rs.36000/- (Rs.3000/- x 12). After taking into

consideration the age of the deceased, the Tribunal adopted the multiplier of 16 and arrived at the loss of dependency at Rs.5,76,000/-

(Rs.36000/- x 16). Learned Counsel for the appellant vehemently contended that even though the Tribunal has taken the monthly income at

Rs.3900/- the Tribunal has not deducted 1/4th of the amount towards personal expenses. According to the counsel for the appellant, the Tribunal

ought to have deducted 1/4th of the amount towards personal expenses of the deceased and he relied on Sarla Verma''s case (cited supra), in

support of his contention. In that case, the Supreme Court has held that, for the family members of more than four, 1/4th of the amount has to be

deducted towards personal expenses of the deceased. Taking into consideration of the same, this Court is of the view that 1/4th of the amount has

to be deducted towards personal expenses of the deceased. If 1/4th of the amount, i.e. Rs.975/- is deducted from Rs.3900/-, the monthly

contribution of the deceased to the family works out to Rs.2925/- and the annual contribution works out to Rs.35,100/-. The Tribunal has adopted

the correct multiplier of 16. If 16 mutliplier is adopted, the loss of dependency works out to Rs.5,61,600/- (Rs.35,100/- x 16). Therefore, the loss

of dependency stands modified to Rs.5,61,600/- as against the sum of Rs.5,76,000/- awarded by the Tribunal. The amounts awarded by the

Tribunal at Rs.5000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses and Rs.4,000/- towards mental agony 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. The details of the modified compensation are as under:

Rupees

Loss of income 5,61,600/-

Loss of love and affection 5,000/-

Funeral expenses 5,000/-

Mental agony 4,000/-

Total.... 5,75,600/-

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Therefore, the claimants are entitled to the modified compensation of Rs.5,75,600/- with interest at 9% p.a. from the date of petition.

9. It is stated that the Insurance Company has already deposited the entire compensation awarded by the Tribunal and the major claimants were

also permitted to withdraw 50% from the deposited amount by order of this Court dated 13.02.2004. Under the circumstances, since the

claimants are entitled to the modified compensation of Rs.5,75,000/- with interest at 9% p.a. from the date of petition, the major claimants are

permitted to withdraw their respective shares from the deposit, less the amount already withdrawn, on making proper application. The second

respondent herein, the daughter of the deceased has already attained the age of majority. In respect of the share of the minor, the third respondent

herein, his share shall be deposited in a fixed deposit in a Nationalised Bank till he attains majority. The first respondent, who is the mother of the

minor, is permitted to withdraw the accrued interest from the bank, once in three months, on making proper application.

10. The Civil Miscellaneous Appeal is disposed of with the above modification. No costs.