

(2001) 01 MAD CK 0017
In the Madras High Court
Case No : C.M.A. No. 979 of 1996

Abdul Bari and Another

APPELLANT

Vs

Palani and Others

RESPONDENT

Date of Decision : 11-01-2001

Acts Referred:

Citation : (2003) ACJ 319 : (2001) 1 MLJ 360

Hon'ble Judges : A. Subbulakshmy, J

Bench : Single Bench

Advocate : N. Srinivasan, for the Respondent

Judgement

A. Subbulakshmy, J.—On 2.2.1993, at about 2 a.m. at Tiruppur Palladam Road near T.K.T. Mill the deceased Arumugam was riding a

moped bearing registration No. TN 41-Y 2157 and the van bearing registration No. TCA 1716 driven by its driver came in a rash and negligent

manner dashed against the moped and the victim Arumugam sustained injuries and succumbed to the injuries. The claimants are the parents of the

deceased.

2. The claimants contend that the accident occurred due to rash and negligent driving of the van driver and the deceased was earning a monthly

income of Rs. 2,500 and the respondents in the petition are liable to pay the compensation. The claimants claimed Rs. 9,00,000 as compensation.

3. The respondent No. 1, driver of the van contends that he was driving his van slowly with care and caution on the left side and the victim came

on the moped without any lights and he only dashed against the van and the respondent No. 1 is not responsible.

4. The respondent No. 3, insurance company contends that the deceased, at the

time of death, was 22 years old and the van TCA 1716 was not insured with their company and only the claimants must establish with regard to the negligence as well as the compensation to be paid.

5. The Tribunal awarded a sum of Rs. 5,05,340 as compensation.

6. As against that award, respondent Nos. 2 and 3 in the petition, i.e., the owner of the vehicle and the insurance company have come forward with this appeal.

7. Learned counsel for the appellants submitted that the victim was a bachelor and the claimants are his parents and they are aged about 45 years

or so, the multiplier adopted as 30 is not proper. He has further submitted that the claimants being parents, the multiplier ought not have been

adopted as per Schedule and only a lesser multiplier ought to have been adopted. He further submitted that in the criminal case, the respondent

No. 1 was acquitted and so, it cannot be attributed that there was negligence on the part of the respondent No. 1 driver.

8. The Tribunal observed that the witnesses in the criminal court turned hostile and so, the accused was acquitted and so the finding in the criminal

court cannot have any bearing for the purpose of this case. The report of the Motor Vehicles Inspector, Exh. P-3, shows that the respondent No.

1 was having valid licence and the accident was also not due to any mechanical trouble. The Tribunal, on analysis of evidence, found that the

accident occurred only due to rash and negligent driving of the van driver and the respondents in the petition, viz., appellants are liable to pay

compensation. The finding of the trial court with regard to this aspect is justified.

9. The deceased was aged about 22 years at the time of the accident. It is the case of the claimants that the deceased was working as Checking

Master in Anandhi Printers and drawing a salary of Rs. 2,500 per month. PW 1 also speaks in her evidence to this effect. The claimants also filed

the pay certificate Exh. P-5. So, the oral as well as the documentary evidence, Exh. P-5, clearly proves that the deceased was earning Rs. 2,500

per month. Tribunal found that the deceased would have paid Rs. 2,300 to his parents and he would have taken Rs. 200 for his personal expenses

and accordingly calculated yearly dependency at Rs. 27,600 and calculated for 30 years and arrived at a sum of Rs. 7,28,000 (which should be

Rs. 8,28,000). Taking into consideration the age of the deceased learned Tribunal

found that the deceased would have lived for a further period of 43 years and accordingly, it has adopted a multiplier of 30 and then deducted 1/3rd of the amount and arrived at the amount towards loss of dependency as Rs. 4,85,340 and inclusive of Rs. 10,000 each to the claimants for loss of love and affection, the learned Tribunal has arrived at a sum of Rs. 5,05,340 towards total compensation.

10. Counsel for the appellants submitted that the method adopted by the Tribunal in calculating the loss of dependency is not proper and justified in the light of the decisions of the Supreme Court and the High Court. He strenuously pointed out that in the case of death of bachelor, the claimants being parents, same multiplier as adopted in other cases cannot be adopted because the expectation of life of the parents will be less and a lesser multiplier ought to have been adopted.

11. The Supreme Court has held in *U.P. State Road Trans. Corpn. v. Trilok Chandra* 1996 ACJ 831 (SC), that in the case of death of cyclist, the Tribunal fixed the life expectancy at 60 years, deducted 36 years and adopted the multiplier of 24 and the appellate court corrected the error and adopted the multiplier of 34, but, the multiplier cannot exceed 18. In the case of *General Manager, Kerala State Road Trans. Corporation v.*

Susamma Thomas 1994 ACJ 1 (SC), the Apex Court observed that:

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising 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 has been observed in the decision reported in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, , that:

the Table given in the Schedule can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45

and his dependants are his parents, age of the parents would also be relevant in the choice of multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years" purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies case.

12. As per the Table in the Second Schedule between the ages of 20 and 25 years, a multiplier of 17 has to be adopted. The parents are aged about 45 years. The counsel for the appellants submitted that only the parents' age should be taken into consideration and the multiplier applicable to their age, viz., multiplier of 13 should be adopted and not the multiplier applicable to the age of the deceased.

13. The deceased died as bachelor. If he had a spouse and children, the dependency will be more. Then, of course, the multiplier as per the Schedule for the age of the deceased has to be adopted. The survivors are only the parents of the deceased and they are aged about 45 years.

The longevity of the dependency will be less than that of the spouse and children. Since, the dependency rate of the parents who are aged about 45 years may not be as much as that of the surviving spouse or the children, the court find some force in the argument advanced by the learned Counsel for the appellants for adopting a lesser multiplier.

14. The damages are to be based on the reasonable expectation of life of the surviving parties. In assessing damages, all the circumstances have to be taken into account. As per the Table in the Second Schedule the multiplier for the age of the deceased is 17. If the parents age is taken into account, the multiplier is 13. The Table enunciates that only the age of victim has to be taken into consideration while adopting the multiplier. The age of the surviving parents cannot be taken into account as per the Table. Since the deceased had left only his surviving parents, who are aged about 45 years, whose normal expectancy of life will not be as that of the surviving spouse or children. The court is of the view that the multiplier of

17 cannot be adopted for the case on hand and the court is of view that a multiplier of 15 can be adopted for assessing damages. Accordingly, the multiplier of 15 is adopted.

15. The Tribunal, on analysis of the evidence, found that the deceased was earning a monthly income of Rs. 2,500. After deducting $\frac{1}{3}$ rd he would have given $\frac{2}{3}$ rd for his parents and the $\frac{2}{3}$ rd amount works out to Rs. 1,666. Accordingly, the annual income comes to Rs. 19,992 and by adopting the multiplier of 15, the compensation for loss of dependency comes to Rs. 2,99,880. For the loss of love and affection of their son, the claimants each are entitled to Rs. 10,000 and accordingly a total sum of Rs. 3,19,880 is fixed as compensation which amount shall be paid to both the claimants in equal share.

In the result, the appeal is partly allowed to the extent indicated above. No costs. Consequently, C.M.P. No. 10460 of 1996 is closed.