

(2010) 06 MAD CK 0236

In the Madras High Court

Case No : C.M.A. NPD. No. 2904 of 2003

Balasubramaniam and National Insurance Co. Ltd.

APPELLANT

Vs

Selvi and Others

RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337, 384

Citation : (2010) 06 MAD CK 0236

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

Bench : Single Bench

Advocate : T.M. Venkataraman, for the Appellant; S. Kaithamalaikumaran, for A.K. Kumaraswamy, for RR1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the owner of the van as well as the National Insurance Company Limited against award dated 9.3.2001 made in MCOP No. 893 of 1997 by the Motor Accident Claims Tribunal (Subordinate Judge), Dharapuram.

2. Background facts in a nutshell are as follows:

On 29.6.1996 at about 6.15 a.m., the deceased Gurusamy was travelling in the poultry van bearing Registration No. TN-33-X-7817 belonging to the first appellant and insured with the second appellant. While he was proceeding from Kangayam to Madras, the van driver, who is the fifth respondent drove, the same in a rash and negligent manner. When the van reached near Melmaruvathur Colony, it facefully hit against the lorry bearing Registration NO. TN-28-B-8310 which was driven by the sixth respondent and insured with the eighth respondent. As a result of which, the said Gurusamy died. The claimants are the wife, daughter, son and mother of the deceased. They have claimed a compensation of Rs. 5,00,000/- before the Tribunal. The second appellant / Insurance Company resisted the claim. On the pleadings, the following issues

were framed by the Tribunal:

- a) Whether the claimants are entitled to compensation from the respondents?
- b) If so, what is the amount?

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 van belonging to the first appellant and awarded a compensation of Rs. 4,72,000/- with interest at 12% p.a. from the date of petition. The details of the compensation are as under:

Rs. Loss of income	4,32,000	Transport charges	1,000	Funeral expenses	3,000
Damages	1,000	Loss of love and affection	25,000	Loss of consortium	10,000
-----	Total 4,72,000	-----			

Aggrieved by that award, the owner of the van as well as the Insurance Company have filed the present appeal.

3. Learned Counsel appearing for the second appellant/Insurance Company vehemently contended that the Tribunal is wrong in fixing the negligence only on the part of the driver of the van and also contended that the Tribunal has awarded an exorbitant compensation without basis and justification and further submitted that the rate of interest awarded by the Tribunal at 12% is excessive and that therefore, the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Learned Counsel appearing for the respondents 1 to 4/claimants submits that the Tribunal has considered all the facts of the case at the time of awarding compensation. Further, he submitted that the Tribunal has awarded the compensation on the basis of oral and documentary evidence and hence the same has to be confirmed.

5. Heard the counsel and perused the documents available on record. On the side of the claimants, the wife of the deceased was examined as P.W.1 and documents Ex.P1 to Ex.P6 were marked. On the side of the respondents, no one was examined and no documents were marked. Ex.P1 is the copy of First Information Report. Ex.P2 is the copy of rough sketch; Ex P3 is the copy of Post Mortem Report. Ex.P4 is the copy of the Motor Vehicle Inspector's report. Ex.P5 is the copy of the chargesheet. Ex.P6 is the copy of the Judgment. From Ex P1 First Information Report, Ex P2 rough sketch Ex P4 Motor Vehicle Inspector's report and Ex P5 Charge sheet, it is clear that the accident had occurred only due to the rash and negligent driving of the driver of the van who is the fifth respondent herein and a case has been registered against him in Cr. No. 181/96 of Melamuruvathur Police Station under Sections 279, 337, 384(a) IPC. Subsequently, he was pleaded guilty before the Criminal Court and also paid a fine amount. After taking into consideration of oral and documentary evidence, the Tribunal has come to a conclusion that the accident had occurred due to rash and negligent driving of the driver of the van and the fifth respondent and hence

the appellants are liable to pay compensation and the finding given by the Tribunal is based on valid materials and evidence and 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 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 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 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.

8. The deceased was working as a Cleaner-cum-loadman of the said van. He was 27 years old at the time of accident. Ex P3 is the postmortem certificate, in which, the age of the deceased was mentioned, as 27 years. Therefore, the Tribunal is taken the age of the deceased as 27 years at the time of accident. The claimants claimed that the deceased was earning monthly income of Rs. 4,500/- but no document has been produced to substantiate their claim. Therefore, the Tribunal has taken a correct view that the deceased would have earned a sum of Rs. 3,000/- p.m. and determined the annual income of the deceased at Rs. 36,000/- (Rs. 3,000 x 12). After taking into consideration of the age of the deceased was 27, the Tribunal has adopted the multiplier of 18 and determined the loss of income at Rs. 6,48,000/- (36,000 x 18). Out of the said amount, the Tribunal has deducted 1/3rd towards his personal expenses of Rs. 2,16,000/- (6,48,00 x 1/3) and awarded a sum of Rs. 4,32,000/- towards loss of income. After taking into consideration the facts of the case, the Tribunal is correct in determining the age and monthly income and also correctly adopted multiplier of 18 which is in accordance with law and hence, the same is confirmed. The Tribunal has awarded a sum of Rs. 1,000/- towards Transport charges and a sum

of Rs. 1,000/- towards damages to the articles and these amounts are very reasonable and the same are confirmed. A sum of Rs. 3,000/- was awarded by the Tribunal towards funeral expenses of the deceased and the said amount is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 10,000/- towards loss of consortium and the said award amount is reasonable and the same is confirmed. Further the Tribunal has awarded a sum of Rs. 25,000/- towards loss of love and affection. Minor children lost their father and mother of the deceased also is one of the claimant who lost her son. Therefore, it is reasonable and the same is confirmed. The interest rate awarded by the Tribunal is 12% p.a. from the date of petition. Taking into consideration, the date of accident ie., 29.6.1996 and also prevailing rate of interest during that period, the interest awarded by the Tribunal is very reasonable and the same is confirmed. The findings given by the Tribunal are based on valid materials and evidence. Hence, I do not find any error or illegality or infirmity in the order of the Tribunal so as to warrant interference. In view of the foregoing reasons the compensation awarded by the Tribunal at Rs. 4,72,000/- with interest at 12% p.a. from the date of petition is confirmed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

10. It is stated that the entire compensation awarded by the Tribunal has already been deposited. Hence the first respondent/wife of the deceased and the fourth respondent/mother of the deceased are permitted to withdraw their respective shares from the deposited amount as apportioned by the Tribunal less the amount already withdrawn on making proper application. In respect of the share of the respondents 2 and 3/minor children, the same shall be deposited in a Nationalised Bank in Fixed Deposit till the minors attain majority. The first respondent/wife of the deceased /mother of the minor children is permitted to withdraw the accrued interest thereon once in three months on making proper application.