(2010) 09 MAD CK 0304

In the Madras High Court

Case No : C.M.A. (MD) No. 1328 of 2010

Branch Manager, National Insurance Co. Ltd. APPELLANT

Vs

Rajeswari and Others RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0304

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

Bench : Single Bench

Advocate : A.K. Baskarapandiyan, for the Appellant; G. Arokiasamy, for R1 to R4, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Insurance Company against the award dated 29.01.2009 passed in MCOP No. 827 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions and Special Judge, Pudukottai.

2. When the matter is taken up for admission, the same was opposed by Mr. G. Arokiasamy, the counsel for the Respondents 1 to 4 / claimants, and by consent of the learned Counsel of both the parties, the Civil Miscellaneous Appeal is taken up for final disposal.

3. Background facts in a nutshell are as follows:

The deceased-Perumal met with motor vehicle accident that took place on 11.10.2004 at about 2.30 p.m. The said deceased was the pillion rider in TVS-Champ bearing Registration No. TN-55-B-1663. The brother of the deceased was the rider of the TVS-champ two-wheeler. They were proceeding in the Pudukottai-Trichy Road from North to South direction. At that time, a lorry bearing Registration No. TN-37-H-5177, belonging to the fifth Respondent, came from the opposite direction in a rash and negligent manner at high speed and hit the TVS-Champ vehicle. Due to the said impact, the deceased was thrown out of the vehicle and sustained grievous injuries. Immediately he was taken to the

Government Hospital, Pudukottai and he died in the hospital on the same day. The claimants are the wife, minor children and mother of the deceased. They claimed a sum of Rs. 20,00,000/- as compensation. The lorry was insured with the Appellant / Insurance Company who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident took place due to the rash and negligent driving of the driver of the lorry belonging to the fifth Respondent or not?

2. Whether the claimants are entitled to compensation? If so to what extent?

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 lorry belonging to the fifth Respondent and awarded a sum of Rs. 6,04,440/- as compensation with interest at 7.5% p.a. from the date of petition. The details of the compensation are as follows:

Rupees Loss of dependancy 5,59,440/- Loss of consortium 25,000/- Loss of love and affection 15,000/- Funeral expenses 5,000/- Total... 6,04,440/-

Aggrieved by the award of the Tribunal, the Insurance Company has filed the present appeal.

4. Learned Counsel for the Appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and vehemently contended that the amount awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Further, it is submitted that the Tribunal is wrong in fixing the monthly income of the deceased as Rs. 5,000/-and the same is without any basis and justification. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. Learned Counsel appearing for the Respondents 1 to 4 / claimants has submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the learned Counsel on either side and perused the materials available on record. On the side of the claimants, P.W.1 to P.W.5 were examined and Ex.P1 to P7 were marked. On the side of the Insurance company, R.W.1 was examined and Ex.R1 to R4 were marked. P.W.1 is the wife of the deceased. P.W.2 is an eye witness of the accident.P. Ws.3 to 5 gave evidence in respect of the occupation of the deceased. Ex.P1 is the legal heirship certificate. Ex.P2 is the certified copy of the First Information Report. Ex.P3 is the Motor Vehicle Inspector''s Report. Ex.P4 is the Post Mortem Report. Ex.P5 is the Death Certificate. Ex.P6 and Ex.P7 are receipts of Jayam Lorry Booking Office. R.W.1 is the Motor Vehicle Inspector. Ex.R1 is the requisition of the Inspector of Police. Ex.R2 is the Motor Vehicle Inspection Report. Ex.R3 is the TVS-champ Inspection Report. 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 lorry belonging to the fifth Respondent. The finding of the Tribunal is based on valid materials and evidence and it is a question of fact. Hence the same is confirmed.

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 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 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)

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 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.

9. At the time of the accident, the age of the deceased was 38 years old. Ex.P4 is the Motor Vehicle Inspector''s Report in which the age of the deceased is mentioned as 30 years, but in Ex.P5-Death Certificate, age of the deceased is stated as 38 years. Therefore, the Tribunal relied on Ex.P5 and also the oral evidence of P.W.1 and fixed the age of the deceased as 38 years old. P.W.1, in her evidence has stated that the deceased was earning a sum of Rs. 10,000/- per month. It was stated that the deceased was running a petty shop and he was also a bricklin owner. But there is no concrete evidence to that effect.P. Ws.3, 4 and 5 have stated in their evidence that the deceased was earning Rs. 10000/- per month, but no documentary evidence was filed. After taking into consideration of the facts and circumstances of the case, the Tribunal fixed the monthly income of the deceased at Rs. 5000/- per month. Thereafter the Tribunal deducted 1/3rd of the amount, i.e. Rs. 1670/- towards personal expenses of the deceased and arrived at Rs. 3330/- as the monthly contribution

of the deceased to the family, and also determined the annual contribution at Rs. 39,960/-(Rs. 3330/- x 12). After taking into consideration the age of the deceased as 38, the Tribunal, as per the Schedule, adopted the multiplier of 14 and arrived at Rs. 5,59,440/-(Rs. 39,960/- x 14) towards loss of dependancy. Learned Counsel for the Appellant/Insurance Company vehemently contended that there is no evidence available to fix the monthly income of the deceased at Rs. 5,000/-. Taking into consideration of the facts and circumstances of the case, I am of the view that it would be appropriate and reasonable to fix the monthly income at Rs. 4,500/- per month. Therefore, the annual income works out to Rs. 54,000/-(Rs. 4,500/- x 12). If 1/3rd of the amount is deducted towards personal expenses, it works out to Rs. 36,000/-. The Tribunal has correctly adopted the multiplier of 14. If 14 multiplier is adopted, the loss of dependancy works out to Rs. 5,04,000/-(Rs. 36,000/- x 14). Therefore, the amount awarded by the Tribunal towards loss of dependancy stands modified from Rs. 5,59,440/- to Rs. 5,04,000/-. The Tribunal has awarded a sum of Rs. 25,000/- towards loss of consortium. After taking into consideration of the age of the widow, i.e. 33 years, this Court is of the view that the amount awarded by the Tribunal towards this head is very reasonable and hence the same is confirmed. The Tribunal has awarded a sum of Rs. 15,000/- towards loss of love and affection to the minor children and the mother of the deceased. Taking into consideration of the fact that the minor children have lost their father, and the mother of the deceased lost her son, the Tribunal has correctly awarded Rs. 15,000/- towards loss of love and affection to the minor children and the mother of the deceased. It is also very reasonable and hence the same is confirmed. The amount awarded by the Tribunal at Rs. 5,000/- towards funeral expenses of the deceased, is very reasonable and hence the same is confirmed. The Tribunal has awarded interest at 7.5; p.a., from the date of petition. Considering the date of accident, date of award and also the prevailing rate of interest during that time, I am of the view that the interest rate fixed by the Tribunal at 7.5% p.a. is very reasonable and hence the same is confirmed.

10. The details of the modified compensation as per the above discussion are as under:

Rupees Loss of dependancy 5,04,000/- Loss of consortium 25,000/- Loss of love and affection 15,000/- Funeral expenses 5,000/- Total... 5,49,000/-

Therefore, the claimants are entitled to the modified compensation of Rs. 5,49,000/- with interest at 7.5% p.a from the date of petition.

11. Under the circumstances, the AppellantInsurance Company is directed to deposit the modified amount of compensation of Rs. 5,49,000/- with interest at 7.5% p.a. from the date of petition, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order. It is stated that the minor children have now attained majority. Hence, on such deposit of compensation by the Tribunal, all the claimants are permitted to withdraw their shares, on making proper application.

12. With the above modification, the Civil Miscellaneous Appeal is disposed of. Consequently, M.P.(MD) No. 6 of 2010 is closed. No costs.