(2011) 04 MAD CK 0076

In the Madras High Court

Case No : C.M.A. No. 3511 of 2008

Managing Director, Tamil Nadu State Transport Corporation Division-I Ltd.	APPELLANT
Vs	
Usha and Anjalai	RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0076

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

Bench : Single Bench

Advocate : S.S. Swaminathan, for the Appellant; N. Suresh, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—These appeals are preferred by the Transport Corporation against the fair and decreetal order dated

30.11.2007 passed in M.C.O.P. Nos. 528 and 575 of 2005 respectively, by the learned Principal District Judge, Motor Accident Claims

Tribunal, Villupuram.

2. Since both the appeals arise out of the same accident, they are taken up together and disposed of by a common Judgment.

3. Background facts in a nutshell are as follows:

One deceased Soundar in C.M.A. No. 3457 of 2008 and one deceased Ramakrishnan in C.M.A. No. 3511 of 2008 met with motor vehicle

accident on 17.04.2002 at about 17.45 hours. The deceased Ramakrishnan in C.M.A. No. 3511 of 2008 was proceeding in his TVS 50 bearing

Registration No. TN32A 3145 along with pillion rider Sounder, deceased in C.M.A. No. 3457 of 2008. While they were nearing Thumbur, the bus belonging to the Appellant/Transport Corporation, bearing Reg. No. TN32N 0944, which came from the opposite direction in a rash and

negligent manner, hit the TVS 50. Due to the same, both Ramakrishnan and Soundar, i.e. Rider and pillion rider, sustained fatal injuries and

immediately, they were taken to the Government Hospital, Villupuram and later, they were referred to the Government Hospital, Pondicherry,

wherein both of them died. In C.M.A. No. 3457 of 2008, the claimants are the parents of the deceased. They claimed a sum of Rs. 4,00,000/- as

compensation. In C.M.A. No. 3511 of 2008, the claimants are the wife and the mother of the deceased. They claimed a sum of Rs. 4,00,000/- as

compensation. The Transport Corporation 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 bus driver?

2. Whether the Petitioners in M.A.C.T.O.P. No. 528 of 2005 are entitled to recover compensation as prayed for from the Respondent?

3. Whether the Petitioners in M.A.C.T.O.P. No. 575 of 2005 are entitled to recover compensation as prayed for from the Respondent?

After considering the oral and documentary evidence, the Tribunal has awarded a sum of Rs. 3,88,500/- as compensation with interest at 7.5%

p.a. in C.M.A. No. 3457 of 2008. The details of the compensation are as follows:

Loss of Income - Rs. 3,84,000/-

Funeral Expenses - Rs. 2,000/-

Loss of Estate - Rs. 2,500/-

Total - Rs. 3,88,500/-

In C.M.A. No. 3511 of 2008, the Tribunal has awarded a sum of Rs. 3,93,500/- as compensation with interest at 7.5% p.a. The details of the

same are as follows:

Loss of Income - Rs. 3,84,000/-

Funeral Expenses - Rs. 2,000/-

Loss of Estate - Rs. 2,500/-

Loss of consortium - Rs. 5,000/-

Total - Rs. 3,93,500/-

Aggrieved by these awards, the Transport Corporation has filed these appeals.

4. The learned Counsel appearing for the Appellant-Transport Corporation contended that the accident was occurred while the rider of the TVS

50 was overtaking the van and therefore, the rider of the TVS 50 only caused the accident. Hence, there is a contributory negligence on the part of

the deceased. He further contended that the Tribunal is wrong in fixing entire liability on the Appellant-Transport Corporation and the award

passed by the Tribunal in both the cases are excessive, exorbitant and without basis and justification. He further submitted that in C.M.A. No.

3457 of 2010, the deceased was a bachelor. Therefore, the Tribunal ought to have deducted 50% of amount towards personal expenses. Hence,

the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. The learned Counsel appearing for the Respondents-claimants submitted that the Tribunal has considered all the facts and circumstances of the

case and correctly awarded the compensation, which is based on valid materials and evidence. Therefore, the award passed by the Tribunal is in

accordance with law and the same has to be confirmed.

6. Heard the learned Counsel and perused the materials available on record. On behalf of the claimants, P.W.1-Mrs. Usha, who is the wife of the

deceased in C.M.A.3511 of 2008, was examined. P.W.2 -Mr. Mannangatti, who is the father of the deceased in C.M.A. No. 3457 of 2008, was

examined. P.W.3 is one Mari, who was an Eye-witness of the accident, was examined and he was travelling as one of the occupants in the Van.

The claimants marked documents Exs.P1 to P3. Ex.P1 is the xerox copy of FIR. Ex.P2 is the xerox copy of Post-mortem Certificate of the

deceased Ramakrishnan. Ex.P3 is the xerox copy of Post-mortem Certificate of the deceased Soundar. On behalf of the Transport Corporation,

R.W.1, Palanivel, who is the driver of the Transport Corporation was examined and no documents were marked. Ex.P1 is the copy of FIR and

the complaint was lodged by one Murugan. But, he was not examined. In FIR also, it is stated that while the deceased was overtaking the van, the

bus, which came from opposite direction, dashed against the TVS 50 Motor cycle. After considering the above oral and documentary evidence,

the Tribunal has given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the Appellant-

Transport Corporation and the finding is based on valid materials and evidence and 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 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)

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 judgment cited supra, let me consider the facts of the present case.

In C.M.A. No. 3457 of 2008 (M.C.O.P. No. 575 of 2005)

9. At the time of accident, the deceased was aged about 20 years. In the evidence of P.W.2, it is stated that the deceased was an agricultural

cooly. The deceased was earning a sum of Rs. 7,000/- p.m. But, there is no concrete evidence to prove the salary of the deceased. Therefore, the

Tribunal has fixed the monthly income of the deceased at Rs. 3,000/-. Out of Rs. 3,000/-, the Tribunal has deducted 1/3rd of Rs. 1,000/- towards

personal expenses and taken the balance sum of Rs. 2,000/- as monthly contribution of the deceased to his family members. The annual income of

the deceased works out to Rs. 24,000/- (Rs. 2,000/- x 12). The Tribunal has taken the age of the deceased and adopted the multiplier of ''16'' and the loss of income works out to Rs. 3,84,000/- (Rs. 24,000/- x 16). The learned Counsel appearing for the Appellant vehemently contended

that the deceased was a bachelor. Therefore, the Tribunal ought to have deducted 50% of the amount towards personal expenses. There is no

dispute that the deceased was a bachelor. Therefore, in the present case, if 50% of Rs. 1,500/- is deducted towards personal expenses, the

balance sum of Rs. 1,500/- is taken as monthly contribution of the deceased to his family members and the annual income of the deceased works

out to Rs. 18,000/- (Rs. 1,500 x 12). There is no dispute regarding the multiplier adopted by the Tribunal. If multiplier ''16'' is adopted, the loss of

income works out to Rs. 2,88,000/- (Rs. 18,000 x 16) as against a sum of Rs. 3,84,000/- awarded by the Tribunal. The Tribunal has also

awarded a sum of Rs. 2,000/- towards funeral expenses, which is very low. Hence, it is reasonable to award a sum of Rs. 6,000/- towards funeral

expenses as against Rs. 2,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 2,500/- towards loss of estate, which is very

low. After considering the age of the deceased and other facts and circumstances, it is reasonable to award a sum of Rs. 10,000/- towards loss of

estate as against a sum of Rs. 2,500/- awarded by the Tribunal. The Tribunal has not awarded any sum towards loss of love and affection to the

parents. The claimants, who are the parents of the deceased lost their only son. Hence, it is reasonable to award a sum of Rs. 15,000/- under this

head. The Tribunal has not awarded any amount towards transport charges. After considering the facts and circumstances of the case, it is

reasonable to award a sum of Rs. 6,000/- towards transport charges. The Tribunal has awarded interest at the rate of 7.5% p.a. Considering the

date of accident and the prevailing rate of interest during that period, the interest awarded by the Tribunal is very reasonable and the same is

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

Loss of Income - Rs. 2,88,000/-

Funeral Expenses - Rs. 6,000/-

Transport Charges - Rs. 6,000/-

Loss of Estate - Rs. 10,000/-

Love and affection - Rs. 15,000/-

Total - Rs. 3,25,000/-

Therefore, the claimants are entitled to modified compensation of Rs. 3,25,000/- with interest at 7.5% p.a. as against Rs. 3,88,500/- awarded by

the Tribunal.

10. It is stated by both the counsels that the Appellant/Transport Corporation has deposited the entire compensation awarded by the Tribunal also

the parents of the deceased were permitted to withdraw 50% of their share by order dated 08.01.2010. Under these circumstances, the claimants

are entitled to modified compensation of Rs. 3,25,000/- with interest at 7.5% p.a. and also the claimants are permitted to withdraw the modified

compensation less the amount already withdrawn, on making proper application. The Appellant/Transport corporation is also permitted to

withdraw the balance amount, on making proper application.

In C.M.A. No. 3511 of 2008 (M.C.O.P. No. 528 of 2005)

11. The deceased was 25 years old at the time of accident. P.W.1 is the wife of the deceased. In her evidence, she deposed that the deceased

was an agricultural labour and earning a sum of Rs. 7,000/- p.m. But there is no concrete evidence to prove the same. Therefore, the Tribunal has

fixed the monthly income of the deceased at Rs. 3,000/-. Out of Rs. 3,000/-, the Tribunal has deducted 1/3rd of Rs. 1,000/- towards personal

expenses and taken the balance sum of Rs. 2,000/- as monthly contribution of the deceased to his family members. The annual income of the

deceased works out to Rs. 24,000/- (Rs. 2,000/- x 12). After considering the age of the deceased, the Tribunal had adopted the multiplier of ''16''

as per the Schedule and determined the loss of income as Rs. 3,84,000/- (Rs. 24,000/- x 16). The Tribunal is correct in fixing the age of the

deceased on the basis of the Post-mortem certificate and fixing the monthly income and the multiplier adopted by the Tribunal. Therefore, the

amount awarded by the Tribunal under the head loss of income is very reasonable and the same is confirmed. The Tribunal has awarded a sum of

Rs. 2,000/- towards funeral expenses, Rs. 2,500/- towards loss of estate and Rs. 5,000/- towards loss of consortium, which are also reasonable

and the same are confirmed. The Tribunal has also awarded interest at the rate of 7.5% p.a. After considering the date of accident and the

prevailing rate of interest during that period, the interest awarded by the Tribunal is very reasonable and the same is confirmed.

12. It is stated that the entire amount was already deposited by the Transport Corporation. The claimants were also permitted to withdraw 50% of

the compensation amount by order dated 08.01.2010. Under these circumstances, the claimants are permitted to withdraw their respective

balance shares after deducting the amount already withdrawn, on making proper application.

13. With the above modifications, the Civil Miscellaneous Appeal in C.M.A. No. 3457 of 2008 is disposed of and C.M.A. No. 3511 of 2008 is

dismissed. No costs.

