
(2011) 11 MAD CK 0056

In the Madras High Court

Case No : C.M.A. No. 2690 of 2005 and Cross Objection No. 35 of 2011

Metropolitan Transport Corporation (Chennai Division) Ltd.

APPELLANT

Vs

D. Shanthi, D. Archana and D. Rajkumar (R2 and R3 are rep by their mother and next friend D. Shanthi)
D. Shanthi, D. Archana and D. Rajkumar (R2 and R3 are rep by their mother and next friend D. Shanthi) Vs Metropolitan Transport Corporation (Chennai Division) Ltd.

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0056

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

Bench : Single Bench

Advocate : V. Mohan Choudary in CMA. 2690/05 and Mr. P. Jagadeeswaran in Cr.Obj. 35/11, for the Appellant; P. Jagadeeswaran in CMA. 2690/05 and V. Mohan Choudary in Cr.Obj. 35/11, for the Respondent

Judgement

Honourable Mr. Justice P.P.S. Janarthana Raja

1. C.M.A. No. 2690 of 2005 is preferred by the appellant-Transport Corporation against the award dated 09.02.2005 made in MACTOP No. 4715 of 2002 by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai.

2. Cross Objection No. 35 of 2011 is filed by the claimants against the award dated 09.02.2005 made in MACTOP No. 4715 of 2002 by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai.

3. Background facts in a nutshell are as follows:

On 19.10.2002 at about 16.00 hours, the deceased-Dellibabu was proceeding in his TVS-50 bearing registration No. TN-09-K-3059 along Periyar EVR Salai from East to West. At that time, a bus bearing registration No. TN-02-N-0338 belonging to the appellant-Transport Corporation driven by its driver in a rash

and negligent manner in the same direction and dashed behind the two wheeler. Due to which, the claimant sustained multiple grievous injuries all over the body. Immediately he was admitted in Government Kilpauk Medical College Hospital, Chennai, where he died on the same day. He claimed a sum of Rs. 13,00,000/-as compensation. The appellant-Transport Corporation resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident happened due to the rash and negligent driving of the driver of the bus bearing Regn.No. TN-02-N-0338?
2. Whether the non-joinder of the owner of the lorry bearing Regn.No. TN-04-H-0829 and the insurer of the above lorry is fatal to the claim petition?
3. Whether the petitioners are entitled for the compensation as claimed for?
4. To what relief?

After considering the oral and documentary evidence, the Tribunal held that the accident was occurred only due to rash and negligent driving of the drivers of the appellant-Transport Corporation bus as well as the driver of the lorry bearing Regn. No. TN-04-H-0829 and awarded a compensation of Rs. 7,42,748/-with interest at 9% per annum from the date of petition and the details of the same are as under:

Loss of income

Rs.

7,22,748/-

Loss of Consortium

Rs.

5,000/-

Loss of expectation of life

Rs.

5,000/-

Loss of love and affection

Rs.

5,000/-

Funeral expenses

Rs.

5,000/-

Total...

Rs. 7,42,748/-

Aggrieved by that award, the Transport Corporation as well as the claimants have filed the present appeal and cross objection respectively.

4. The learned counsel appearing for the appellant/Transport Corporation vehemently contended that when the Tribunal has given a specific finding that the accident occurred due to rash and negligent driving of the drivers of the Transport Corporation as well as lorry, they are liable to pay only 50% of the compensation awarded by the Tribunal. He further contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and the Tribunal is wrong in fixing the age of the deceased as "42" without any proof. 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 respondent/claimants, who are the Cross Objector in Cross Objection No. 35 of 2011, submitted that the Tribunal was right in holding that it is the choice of the claimants to implead any joint tort-feasors to claim compensation and it is legally maintainable. He further contended that the Tribunal has awarded very meagre amount under the heads loss of love and affection, loss of consortium and funeral expenses and the Tribunal ought to have awarded the compensation towards future prospects as claimed by the claimant and the Tribunal has not followed the principles of assessment before passing the award. Hence, it is a fit case for enhancing the compensation.

6. Heard the counsel the perused the documents on record. On the side of the claimants, P.Ws.1 to 3 were examined and documents Exs.P1 to P7 were marked. On the side of the appellant-Transport Corporation RW1 to RW3 were examined and Exs.R1 to R4 were marked. P.W.1 is the wife of the deceased. PW2-Kathirvel is an eye witness to the accident. P.W.3-Ranganathan is the employer of the deceased. Ex.P1 is the copy of the First Information Report. Ex.P2 is the death certificate. Ex.P3 is the legalheirship certificate. Ex.P4 is the post-mortem certificate. Ex.P5 is the pay certificate. Ex.P6 is the authorisation letter. Ex.P7 is the salary certificate. RW1-Gandhi is the driver of the bus. RW2-K.S.Rajan is the investigator of the Transport Corporation. R.W.3-Kuppusamy is the legal advisor of the Transport Corporation. Ex.R1 is the copy of the First Information Report. Ex.R2 is the copy of plan. Ex.R3 is the investigation report. Ex.R4 is the copy of the charge sheet. After considering the oral and documentary evidence, the Tribunal held that as per Ex.R3 Investigation Report, initially the lorry hit the two wheeler and subsequently, the front left wheel of the bus ran over the deceased and caused the accident and Ex.R4-Charge sheet was filed against both the drivers of the lorry as well as the bus and hence, relying on Ex.R3-Investigation Report and Ex.R4-charge sheet, the Tribunal had given a categorical finding that the accident had occurred due to the rash and negligent driving of both the drivers of the Transport Corporation bus as well as the lorry. Questioning the said finding, the learned counsel appearing for the appellant-Transport Corporation submitted that non impleading of the owner of the lorry is fatal to the

maintainability of the claim. The learned counsel appearing for the claimant submitted that it is the choice of the claimant to implead any joint tortfeasor to claim compensation and in support of his contention, he relied on the decisions of the Supreme Court reported in *A.P.S.R.T.C. and Another Vs. K. Hemalata and Others*, and this Court reported in *State of Tamil Nadu and Another Vs. P.K. Anandan*,

Considering the principles enunciated in the above judgments, it is clear that where a person is injured as a result of negligence of two or more wrongdoers each wrongdoer is jointly and severally liable for entire damages and the injured person has choice of proceeding against all or any of them. From the above facts and circumstances of the case, this Court is of the view that the the Tribunal has correctly followed the principles enunciated in the above judgments and held that though the accident occurred due to rash and negligent driving of the drivers of both the bus and lorry, non impleadment of the owner of the lorry is not fatal and hence, the claim as against the appellant-Transport Corporation is maintainable and the finding is based on valid materials and evidence and the same is confirmed.

7. In the case of *SARLA VERMA AND OTHERS VS. DELHI Insurance Company AND ANOTHER* 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 Insurance Company 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 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 Insurance Company 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*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*, 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. v. 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 deceased-Dellibabu was aged about 48 years and employed as Senior grade Store Assistant in the Ministry of Defence and was

earning a monthly salary of Rs. 7,000/-. P.W.1, who is the wife of the deceased, deposed that her husband was earning Rs. 7,000/-per month. P.W.3, who is the employer of the deceased, deposed that the deceased was paid a monthly salary of Rs. 6,940/-and marked Ex.P7-salary certificate. In Ex.P4-post-mortem certificate, the age of the deceased was mentioned as 48 years. Considering the above oral and documentary evidence, the Tribunal has taken the age of the deceased as 48 years at the time of the accident. Considering the oral and documentary evidence, the Tribunal was of the view that the age of the deceased was 48 years at the time of the accident and was earning Rs. 6,949/-and taken the said amount as his monthly salary. Out of the said sum, the Tribunal deducted 1/3rd of Rs. 2,316/-(Rs. 6,949 x 1/3) as his personal expenses and taken the balance sum of Rs. 4,633/-(Rs. 6,949-Rs. 2316) as the deceased's contribution to the family. Considering the age of the deceased, the Tribunal has adopted the multiplier of "13" and determined the loss of income at Rs. 7,22,748/-(4,633 x 12 x 13). There is no dispute regarding the monthly income and the multiplier adopted by the Tribunal. Considering Ex.P4-post mortem certificate and Ex.P7-salary certificate, the amount awarded under the head loss of income is very reasonable and the same is confirmed. The learned counsel appearing for the respondents-claimants submitted that the Tribunal has not awarded any amount towards future prospects and if the deceased had been alive, he would have worked up to 58 years and he would have got promotion and higher salary. The Supreme Court has considered the said issue in the case of Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, and held that future prospects of the deceased be taken into consideration while computing compensation. Considering the principles enunciated in the above judgment and also considering the age of the deceased at the time of accident, it is reasonable to award a sum of Rs. 45,000/-towards future prospects. Further, the Tribunal has awarded a sum of Rs. 5,000/-towards loss of consortium, which is very low. At the time of accident the age of the deceased's wife was 42 years. Considering the same, I feel that it would be reasonable to award Rs. 15,000/-under this head as against Rs. 5,000/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 5,000/-towards loss of expectation of life, which is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/-towards loss of love and affection, which is very low. The claimants 2 and 3 are daughter and son, who are minors at that time. Considering the same, it would be reasonable to award a sum of Rs. 25,000/-under this head as against Rs. 5,000/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 5,000/-towards funeral expenses, which is very low and it would be reasonable to award Rs. 7,500/-under this head as against Rs. 5,000/-awarded by the Tribunal. The learned counsel appearing for the claimants submitted that the Tribunal has not awarded any amount toward transport expenses. Considering the facts and circumstances of the case, I feel that it would be reasonable to award a sum of Rs. 2,500/-towards transport expenses. The Tribunal has awarded interest at 9% per annum. Keeping in view the date of accident and the prevailing rate of interest during that period, the rate of interest awarded by the

Tribunal is very reasonable and the same is confirmed. The details of the modified compensation as per the above discussion are as under:-

Loss of income

Rs. 7,22,748/-

Future prospects

Rs. 45,000/-

Loss of Consortium

Rs. 15,000/-

Loss of expectation of life

Rs. 5,000/-

Loss of love and affection

Rs. 25,000/-

Funeral expenses

Rs. 7,500/-

Transport expenses

Rs. 2,500/-

Total...

Rs. 8,22,748/-

Less: Amount already awarded

Rs. 7,42,748/-

Enhanced compensation

Rs. 80,000/-

Therefore, the claimants are entitled to the enhanced compensation of Rs. 80,000/-with interest at 7.5% per annum from the date of petition.

10. The appellant-Transport Corporation in CMA. No. 2690 of 2005 is directed to deposit the enhanced compensation of Rs. 80,000/-with interest at 7.5% per annum from the date of petition within a period of eight weeks from the date of receipt of a copy of this order. It is represented by the learned counsel appearing for the appellant-Transport Corporation that already a sum of Rs. 7,42,748/- awarded by the Tribunal with interest at 9% per annum has already been deposited as per order of this Court dated 29.08.2005 and this Court also permitted the first claimant to withdraw 50% of the amount apportioned to her under the award with interest accrued thereon. He further submitted that the

second claimant, who is the daughter of the deceased attained majority. Therefore, on deposit of the enhanced compensation, the claimants 1 and 2, the wife and daughter of the deceased are permitted to withdraw their respective shares from the enhanced compensation and the amount awarded by the Tribunal, after adjusting the amount, if any, already withdrawn as apportioned by the Tribunal on making proper application. The Tribunal is directed to deposit the share of the minor-third claimant viz., D. Rajkumar in the enhanced compensation in any one of the Nationalised Bank till he attains majority. The first claimant, the mother of the third claimant is permitted to withdraw accrued interest thereon once in three months.

11. With the above modifications, the Civil Miscellaneous Appeal and cross objection are disposed of. No costs.