(2009) 09 MAD CK 0328

In the Madras High Court

Case No : C.M.A. No. 2108 of 2003

Metropolitan Transport Corporation Limited APPELLANT

Vs

Amuthavalli and N. Arunachalam RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Citation : (2009) 09 MAD CK 0328

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

Bench : Single Bench

Advocate : S. Ramachandran, for the Appellant; S. Gangaram Prasad, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the appellant-Transport Corporation against award dated 19.03.1998 made in MCOP No. 1285 of 1996 by the Motor Accident Claims Tribunal (Chief Judge, Small Causes Court), Chennai.

2. Background facts in a nutshell are as follows:

The deceased A. elvakumar (alias) A. elvam met with motor traffic accident that took place on 18.03.1996 at about 17.50 hrs. The deceased was proceeding in his motor cycle bearing Registration No. TN-01-C-6297 from North to South on E.V.R. ampath Salai, Chennai. At that time, a bus bearing Registration No. TCB-4720 belonging to the appellant- Transport Corporation came from North South in a rash and negligent manner and dashed against the motor cycle. Due to which, the deceased fell down and the bus ran over on his head and died on the spot. The claimants are mother and father of the deceased. The claimants claimed a sum of Rs. 6,09,300/- as compensation but restricted their claim to Rs. 4,84,500/- before the Tribunal. The appellant-Transport corporation resisted the claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident was due to the rash and negligence of the part of the driver of the bus?

2. Whether the claimants 1 and 2 are entitled to get compensation, and if so, to what 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 appellant-Transport Corporation and awarded a compensation of Rs. 4,40,000/- with interest at 12% per annum from the date of petition and the details of the same are as under:

Loss of dependency Rs. 4,36,800/- Funeral expenses Rs. 3,200/- ------------------ Total... Rs.4,40,000/- ------------------

Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

3. he learned Counsel appearing for the appellant- Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and therefore, the same has to be set aside.

4. Learned Counsel appearing for the respondents/claimants 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.

5. Heard the counsel. On the side of the claimant, Pws. 1 to 4 were examined and documents Exs.P1 to P12 were marked. On the side of the appellant-Transport Corporation, one Sathya Narayanan, the driver of the bus was examined as R.W.1 and no document was marked to support their claim. P.W.1 is the father of the deceased. P.W.2 Ravikumar is an Eye witness of the accident, P.W.3 is the Sub-Inspector of Police and P.W.4 Srinivasan is Accountant of the firm, in which, the deceased was an employee of the Seax Exports Company. Ex.P1 is the Transfer Certificate. Ex.P2 is the salary certificate. Ex.P3 is the Death Certificate Ex.P4 is the legal heirship Certificate. Ex.P.5 is the copy of the Subpoena. Ex.P.6 is the copy of the First Information Report. Ex.P.7 is the Rough Sketch. Ex.P.8 is the Post-mortem Certificate. Ex.P.9 is the Authorization letter. Ex.P.10 is the Salary receipt. Ex.P.11 is the copy of the Acknowledgement of registration of Firms. Ex.P.12 is the Registration-cum-Membership certificate copies (series). 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 appellant - Transport Corporation and the finding is based on valid materials and evidence.

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 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 After considering the principles enunciated in the judgments cited supra, let me consider the facts of the present case. appropriate multiplier

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, 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.

8. At the time of the accident, the deceased was aged about 26 years. He was a batchelor and working as supervisor. In Ex.P8 - Postmortem Report, the age of the deceased was mentioned as 26 years. PW1, the father of the deceased deposed that he was working as Supervisor in Seax Exports Company and was earning Rs. 4,200/- per month. Ex.P2 is the salary certificate issued by the Accountant working in the said firm. P.W.4 is the Accountant and in his evidence, he has stated the deceased was earning Rs. 4,200/- per month. After considering the above oral and documentary evidence, the Tribunal has fixed the monthly income of the deceased at Rs. 4,200/-. Out of the said sum, if 1/3rd is deducted towards his personal expenses i.e. Rs. 1,400/-, the balance amount of Rs. 2,800/- was taken as the contribution of the deceased to his family and determined the annual income at Rs. 33,600/- (Rs. 2,800 x 12). The age of the father is 54 years and the age of the mother is 46 years old at that time of accident. After taking into consideration of the mother''s age, the Tribunal has adopted the multiplier of ''13''. The Apex Court, in the case of New India Assurance Company Limited v. Shanti Pathak and Ors. reported in 2007 ACJ 2188, has held that where the claimants are parents of the deceased, the choice of multiplier would depend upon the age of the claimants and not that of the deceased and in paragraph 6 it has been held as follows:

6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted with. The monthly contribution was fixed at Rs. 3500. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of

5 considering the fact that the mother of the deceased was about 65 years at the time of the accident and age of the father was more than 65 years. Taking into account the monthly contribution at Rs. 3500 as held by the Tribunal and the High Court, the entitlement of the claim would be Rs. 2,10,000. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.

In the present case, the claimants are father and mother. The age of the first respondent-mother was 46 years at the time of the accident. If the age of the mother is taken into consideration, the correct multiplier that should be adopted is 13. Considering the above judgment, the Tribunal has correctly adopted the multiplier of 13 and determined the total loss of dependency at Rs. 4,36,800/- (Rs. 33,600 x 13). Hence, the Tribunal is correct in fixing monthly as well as annual income and also adopted the correct multiplier, following the judgment of the Supreme Court. Therefore, the amount of Rs. 4,36,800/- awarded by the Tribunal towards loss of dependency is very reasonable and the same is confirmed. The Tribunal also awarded a sum of Rs. 3,200/- towards funeral expenses, which is very reasonable and the same is confirmed. The Tribunal has fixed the rate of interest at 12% per annum. The date of accident is on 18.03.1996. Further it is relevant to note that the Tribunal has not awarded any sum towards loss of love and affection and loss of estate. Therefore, it is not necessary to reduce the interest. Considering that the date of accident and the prevailing rate of interest, I feel that the rate of interest awarded by the Tribunal is reasonable and the same is hereby confirmed. The learned Counsel appearing for the appellant/Transport Corporation is unable to point out any error or illegality in the order. The finding is based on valid materials and evidence. There is no error or illegality in the order of the Tribunal so as to warrant interference by this Court. It is a question of fact. It is not a perverse order. It is in accordance with law and therefore, the award passed by the Tribunal is confirmed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, C.M.P. No. 12882 of 2003 is also dismissed.

9. he learned Counsel appearing for the appellant-Transport Corporation has submitted that already the entire award amount has been deposited as per order of this Court dated 22.10.2003. The claimants are permitted to withdraw their respective shares with accrued interest thereon, after adjusting the amount if any, already withdrawn on making proper application.

