

(2010) 09 MAD CK 0273

In the Madras High Court

Case No : C.M.A. (MD) No. 1239 of 2010

National Insurance Co. Ltd.

APPELLANT

Vs

S. Shanthi and Others

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0273

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

Bench : Single Bench

Advocate : A.K. Baskarapandian, for the Appellant; R. Ramadurai, for R1 to R4/
Caveators, for the Respondent

Judgement

1. The appeal is preferred by the Insurance Company against the award dated 10.07.2009 made in MCOP No. 645 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, FTC No. 3, Madurai.

2. When the matter is taken up for admission, the same was opposed by Mr. R. Ramadurai, the counsel for the Respondents 1 to 4, who are the caveators, and by consent of both the sides, the Civil Miscellaneous Appeal is taken up for final disposal.

3. Background facts in a nutshell are as follows:

The deceased-Saravanan met with motor vehicle accident that took place on 14.12.2007 at about 8.00 p.m. The said deceased was driving a two-wheeler bearing Registration No. TN-59-P-7114 belonging to his friend, on the extreme left side of the Natham-Madurai Main Road, from North to South direction. At that time, a three-wheeler Minidor Tempo bearing Registration No. TN-59-T-1311 belonging to the fifth Respondent and insured with the Appellant / Insurance Company, came from the opposite direction in a rash and negligent manner at high speed and hit the two-wheeler. Due to the said impact, the deceased sustained multiple grievous injuries. He was immediately taken to the Government Rajaji Hospital, Madurai and he died in the hospital on the next day.

The claimants are the wife, parents and minor son of the deceased. They claimed a sum of Rs. 20,00,000/- as compensation. The Appellant / Insurance Company 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 driver of the three-wheeler Minidor Tempo?
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 three-wheeler Minidor Tempo belonging to the fifth Respondent and awarded a sum of Rs. 10,90,000/- as compensation with interest at 9% p.a. from the date of petition. The details of the compensation are as follows:

Rupees Loss of income 8,64,000/- Loss of love and affection to the son 1,00,000/- Loss of love and affection to the parents 20,000/- Transport expenses 10,000/- Loss of consortium 50,000/- Funeral expenses 5,000/- -----
Total... 10,49,000/- =====

The totalling of the amounts awarded by the Tribunal towards various heads, works out to Rs. 10,49,000/-, but the Tribunal has awarded Rs. 10,90,000/-. It is a totalling error.

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

5. Learned Counsel for the Appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and 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 taking the monthly income of the deceased as Rs. 6,000/- and the same is without any basis and justification. He further submitted that the interest rate of 9% awarded by the Tribunal is also excessive. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

6. Learned Counsel appearing for the Respondents 1 to 4 /caveators 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.

7. Heard the learned Counsel and perused the materials available on record. On the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to P7 were marked. On the side of the Insurance company, no one was examined and no documents were marked. P.W.1-Santhi is the wife of the deceased. P.W.2-Raji is an eye witness of the accident. Ex.P1 is the certified copy of the First Information Report. Ex.P2 is the charge sheet. Ex.P3 is the Post Mortem Certificate. Ex.P4 is the Motor Vehicle Inspector's Report. Ex.P5 is the Original passport. Ex.P6 is the

Legal Heir Certificate. Ex.P7 is the copy of Birth Certificate compared with the original. 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 three-wheeler Minidor Tempo. The finding of the Tribunal is based on valid materials and evidence and it is a question of fact. Hence the same is confirmed.

8. 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 there from 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 there from 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 there from 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)

9. 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 Thomas², 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. Veluswami⁴, 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.

10. At the time of the accident, the age of the deceased was 29 years old. P.W.1, in her evidence, has stated that the deceased was a mason in Malaysia and he was earning a sum of Rs. 15,000/- per month. Ex.P5 is the passport, in which it is stated that the age of the deceased was 29 years. Therefore the Tribunal correctly fixed the age of the deceased as 29 years. In respect of monthly income, there is no concrete evidence on record to show that he was earning a sum of Rs. 15,000/-per month, except the evidence of P.W.1. Therefore, the Tribunal, after considering the facts and circumstances of the case, fixed the monthly income of the deceased at Rs. 6,000/-. Out of the said sum, the Tribunal deducted 1/3rd towards personal expenses and arrived at Rs. 4,000/- as the monthly contribution of the deceased to the family, and determined the annual contribution at Rs. 48,000/- (Rs. 4,000/- x 12). After taking into consideration the age of the deceased as 29, the Tribunal, as per the Schedule, adopted the

multiplier of 18 and arrived at Rs. 8,64,000/- (Rs. 48,000/- x 18) towards loss of income. Learned Counsel for the Appellant vehemently contended that the Tribunal is wrong in fixing the monthly income at Rs. 6,000/- as there is no basis for the same. 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. 5,000/- per month. Therefore, the annual income works out to Rs. 60,000/- (Rs. 5,000/- x 12). As per the principles enunciated in Sarla Verma's case (cited supra), it would be appropriate to deduct 1/4th of the income towards personal expenses, in the present case. Hence, if 1/4th of the amount is deducted, the annual contribution of the deceased to the family works out to Rs. 45,000/-. The Tribunal has correctly adopted the multiplier of 18. If 18 multiplier is adopted, the loss of income works out to Rs. 8,10,000/- (Rs. 45,000/- x 18). Therefore, the amount awarded by the Tribunal towards loss of income stands modified from Rs. 8,64,000/- to Rs. 8,10,000/-. The Tribunal has awarded a sum of Rs. 50,000/- towards loss of consortium. Learned Counsel for the Appellant vehemently contended that the amount awarded towards loss of consortium is excessive and exorbitant. It would be appropriate and reasonable to award a sum of Rs. 25,000/- towards this head. Therefore, the amount awarded by the Tribunal towards loss of consortium is modified from Rs. 50,000/- to Rs. 25,000/-. The Tribunal has awarded a sum of Rs. 1,00,000/- towards loss of love and affection to the minor son of the deceased. Taking into consideration the facts and circumstances of the case, it would be appropriate and reasonable to award a sum of Rs. 50,000/- towards loss of love and affection to the minor son who was unborn at the time of the accident. Therefore, the amount awarded by the Tribunal towards loss of love and affection to the minor son of the deceased stands modified from Rs. 1,00,000/- to Rs. 50,000/-. The amount awarded by the Tribunal at Rs. 20,000/- towards loss of love and affection to the parents of the deceased, is very reasonable and hence the same is confirmed. The amounts awarded by the Tribunal at Rs. 10,000/- towards transport expenses and Rs. 5,000/- towards funeral expenses are also very reasonable and hence they are confirmed. The Tribunal has awarded interest at 9% p.a., from the date of petition. In the present case, the date of award is 10.07.2009. Considering the prevailing rate of interest during that time, I am of the view that the interest rate fixed by the Tribunal at 9% p.a. is excessive and it would be appropriate to fix the interest rate at 7.5% p.a. from the date of petition.

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

Rupees	Loss of income	8,10,000/-	Loss of love and affection to the son	50,000/-	
	Loss of love and affection to the parents	20,000/-	Transport expenses	10,000/-	
	Loss of consortium	25,000/-	Funeral expenses	5,000/-	-----
					Total...
					9,20,000/-
					=====

Therefore, the claimants are entitled to the modified compensation of Rs.

9,20,000/- with interest at 7.5% p.a from the date of petition.

12. Under the circumstances, the Insurance Company is directed to deposit the modified amount of compensation, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the wife and parents of the deceased are permitted to withdraw their respective proportionate shares, on making proper application. In respect of the share of the minor son of the deceased, it shall be deposited in any Nationalised Bank, till he attains majority. The mother of the minor son of the deceased, the first Respondent herein, is permitted to withdraw the interest accrued, once in three months on making proper application.

13. With the above modification, the Civil Miscellaneous Appeal is disposed of. Consequently, M.P.(MD) No. 4 of 2010 is closed. No costs.