(2010) 11 MAD CK 0061

In the Madras High Court

Case No : C.M.A. (MD) No. 1160 of 2010 and M.P. (MD) No''s. 2 and 3 of 2010

National Insurance Company Limited APPELLANT

Vs

Aruputhamani, Krishnaraja (mentally retarded) represented by his mother, Jothi Dhanalakshmi and Arul Perumjothi RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Citation : (2010) 11 MAD CK 0061

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

Bench : Single Bench

Advocate : P. Malini, for the Appellant; G. Parimalam, for R 1 to R 3, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—This appeal is preferred by the appellant-Insurance Company against the judgment and Decree dated

31.03.2009 made in M.C.O.P.No.160 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court/Fast Track Court

No.1, Tirunelveli.

2. Background facts in a nutshell are as follows:

The deceased-Subbiah met with motor traffic accident on 08.02.2003 at about 22.00Hrs. The said deceased was riding his motorcycle bearing

registration No.TN-72-C-3553 from Palayamkottai to Kokkirakulam, and his friend was the pillion rider. When the deceased was proceeding

near Murugankurichi signal point from East to West direction on the extreme left side of the road, a lorry belonging to the fourth respondent

bearing registration No.TNH-9078 came from the opposite direction in a rash and negligent manner and also at high speed and hit the motorcycle.

Due to the said impact, the deceased was thrown out from the motorcycle and he sustained grievous injuries all over the body. Immediately, he

was taken to the Tirunelveli Medical College Hospital, Tirunelveli and then he was referred to the Shifa Hospital, Tirunelveli, but in spite of the best

treatment given to him, he died on 12.02.2003. The claimants are the wife, son and daughter of the deceased. They claimed a sum of

Rs.10,00,000/- as compensation before the Tribunal. The said lorry was insured with the appellant-Insurance Company, who resisted the claim.

On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the lorry belonging to the fourth respondent?

2.Whether the claimants are entitled to any compensation, if so how much and from whom?

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 and awarded a compensation of Rs.6,82,047/- with interest at 7.5% per annum from the date of petition. The details of the

compensation are as follows:

For loss of dependency Rs.6,40,000/-

For medical expenses Rs. 12,547/-

For loss of consortium Rs. 5,000/-

For love and affection Rs. 20,000/-

For loss of estate Rs. 2,500/-

For funeral expenses Rs. 2,000/-

Total Rs.6,82,047/-

Aggrieved by that award, the appellant-Insurance Company has filed the present appeal.

3. Learned counsel appearing for the appellant-Insurance Company questioned only the quantum of compensation awarded by the Tribunal and

vehemently contended that the compensation awarded by the Tribunal is excessive, exorbitant and also without any basis and justification. She further submitted that the Tribunal has wrongly fixed a sum of Rs.5,000/- towards monthly income of the deceased, since there is no evidence on

record to support the claim of the claimants. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set

aside.

4. Learned Counsel appearing for the respondents 1 to 3/ claimants has submitted that the Tribunal had considered all the relevant materials and

evidence on record and came to the right conclusion in holding that the accident had occurred only due to the rash and negligent driving of the

driver of the lorry and awarded a just, fair and reasonable compensation. It is a question of fact and also it is based on valid materials and

evidence. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel on either side and perused the materials available on record. On the side of the claimants, P.W.1 and P.W.2 were examined

and documents Exs.P.1 to P.15 were marked. P.W.1 is the wife of the deceased. P.W.2 is one Mani, who is the eye-witness of the accident. On

behalf of the appellant-Insurance Company, no one was examined and no document was marked to substantiate their claim. 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 and awarded the compensation. It is a question of fact and therefore the same is confirmed.

6. In the case of Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. reported in (2009) 4 ML J 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 wellestablished. 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 onefourth 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)

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. It is stated in the claim petition that the deceased was 40 years old at the time of accident. In the evidence of P.W.1, it is stated that the

deceased was earning a sum of Rs.10,000/- per month. Further, it is stated that the deceased was running Saraswathi Lottery Agency and was

also doing hotel business. Further it is stated that the deceased was an incometax assessee. Ex.P.9 is the copy of the Saral Form for the Income

Tax assessment for the year 2003-2004. Since, no concrete evidence is available on record to show that the deceased was earning a sum of

Rs.10,000/- per month from lottery business as well as hotel business and that the Saral Form for Income Tax assessment produced, is only for

the first year of the assessment, the Tribunal has fixed the monthly income of the deceased at Rs.5,000/- per month. Ex.P.4 is the Post Mortem

Report, in which the age of the deceased is stated as 40 years. Therefore, the Tribunal has fixed the age of the deceased as 40 years and adopted

the multiplier of ""16"". After fixing a sum of Rs.5,000/- towards monthly income, the Tribunal calculated the annual income at Rs.60,000/-.

Thereafter, the Tribunal has deducted 1/3rd towards personal expenses of the deceased and arrived at the annual contribution of the deceased to

the family at Rs.40,000/- Thereafter the Tribunal arrived at loss of dependency at Rs.6,40,000/-(Rs.40,000/- x16). Learned Counsel for the

appellant-Insurance Company has vehemently contended that the Tribunal has fixed the monthly income of the deceased as Rs.5,000/- when there

is no documentary evidence to prove the same. After considering the facts and circumstances of the case and also the evidence of P.W.1, it is

reasonable to fix the monthly income of the deceased at Rs.4,000/- After deducting 1/3rd towards personal expenses of the deceased and

applying the correct multiplier of ""16"", as adopted by the Tribunal, the loss of dependency works out to Rs.5,12,000/-(Rs.4,000/- x 12x2/3x16).

Therefore, the loss of dependency is modified to Rs.5,12,000/- as against Rs.6,40,000/- awarded by the Tribunal. The Tribunal has also awarded

a sum of Rs.12,547/- towards medical expenses. Immediately after the accident, the deceased was admitted in the Government Hospital as well as

in a private hospital in Tirunelveli. It is an actual expenditure. Ex.P.10 are the series of Medical bills. Therefore, the amount awarded by the

Tribunal under this head is very reasonable and hence, the same is confirmed. The Tribunal has awarded a sum of Rs.5,000/- towards loss of

consortium. After taking into consideration the age of the wife is 38 years at the time of the accident, the amount awarded by the Tribunal under

this head is very low. This Court is of the view that it is reasonable to award a sum of Rs.15,000/- towards loss of consortium. Further, the

Tribunal has awarded a sum of Rs.20,000/- towards loss of love and affection. The claimants 2 and 3 are the son and the daughter of the

deceased, respectively, who lost the love and affection of their father. Hence, the amount awarded by the Tribunal under this head is very

reasonable and hence, the same is confirmed. The Tribunal has also awarded a sum of Rs.2,500/- towards loss of estate, which is very reasonable

and hence, the same is confirmed. Further, the Tribunal has also awarded a sum of Rs.2,000/- towards funeral expenses and no amount was

awarded towards transport charges. Considering the facts circumstances of the case, it is reasonable to award a consolidated sum of Rs.5,000/-

towards funeral expenses and transport charges. Further, the Tribunal has also awarded 7.5% interest p.a. from the date of petition. After taking

note of the date of accident, the date of award and also the prevailing rate of interest during the relevant period, the interest rate awarded by the

Tribunal at 7.5%p.a. from the date of petition is very reasonable and hence, the same is confirmed.

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

For loss of dependency Rs.5,12,000/-

For medical expenses Rs. 12,547/-

For loss of consortium Rs. 15,000/-

For love and affection Rs. 20,000/-

For loss of estate Rs. 2,500/-

For funeral expenses Rs. 5,000/-

Total Rs.5,67,047/-

Therefore, the claimants are entitled to the modified compensation of Rs.5,67,047/- with interest at 7.5% per annum from the date of claim petition

as against the sum of Rs.6,82,047/- with 7.5% interest per annum granted by the Tribunal.

10. It is stated by the learned Counsel for the appellant that the Insurance Company has already deposited the entire award amount with accrued

interest by order of this Court dated 26.08.2010. Under these circumstances, since the claimants are entitled to the modified compensation of

Rs.5,67,047/- with interest at 7.5% from the date of petition, the first claimant, wife of the deceased and the third claimant, daughter of the

deceased, who are majors, are permitted to withdraw their respective entire share amounts, less the amount if any already withdrawn, on making

proper application. In respect of the share of the second respondent/the son of the deceased, as he is mentally retarded, the Tribunal is directed to

keep the entire share amount of the second respondent in a fixed deposit under Reinvestment Scheme in any Nationalized Bank initially for a

period of three years and the same shall be renewed. The mother of the second respondent is permitted to withdraw the accrued interest once in

three months from the bank on making proper application. The appellant-Insurance Company is also permitted to withdraw the balance amount

on making proper application.

11. With the above modification, the Civil Miscellaneous Appeal is disposed of. Consequently, the connected Miscellaneous Petitions are closed.

No costs.

