
(2010) 06 MAD CK 0028
In the Madras High Court
Case No : C.M.A. NPD. No. 475 of 2003

National Insurance Company Ltd.

APPELLANT

Vs

Renugadevi and Others

RESPONDENT

Date of Decision : 22-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 304(A)

Citation : (2010) 06 MAD CK 0028

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

Bench : Single Bench

Advocate : N.B. Surekha, for the Appellant; P. Thangavel, for Respondents 1 to 6, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Insurance Company against the award dated 05.04.2002 made in MACTOP

No. 196 of 2001 by the Motor Accident Claims Tribunal (Principal Sub Judge), Gobichettipalayam.

2. Background facts in a nutshell are as follows:

On 21.03.2001 at about 2.00p.m., in the poramboke land at Kavilipalayam, the 7th respondent-driver drove the tractor bearing registered No.

TCD-1568, owned by the 8th respondent and insured with the appellant-Insurance company, in a rash and negligent manner and hit against one

Sivakumar, who sustained fatal injuries and died. The claimants are wife, minor daughter, father, mother and two unmarried brothers of the

deceased. They claimed a sum of Rs. 18,00,000/- as compensation before the Tribunal. The appellant-Insurance company resisted the claim. On

pleadings the Tribunal framed the following issues:

1. In whose negligence the accident occurred?

2. Whether the claimants are entitled to any compensation? If so, how much.

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to rash and negligent driving of the

seventh respondent and awarded a compensation of Rs. 7,98,400/- with interest at 9% per annum from the date of the claim petition and the

details of the same are as under:

Loss of income to the family Rs. 7,88,400/-

Loss of love and affection Rs. 5,000/-

Funeral expenses Rs. 5,000/-

Total ... Rs. 7,98,400/-

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

3. The learned Counsel appearing for the appellant/Insurance Company has questioned only the quantum of compensation awarded by the

Tribunal by contending that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. He further submitted that

the Tribunal has wrongly fixed the monthly income at Rs. 4500/- without any basis and wrongly adopted the multiplier of 18 and the interest

awarded at the rate of 9% per annum is also on the higher side and that 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 6 submitted that the Tribunal has 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 claimants Pws.1 and 2 were examined and documents Exs.P1 to P12 were marked. On the side of the

respondents no one was examined and Ex.R1-Insurance policy was marked. PW1 is the father of the deceased. PW2 one Ponnusamy is the eye

witness to the accident. Ex.P1 is the certified copy of the First Information Report. Ex.P2 is the certified copy of the post mortem certificate.

Ex.P3 is the certified copy of the rough sketch. Ex.P4 is the certified copy of the observation mahazer. Ex.P5 is the certified copy of the motor

vehicle inspector's report. Ex.P6 is the certified copy of the Inquest report. Ex.P7 is the certified copy of the charge sheet. Ex.P8 is the certified

copy of the judgment. Ex.P9 is the xerox copy of the legal heriship certificate. Ex.P10 is the income certificate. Ex.P11 is the xerox copy of the

sale deed. Ex.P12 is the Kanthaya receipts. After considering the above oral and documentary evidence, the Tribunal had given a categorical

finding that the accident occurred only due to the rash and negligent driving of the seventh respondent-the driver of the tractor, which belonging to

the eighth respondent 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 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 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.

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 ĩ½would 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 thingĩ½. 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 Sivakumar was aged about 27 years. He was an agriculturist and owning a goat farm and milk dairy.

PW1, who is the father of the deceased/fourth respondent deposed that

deceased son Sivakumar was earning Rs. 10,000/- per month and he is only son who is doing all the agricultural activities and the accident had occurred only due to the rash and negligent driving of the driver of the tractor. He further deposed that a case has been registered against the driver of the tractor/seventh respondent in Crime No. 100 of 2001 of Puliampatty Police Station u/s 304(A) IPC. He further deposed that the family was holding four acres of land and out of four acres, 2 1/4 acres was cultivated by the deceased. Though Ex.P10-income certificate given by the Tahsildar has been marked, it was not proved that the deceased was earning Rs. 10,000/- per month. Considering the same, the Tribunal fixed the income of the deceased per day at Rs. 30/- and the monthly income at Rs. 4,500/-(Rs. 150 x 30). The Tribunal by adopting the unit method, determined the total units at 12 and calculated per unit at Rs. 375/- (Rs. 4500/12) and fixed two units for the deceased and it worked out to Rs. 750/- (Rs. 375 x 2). The Tribunal also taken into consideration the personal expenses of the deceased at Rs. 100 and fixed a sum of Rs. 850/- (Rs. 750 + 100). Out of the monthly income of Rs. 4,500/- the Tribunal has deducted Rs. 850/- and fixed the monthly income at Rs. 3,650/- (Rs. 4500-850) and determined the annual income at Rs. 43,800/- (Rs. 3650 x 12). On the basis of Ex.P2-post-mortem certificate, the Tribunal has taken the age of the deceased at 26 years and adopted the multiplier of 18 and awarded a sum of Rs. 7,88,400/- (Rs. 43,800 x 18) towards loss of income. The learned Counsel appearing for the appellant-Insurance company vehemently contended that the Tribunal is wrong in fixing the monthly income at Rs. 4,500/- per month without any document. Considering the facts and circumstances of the case, it would be reasonable to award a sum of Rs. 4000/- per month. The learned Counsel appearing for the respondents 1 to 6/claimants submitted that considering larger family, 1/4 may be deducted towards personal expenses and he has also relied on the decision in the case of National Insurance Company Ltd. Vs. Meghji Naran Soratiya and Others, , wherein the Apex Court, in view of large number of claimants, has deducted 1/4 for personal expenses of the deceased and assessed the dependency and in paragraph 16, it has been held as follows:

16. The learned Counsel for the insurer submitted that in view of the admissions

and evidence that deceased was getting a salary of Rs. 3,000/-,

the Tribunal ought not to take the income at a figure more than Rs. 3,000 per month. But having regard to the fact that the claimants had produced evidence to show that the deceased had passed B.A. and was studying for securing a M.A degree, we are of the view that the Tribunal was justified in assuming a higher income at the time of death instead of actual earning at the time of his death. But the amount assessed as income cannot be a fancy figure. It should be realistic and should be close to the actual earning vide General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . On the facts and circumstances, we are of the view that income should be taken as Rs. 4,000/- per month (Rs. 48,000 per annum). Only one-fourth of the income (instead of the standard one-third) has to be deducted towards personal and living expenses of the deceased, having regard to his larger family. Thus the contribution to the family would have been Rs. 36,000 per annum. By applying a multiplier of 17, the loss of dependency would be Rs. 6,12,000/-. By adding Rs. 5000/- each under the heads of loss to estate, loss of consortium and funeral expenses, the total compensation would be Rs. 6,27,000. As the rate of interest awarded (15 per cent per annum) is excessive, we reduce it to 9 per cent per annum.

Following the above decision of the Apex Court and taking into consideration the larger family, i.e. 6 members, I feel that it would be reasonable to deduct 1/4 towards personal expenses i.e. Rs. 1,000/-. Out of the said sum, if 1/4th of Rs. 1000/- is deducted, the balance sum of Rs. 3,000/- is taken as the monthly contribution to the family of the deceased. The learned Counsel appearing for the appellant-Insurance company submitted that the Tribunal ought not to have adopted the multiplier of 18 and relied on the decision of Supreme Court cited supra in the case of Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. reported in (2009) 4 MLJ 997, wherein in para 21, it has been held as follows:

21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above prepared by applying General Manager, Kerala State Road Transport Corporation v. Susammal Thomas (Supra), U.P. State Road Transport Corporation v. Trilok Chandra

(Supra) and New India Assurance Co. Limited v. Charlie (Supra), which starts with an operative multiplier of 18 (for the age groups of 15 to 20

and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years,

M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for

56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

In the present case, the age of the deceased was 26 years at the time of the accident. Following the above decision, for the age of 26 to 30, the

multiplier to be adopted in this case is 17. Following the abovesaid judgment, if 17 multiplier is adopted, the loss of income would be Rs.

6,12,000/- (3,000 x 12 x 17) as against Rs. 7,88,400/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 5,000/- towards loss of

love and affection. Taking into consideration the age of the parents, two brothers and a minor child, it is reasonable to award a sum of Rs.

20,000/- under this head. The Tribunal has awarded a sum of Rs. 5,000/- towards funeral expenses, which is very reasonable and the same is

confirmed. The Tribunal has not awarded any sum towards loss of consortium. The age of the wife is 23 years at the time of the accident.

Therefore, it is reasonable to award a sum of Rs. 15,000/- under this head. The Tribunal has not awarded any sum towards transport charges, loss

of estate and future prospects. Considering the facts and circumstances of the case, it would be reasonable to award a sum of Rs. 5,000/- towards

transport charges, Rs. 10,000/- towards loss of estate and Rs. 10,000/- towards future prospects. The Tribunal has awarded interest at 9% p.a

from the date of petition. The date of accident is 21.03.2001. Keeping in view the prevailing rate of interest during that time, I feel that it is

reasonable to award interest at the rate of 7.5% as against 9% awarded by the Tribunal. The details of the modified compensation as per the

above discussion are as under:

Loss of income Rs. 6,12,000/-

Loss of love and affection Rs. 20,000/-

Funeral expenses Rs. 5,000/-

Loss of consortium Rs. 15,000/-

Transport charges Rs. 5,000/-

Loss of estate Rs. 10,000/-

Future prospects Rs. 10,000/-

Total Rs. 6,77,000/-

Therefore, the claimants are entitled to the modified compensation of Rs. 6,77,000/- with interest at 7.5% p.a. as against the compensation of Rs.

7,98,400/- awarded by the Tribunal.

9. It is represented by the learned Counsel appearing for the appellant-Insurance Company that already entire award amount has been deposited

as per the order of this Court dated 25.03.2003 and the claimants had been permitted to withdraw the following amount: 1st claimant - Rs.

1,00,000/-; 3rd and 4th claimant-Rs. 50,000/- each and claimants 5 and 6 - Rs. 25,000/- each. It is also represented that the fifth respondent

attained majority. The respondents 1 to 6/claimants are entitled to the modified compensation of Rs. 6,77,000/- with interest at 7.5% p.a. from the

date of petition and respondents 1, 3 to 6 are permitted to withdraw their respective balance shares as apportioned by the Tribunal, after adjusting

the amount already withdrawn, on making proper application. The share of the minor second respondent is directed to be redeposited in the fixed

deposit in a nationalised bank till she attains majority. The first respondent-mother is permitted to withdraw accrued interest thereon once in six

months. The appellant-Insurance company is also permitted to withdraw the balance amount, if any, on making proper application.

10. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.