(2010) 09 MAD CK 0144

In the Madras High Court

Case No : C.M.A. (MD) No. 411 of 2005

P. Velammal and Others — APPELLANT

Vs

State Express Transport Corporation Ltd. — RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0144

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

Bench : Single Bench

Advocate : T.S. Selvakumaran, for the Appellant; Rajinish Pathyil, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—This appeal is preferred by the appellant-claimants against the Judgment and Decree dated 19.11.2003 made in M.C.O.P. No. 1659 of 2001 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Tirunelveli.

2. Background facts in a nutshell are as follows:

The deceased-Kattaian Perumal met with motor vehicle accident that took place on 17.10.2001 at about 21.30 hrs. The said deceased was travelling in a Motor Cycle bearing Registration No. TN 72.E.8976 as a pillion rider from Ponnakudi Pushpa Tea Hotel to "Om Sakthi Crushers". The rider of the motor cycle is one Rajendran. When they were proceeding near Tirunelveli-Nagercoil Main Road from north to south direction on the extreme left side of the road, a bus bearing Registration No. TN 07.N.9342 belonging to the respondent/Transport Corporation came from the opposite direction, in a rash and negligent manner and also at high speed and hit the motor cycle. Due to the same, the deceased was thrown out from the motor cycle and sustained grievous injuries and died on the spot. The claimants are the wife, two minor children and parents of the deceased. They claimed a sum of Rs. 7,00,000/- as compensation. The respondent/Transport Corporation, resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred only due to the rash and negligent driving of the driver of bus belonging to the respondent/Transport Corporation?

2. Whether the respondent/Transport Corporation is liable to pay compensation?

3. Whether the claimants are entitled to claim any compensation, if so how much?

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 bus belonging to the respondent-Transport Corporation and awarded a compensation of Rs. 1,55,000/- with interest at 9% p.a. from the date of the claim petition. The details of the compensation are as under:

Loss of income Rs. 1,44,000/- Loss of consortium Rs. 10,000/- Funeral expenses Rs. 1,000/-

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Total Rs. 1,55,000/-

Aggrieved by that award, the appellants-claimants have filed the present appeal for enhancement.

3. Learned Counsel appearing for the appellants-claimants submitted that the Tribunal has awarded a very low and meagre sum of compensation. The Tribunal ought to have awarded the compensation as claimed by the claimants. It is also submitted that the Tribunal has not followed the principles of assessment before passing the award. Therefore, according to the learned Counsel, this is a fit case for enhancement.

4. Learned Counsel appearing for the respondents 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 either side and perused the materials available on record. On the side of the claimants P. Ws.1 to 3 were examined and documents Exs.P1 to P7 were marked. P.W.1 Vellammal, is the wife of the deceased. P.W.2 Velu, is the eye witness to the accident. P.W.3 Prakash, is the co-worker of the deceased. Ex.P1 is the certified copy of the First Information Report relating to the Crime No. 269/2001 registered by Munnerpallam Police Station. Ex.P2 is the rough sketch. Ex.P3 is the certified copy of the parvai mahazar. Ex.P4 is the xerox copy of the Motor Vehicle Inspector''s Report. Ex.P5 is the xerox copy of the charge sheet. Ex.P6 is the certified copy of the postmortem report. Ex.P7 is

the death certificate relating to Ponnusamy Nadar. On behalf of the respondent/ Transport Corporation one Sivasankara Shanmuga Perumal was examined as R.W.1 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 bus. The finding of the Tribunal is based on valid materials and evidence and it is a question of fact. Hence the same is confirmed.

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 Daviesformula 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 9 too followed the same pattern till recently when tribunals/courts began to use a hybrid method of using Nancemethod 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. At the time of the accident, the deceased Kattain Perumal was aged about 24 years. P.W.1, the wife of the deceased, in her evidence has stated that the deceased was working as a Crusher Engine Operator and he was earning Rs. 3,500/- per month. Ex.P.6 is the Postmortem Report, in which it is stated that the age of the deceased was 24 years at the time of the accident. Therefore, the Tribunal has fixed the age of the deceased as 24 years at the time of the accident. In respect of the income, there is no concrete evidence available on record to prove the same. P.W.3, is the co-worker of the deceased, in his evidence it is stated that the deceased was earning Rs. 200/- per day. After considering the above oral and documentary evidence, the Tribunal fixed the

monthly income of the deceased at Rs. 1,200/-. Out of the said sum, 1/3 of the amount i.e., Rs. 400/- was deducted towards personal expenses of the deceased and the balance sum of Rs. 800/- was taken as the monthly contribution of the deceased to the family and determined the annual contribution at Rs. 9,600/- (Rs. 800X12). After taking into consideration of the age of the deceased, the Tribunal adopted the multiplier of ''15'' and determined the loss of income at Rs. 1,44,000/-(Rs. 9,600X15). Learned Counsel appearing for the appellants-claimants vehemently contended that the Tribunal wrong in fixing the monthly income of the deceased at Rs. 1,200/-and also wrongly adopted the multiplier of 15. After taking into consideration of the facts and circumstances of the case, I am of view that it would be reasonable to fix the monthly income at Rs. 2,100/-. Out of the said sum, 1/3 of the amount i.e., Rs. 700/- is deducted towards personal expenses of the deceased and the balance sum of Rs. 1,400/- is taken as the monthly contribution of the deceased to the family. Accordingly, the annual contribution works out to Rs. 16,800/- (Rs. 1,400X12). In the present case, the Tribunal adopted the multiplier of ''15''. As per the Schedule the correct multiplier that should be adopted is ''17''. The age of the deceased was 24 years at the time of the accident. For the age group between 20 and 25 the multiplier is ''17''. If multiplier of ''17'' is adopted, the loss of income works out to Rs. 2,85,600/-(Rs. 16,800/-X17). Therefore, the loss of income is modified to Rs. 2,85,600/- as against Rs. 1,44,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 10,000/- towards loss of consortium. At the time of the accident, the wife of the deceased as 23 years. Taking into consideration of the same, I feel that the amount awarded towards this head is very reasonable and hence the same is confirmed. The Tribunal has awarded a sum of Rs. 1,000/- towards funeral expenses, which is very low and meagre. It is reasonable to award a sum of Rs. 2,500/- towards this head. The Tribunal has not awarded any amount towards loss of love and affection. After taking into consideration of the age of the children and parents, it is reasonable to award a sum of Rs. 30,000/- towards loss of love and affection. The Tribunal has not awarded any amount towards transport charges. After taking into consideration of the facts and circumstances of the case, I am of the view that it is reasonable to award a sum of Rs. 1,500/- towards transport charges. The Tribunal has awarded interest at 9% per annum. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during that time, the interest awarded by the Tribunal is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of income Rs. 2,85,600/- Loss of consortium Rs. 10,000/- Funeral expenses Rs. 2,500/- Loss of love and affection Rs. 30,000/- Transport charges Rs. 1,500/-

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Total Rs. 3,29,600/- Less: Already awarded amount Rs. 1,55,000/-

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Enhanced amount Rs. 1,74,600/-

(Rounded off to Rs. 1,75,000/-)

Therefore, the claimant is entitled to the enhanced compensation of Rs. 1,75,000/-. With regard to the enhanced compensation of Rs. 1,75,000 /- the interest shall be at 7.5% p.a. from the date of petition.

9. Learned Counsel appearing for the respondent-Transport Corporation is directed to deposit the enhanced compensation of Rs. 1,75,000 /- with interest at 7.5% p.a. from the date of petition within a period of six weeks from the date of receipt of a copy of this order. On such deposit, in respect of the major claimants they are permitted to withdraw their shares on making proper application. In respect of the minor claimants, their shares shall continue to be in the Nationalised Bank deposit till they attain majority. The mother of the minors is permitted to withdraw the accrued interest on the said deposit once in three months, on making proper application.

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