(2009) 08 MAD CK 0444

In the Madras High Court

Case No : C.M.A. No. 2287 of 2009

Pachaiammal, Velu, Balausbramanian and Rani	APPELLANT
Vs	
Bakiam and The Divisional Manager, The Oriental Insurance Company Limited	RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Citation : (2009) 08 MAD CK 0444

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

Bench : Single Bench

Advocate : M. Malar, for the Appellant; M.J. Vijayaraghavan, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—By consent, the main appeal itself is taken up for disposal.

2. The appeal is preferred by the claimants against award dated 29.03.2006 made in MACTOP No. 130 of 2005 by the Motor Accident Claims Tribunal (District Judge), Thiruvannamalai.

3. Background facts in a nutshell are as follows:

The deceased-Ethiraj, met with fatal accident on 27.06.2004 at about 11,45 a.m. The deceased was proceeding as pillion rider on a bicyle from Mallavadi along with one Velu. At that time, a bus bearing registration No. TN-23-J-7475 belonging to the first respondent and insured with the second respondent-Insurance company, which was coming from Thiruvannamalai driven by its driver in a rash and negligent manner and dashed against the bicycle. Due to which, the pillion rider-Ethiraj fell down and had sustained injuries. Immediately he was admitted in the Government Hospital, Thiruvannamalai for treatment and later in the Government General Hospital, Chennai. The claimants are the wife, two sons and one daughter of the deceased. The claimants/appellants claimed a sum of Rs. 10,00,000/- as compensation. The second respondent-Insurance company 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 first respondent''s bus driver or not?

2.Who is responsible to pay the compensation amount as fixed in this petition? 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 first respondent''s bus and awarded a compensation of Rs. 2,71,000/- with interest at 7.5% per annum from the date of petition and the details of the same are as under:

Loss of income Rs. 2,64,000/- Loss of consortium Rs. 5,000/- Funeral expenses Rs. 2,000/- ------------------ Total... Rs. 2,71,000/- ------------------

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

4. The learned Counsel appearing for the claimants-appellants questioned only quantum of compensation awarded by the Tribunal and submitted that the Tribunal ought to have awarded compensation as claimed by the claimants and the amount awarded under various heads is very low and the Tribunal has not followed the principles of assessment before passing the award. He further submitted that the Tribunal ought to have fixed the multiplier of 10 and the amount awarded by the Tribunal is very low and meagre and seeks to enhance the compensation.

5.Learned Counsel appearing for the second respondent/Insurance company 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.

6. Heard the counsel. On the side of the claimant, P.W.1 was examined and documents Exs.P1 to P11 were marked. On the side of the respondents, no witness was examined and no documents were marked to substantiate their claim. P.W.1 is the second claimant, who is the son of the deceased. Ex.P1 is the xerox copy of the First Information Report. Ex.P2 is the xerox copy of the Motor Vehicle Inspector''s report. Ex.P3 is the xerox copy of the inquest report. Ex.P4 is the Insurance policy. Exs.P5 and P6 are the xerox copies of the Accident Registers. Ex.P7 is the xerox copy of the Express report. Ex.P8 is the xerox copy of the post mortem certificate. Ex.P9 is the Identity card. Ex.P10 are the chandha receipts. Ex.P11 is the copy of the demand petition form-C. 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 first respondent''s bus and the finding is based on valid materials and evidence.

7. 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 appropriate multiplier

8. 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.

9. At the time of the accident, the deceased was aged about 55 years. PW1, the son of the deceased deposed that his father was working as Mason and earning Rs. 6,000/- per month and has also produced Ex.P9 Identity card. The Tribunal, considering Ex.P3-xerox copy of the inquest report, has taken the age of the deceased at 55 years at the time of the accident. Though Pw1, the son of the deceased deposed that his father was earning Rs. 200/- per day, no document was marked to substantiate his claim. Hence, the Tribunal was of the view that the deceased would be earning not less than Rs. 120/- per day and the deceased also would not be working all the days in a month. Therefore, the monthly income was fixed at Rs. 3,000/- and determined the annual income at Rs. 36,000/- (Rs. 3,000 x 12). Out of the said amount, if 1/3rd i.e. Rs. 12,000/- is deducted towards personal expenses of the deceased, the contribution to his family comes to Rs. 24,000/- (Rs. 36,000/- - 12,000/-). Taking into consideration the age of the deceased at 55 years, the Tribunal adopted the multiplier of 11 and awarded a sum of Rs. 2,64,000/- (Rs. 24,000 x 11) towards loss of income. Considering the age of the deceased, the multiplier adopted by the Tribunal is very reasonable and the amount awarded under the head loss of income is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/- towards loss of consortium to the first claimant, who is the wife of the deceased, which I feel is very low. At the time of the accident, the age of the first claimant was 50 years. Taking into consideration the age of the first claimant, it would be appropriate to award a sum of Rs. 10,000/- under the head as against

Rs. 5,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 2,000/- towards funeral expenses, which I feel is very low and it would be very reasonable to award a sum of Rs. 10,000/- under this head as against Rs. 5,000/-. The learned Counsel appearing for the claimants vehemently contended that the Tribunal ought to have awarded under the head loss of love and affection and transport charges, since the deceased took treatment at Government Hospital, Thiruvannamalai and the Government General Hospital, Chennai and later he died. Taking into consideration the claimants 2 to 4 are sons and daughter of the deceased, it would be appropriate to award a sum of Rs. 15,000/- towards loss of love and affection and Rs. 11,000/- towards transport charges. The details of the enhanced compensation as per the above discussion are as under:

Loss of income Rs. 2,64,000/- Loss of consortium Rs. 10,000/- Funeral expenses Rs. 10,000/- Loss of love and affection Rs. 15,000/- Transport charges Rs. 11,000/- ------------------ Total... Rs. 3,10,000/- Less: Already awarded amount Rs. 2,71,000/- ----------------- Enhanced amount Rs. 39,000/- ------------------

Therefore, the claimant is entitled to the enhanced compensation of Rs. 39,000/- with interest at 7.5% from the date of petition.

10. The learned Counsel appearing for the second respondent-Insurance Company is directed to deposit the enhanced compensation of Rs. 39,000/- with interest at 7.5% 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, the appellants-claimants are permitted to withdraw the same on proper application.

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

