(2010) 09 MAD CK 0272

In the Madras High Court

Case No : C.M.A. (MD) No. 801 of 2005

Tamil Nadu State Transport Corporation APPELLANT

Vs

Ellammal RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 168
Penal Code, 1860 (IPC) — Section 304(A)

Citation : (2010) 09 MAD CK 0272

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

Bench : Single Bench

Advocate : P. Thilakkumar, for the Appellant; A. Saravanan, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—This appeal is preferred by the Appellant-Transport Corporation against the judgment and Decree dated 16.02.2005 made in M.C.O.P. No. 961 of 2000 on the file of the learned Motor Accidents Claims Tribunal, III Sub Court, Tiruchirapalli.

2. Background facts in a nutshell are as follows:

The deceased-Mani met with motor traffic accident that took place on 20.10.1999 at about 18.45hours. The said deceased was proceeding in his bicycle in the Manaparai-Madurai Road at Kalnaickenpatti keeping on the left side from South to North direction. At that time, a bus belonging to the Appellant-Transport Corporation bearing Registration No. TN-45-N-1472 came in a rash and negligent manner and at high speed from Madurai to Trichy and hit the bicycle. Due to the said impact, the deceased was thrown out of the bicycle and sustained grievous injuries and died on the spot. The claimant is the mother of the deceased and she claimed a sum of Rs. 4,00,000/- as compensation. The Appellant-Transport Corporation 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 bus belonging to the Appellant-Transport Corporation?

2. Whether the claimant is entitled for compensation? If so, what is the amount 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 bus belonging to the Appellant-Transport Corporation and awarded a compensation of Rs. 2,84,000/- with interest at 9% per annum from the date of petition. The details of the compensation are as under:

For loss of income Rs. 2,64,000/- For love and affection Rs. 15,000/- For funeral expenses Rs. 5,000/- ------------------ Total Rs. 2,84,000/- ------------------

Aggrieved by that award, the Appellant-Transport Corporation has filed the present appeal.

3. Learned Counsel appearing for the Appellant-Transport Corporation questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant and also without any basis and justification. He further submitted that the Tribunal ought to have deducted 50% of the income towards personal expenses. 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 Respondent-claimant 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. 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 Respondent-claimant, P.W.1 and P.W.2 were examined and documents Ex.P.1 and Ex.P.2 were marked. P.W.1 is the mother of the deceased. P.W.2 is Thangavel, who is the eye-witness of the accident. Ex.P.1 is the copy of the First Information Report. Ex.P.2 is the Postmortem certificate. On the side of the Appellant-Transport Corporation, R.W.1, Rajendran, the driver of the bus was examined and EX.R.1, the copy of the judgment of the Criminal Court in C.C. No. 444 of 1999, was marked. After considering the 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 belonging to the Appellant-Transport Corporation. It is a question of fact and also it is also based on valid materials and evidence. 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 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 ''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. The age of the deceased was 24 years at the time of accident. He was working as a mason. In the evidence of P.W.1, it is stated that the deceased was earning a sum of Rs. 150/- per day. Further it is stated that it was only the driver of the bus belonging to the Appellant-Transport Corporation has caused the accident and the driver was charge-sheeted by the Manaparai Police Station in Cr. No. 542 of 1999 u/s 304(A) of I.P.C. Ex.P.2 is the Post Mortem Report, in which it is stated that the age of the deceased was 24 years. The Tribunal has correctly fixed the age of the deceased as 24 years. In respect of the income, there is no concrete evidence available on record to show that the deceased was earning a sum of Rs. 150/- per day. After taking into consideration of the facts and circumstances of the case, the Tribunal has fixed the daily income of the deceased at Rs. 100/- and calculated the monthly income at Rs. 3,000/- (Rs. 100 X 30) per month. Out of the said sum, the Tribunal deducted 1/3rd towards personal expenses of the deceased (i.e. Rs. 1,000/-) and the balance amount of Rs. 2,000/- was taken as the monthly contribution of the deceased to the family and accordingly arrived at the annual contribution of the deceased at Rs. 24,000/-. After considering the age of the claimant i.e the mother of the deceased i.e 50 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. Learned Counsel for the claimant has submitted that the age of the mother was 50 years at the time of accident and as per the Second Schedule of the Motor Vehicles Act, for the age group between 45 years and 50 years, the multiplier that should be adopted is "13". In Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. reported in (2009)4 MLJ 997 , the Apex Court considered the amount to be

deducted towards personal expenses in the case of Bachelor and determined as 50%. The paragraph 15 of the above said judgment reads as follows:

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependant on the father. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

After considering the principles enunciated in the judgment cited supra and the submission made by the learned Counsel for the claimant, this Court is of the view that the Tribunal ought to have deducted 50% of the income towards personal expenses as against 1/3rd. The Tribunal has correctly fixed the monthly income of the deceased as Rs. 3,000/- p.m. and there is no dispute regarding the same. Further, the Tribunal has wrongly adopted multiplier "11" instead of "13". The correct multiplier that should be adopted in the present case is "13". Therefore, the loss of income is worked out as under:

Rs. 3,000/- x 50/100 x 12 x 13 = Rs. 2,34,000/-.

Therefore, the loss of income stands modified to Rs. 2,34,000/- as against a sum of Rs. 2,64,000/- awarded by the Tribunal. The Tribunal has also awarded a sum of Rs. 15,000/- towards loss of love and affection. The deceased is the only son of the claimant. Therefore, amount awarded by the Tribunal towards this head is very reasonable and hence, the same is confirmed. The Tribunal has awarded Rs. 5000/- towards funeral expenses which is very reasonable and hence the same is confirmed. Further, the Tribunal has not awarded any amount towards loss of future prospects and also for transport expenses. Taking into consideration the age of the deceased, I am of the view that it is very reasonable to award a sum of Rs. 7,500/- towards loss of future prospects and a sum of Rs. 2,500/- towards transport charges. Accordingly, the claimant is entitled to a sum of Rs. 7,500/- towards loss of future prospects and a sum of Rs. 2,500/- towards transport charges. The Tribunal has also awarded an interest of 9% 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 fixed by the Tribunal at 9% 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 income Rs. 2,34,000/- For loss of love and affection Rs. 15,000/- For funeral expenses Rs. 5,000/- For transport charges Rs. 2,500/- For loss of future prospects Rs. 7,500/- ---------------- Total Rs. 2,64,000/- ----------------

Therefore, the claimant is entitled to the modified compensation of Rs. 2,64,000/- with interest at 9% per annum from the date of claim petition as against the sum of Rs. 2,84,000/- with 9% interest per annum granted by the Tribunal.

10. It is stated that the Appellant has deposited the entire award amount, as per the order of this Court dated 26.10.2005 and the claimant has also withdrawn 50% from the deposit. Under the circumstances, the claimant is permitted to withdraw the modified compensation of Rs. 2,64,000/- with 9% p.a. interest from the date of petition, less the amount already withdrawn, on making proper application. The Appellant-Transport Corporation is also permitted to withdraw the balance amount on making proper application.

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