
(2011) 02 MAD CK 0020

In the Madras High Court

Case No : C.M.A. No. 360 of 2011, M.P. No. 1 of 2011 and Cross Obj. No. 42 of 2011

Tamilnadu State Transport Corporation

APPELLANT

Vs

Sarojini Devi, Harini, Bavithra and Bhagiyammal

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0020

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

Bench : Single Bench

Advocate : V. Ramesh, for the Appellant; F. Terry Chellaraja, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal preferred by the Appellant-Transport Corporation as well as the cross objection filed by the

claimants against the judgment and decree in MCOP No. 617 of 2007 on the file of Motor Accident Claims Tribunal, Fast Track Court, Ponneri

were taken up together and disposed of by a common judgment at the stage of admission itself.

2. Background facts in a nutshell are as follows:

The deceased one Angamuthu met with a motor traffic accident on 21.03.2007 at about 3.45 pm at GNT Road and Sholavaram Junction. The

said deceased was riding his motor cycle towards Gummidipoondi to Redhills and when he was nearing Sholavaram Junction, a bus bearing Regn.

No.TN21N0871, belonging to the Appellant-Transport Corporation came in a rash and negligent manner and also in a high speed, hit the motor

cycle. Due to the impact of the same, the deceased sustained grievous fatal injuries and immediately he was admitted to Government General

Hospital, Chennai and he died on 08.04.2007. The claimants are wife, two minor children and mother of the deceased and they claimed a

compensation of Rs. 25,00,000/- , but restricted to Rs. 7,00,000/- . The Appellant-Transport Corporation, resisted the claim. On pleadings the

Tribunal framed the following issues:

1. On whose negligence, the accident occurred?
2. Whether the Petitioners are entitled for compensation. If so, what is the amount entitled to?

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

driver of the Appellant-Transport Corporation bus and awarded a compensation of Rs. 5,36,500/- 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.4,99,200/-

Loss of consortium Rs. 10,000/-

Loss of love and affection Rs. 10,000/-

Funeral Expenses Rs. 7,500/-

Rs. 5,36,000/-

Rs.5,36,700/-

rounded off to

Aggrieved by that award, the Appellant-Transport Corporation has filed the appeal and the claimants filed cross objection for enhancement.

3. The learned Counsel appearing for the Appellant-Transport Corporation, questioned only the quantum of compensation and vehemently

contended that the compensation awarded by the Tribunal is excessive, exorbitant, without basis and justification. The counsel for the Appellant-

Transport Corporation further submitted that the Tribunal has wrongly fixed the monthly income of the deceased at Rs. 4,800/- and also wrongly

adopted the "13" multiplier. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. The Learned Counsel appearing for the Respondents/claimants submitted that the Tribunal ought to have awarded compensation as claimed by

the claimants and the amount awarded under various heads are very low and the tribunal has not awarded any amount towards transportation and

loss of estate and contended that the Tribunal has not followed the principles of assessment before passing the award and the order passed by the

Tribunal is not in accordance with law and it is a fit case for enhancement.

5. Heard the counsel and perused the document on record. On the side of the claimants/Respondents, the wife of the deceased was examined as

PW1 and documents Exs.P1 to 4 were marked. Ex.P1, is the FIR. Ex.P2, is the postmortem report. Ex.P3, is the death certificate and Ex.P4, is

the legal heir certificate. On the side of the Appellant-Transport Corporation, no one was examined and no document was marked in support of

their claim. After considering the oral and documentary evidence, the Tribunal has given a categorical finding that the accident has occurred only

due to rash and negligent driving of the driver of the Appellant-Transport Corporation bus. It is a question of fact and based on valid materials and

evidences and so 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 there from 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 capitalized 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 there from 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 there from 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 there from 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 dependents 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 neighbors 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 dependent 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 dependents many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss

to the dependents 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 dependent 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 dependents 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 dependents, the amount that the deceased would have earned during the

remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have

lived or the dependents 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

dependents 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, who 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 capitalizing 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 was 46 years old. In the evidence of the wife of the deceased, PW1, it is stated that the deceased was doing centering work (roofing) and earning a sum of Rs. 20,000/- per month. Ex.P3, is the postmortem certificate, in which it is stated that the age of the deceased as 46 years. Therefore, the Tribunal fixed the age of the deceased as 46 years, at the time of the accident. In respect of the monthly income of the deceased, no documentary evidence was filed to prove the same. Therefore, the Tribunal fixed the monthly income of the deceased at Rs. 4,800/- and out of the said sum, 1/3 was deducted towards personal expenses and balance sum of Rs. 3,200/- is taken as monthly contribution to the family and fixed the annual contribution as Rs. 38,400/- . After considering the age of the deceased, the Tribunal adopted "13" multiplier as per the schedule and awarded a sum of Rs. 4,99,200/- (i.e., Rs. 38,400 x 13). The counsel appearing for the Appellant-Transport Corporation vehemently contended that there is no document in record to show that the deceased was earning Rs. 4,800/- per month. After considering the facts and circumstances, it is reasonable to fix Rs. 4,000/- per month and out of the said sum, 1/4, is deducted towards personal expenses, since the family consists of more than four members, as per the Supreme Court judgment in the case of Sarla Varma cited supra, if family consists of 4 to 6 members, correct deduction would be 1/4 towards personal expenses. Therefore, 1/4 is deducted from the monthly income and balance 3/4 i.e. Rs. 3,000/- is taken as monthly contribution and the annual contribution works out to Rs. 36,000/- . In the said Supreme Court judgment, it is stated that for the age group between 45 and 50, the correct multiplier to be adopted is "12" and the loss of income works out to Rs. 4,32,000/- (i.e., Rs. 36,000/- x 12). Therefore, a sum of Rs. 4,32,000/- , is awarded towards loss of income as against Rs. 4,99,200/- , awarded by the Tribunal. The Tribunal has awarded only a sum of Rs. 10,000/- towards loss of consortium to the wife of the deceased. The age of the wife of the deceased was 43 years, at the time of the accident. The award amount towards the said head is very low after considering the age of the wife of the deceased, and therefore, it is reasonable to award a sum of Rs. 15,000/- towards loss of consortium as against Rs. 10,000/- awarded by the Tribunal. Further, the Tribunal has awarded a sum of Rs. 10,000/- only towards loss of love and affection to

the children and mother of the deceased. The award amount is very low. The age of the minor daughters of the deceased were 17 and 16 years, at the time of the accident. The age of the mother was 75 years at the time of the accident. The minor daughters have lost the love and affection of their father and the mother had lost the love and affection of her son. Therefore, it is reasonable to award a sum of Rs. 50,000/- towards loss of love and affection to the minor daughters and mother of the deceased, as against Rs. 10,000/- awarded by the Tribunal. Further, the Tribunal has awarded a sum of Rs. 10,000/- towards mental agony, which is unwarranted and the same is deleted. Further, the tribunal has awarded a sum of Rs. 7,500/- towards funeral expenses, which is very reasonable and the same is confirmed. The Tribunal has not awarded any sum towards transportation. It is not in dispute that immediately after the accident, the deceased was taken to the hospital and for more than 15 days, he was in the hospital. Therefore, it is reasonable to award a sum of Rs. 7,500/- towards transportation. Further no amount was awarded towards loss of estate. Therefore, it is reasonable to award a sum of Rs. 25,000/- towards loss of estate. The Tribunal has awarded interest at the rate of 7.5% per annum. After taking into consideration the date of accident, date of award and also the prevailing rate of interest during that period, the interest awarded by the Tribunal is very reasonable and the same is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of Income Rs.4,32,200/-

Loss of love and affection Rs. 50,000/-

Loss of consortium Rs. 15,000/-

Funeral Expenses Rs. 7,500/-

Transportation Rs. 7,500/-

Loss of estate Rs. 25,000/-

Total Rs. 5,37,000/-

Therefore, the claimants/Respondents are entitled to the modified compensation of Rs. 5,37,000/- with interest at 7.5% from the date of petition as against Rs. 5,36,500/- awarded by the Tribunal.

9. In these circumstances, the Appellant-Transport Corporation is directed to

deposit the modified compensation of Rs. 5,37,000/- with interest of 7.5% per annum, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. It is stated that the minor children have attained majority and therefore, on deposit of the same, the claimants are permitted to withdraw their respective shares, less the amount already withdrawn, on making proper application.

10. With the above directions, both the Civil Miscellaneous Appeal and the cross objection are disposed of. No costs. Consequently the connected Miscellaneous Petition is closed.