(2011) 02 MAD CK 0211

In the Madras High Court

Case No : C.M.A. No. 3685 of 2010 and M.P. No. 1 of 2010

The Branch Manager United India Insurance Co. Ltd. APPELLANT

Vs

Veerammal Devi and Others RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0211

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

Bench : Single Bench

Advocate : T.M. Venkatraman, for the Appellant; Mukund R. Pandian, for RR 1 to 5, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Appellant-Insurance Company against the award dated 06.04.2010, made in

M.C.O.P. No. 1198 of 2006, by the Motor Accident Claims Tribunal (Principal District Judge), Krishnagiri.

2. By consent, the main appeal itself is taken up for final disposal at the admission stage.

3. Background facts in a nutshell are as follows:

The deceased Gnanasekaran met with motor vehicle accident that took place on 16.10.2005, at about 1.30 p.m. The said deceased was riding his

TVS Super XL motorcycle bearing registration No. TN24 Y4876, from Arasanetti towards Hosur. While he was nearing Susil Weight Bridge, a

lorry bearing registration No. TN23 W2399 belonging to the 6th Respondent herein, came in the opposite direction in a rash and negligent manner,

at high speed and hit against the motorcycle. Due to the same, the rider of the motorcycle sustained grievous injury. Immediately he was taken to hospital and he died in the hospital on 22.10.2005. The claimants are the wife, children, father-in-law and mother-in-law of the deceased. They

claimed a sum of Rs. 15,00,000/-as compensation, before the Tribunal. The Appellant Insurance company resisted the claim. On pleadings the

Tribunal framed the following issues:

1. Whether the accident took place due to the rash and negligent driving of the driver of the first Respondent''s vehicle?

2. Whether the Respondents are liable to pay the compensation? If so, what is the quantum of compensation the Petitioners are entitled?

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 lorry, which belonged to the sixth Respondent herein and awarded a compensation of Rs. 7,28,000/-with interest at 6% 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. 6,72,000/-

Loss of consortium Rs. 10,000/-

Loss of estate Rs. 5,000/-

Transport expenses Rs. 3,000/-

Funeral expenses Rs. 5,000/-

Attender charges Rs. 1,000/-

Medical expenses Rs. 30,000/-

Extra-nourishment Rs. 2,000/-

Total... Rs. 7,28,000/-

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

4. The learned Counsel appearing for the Appellant-Insurance Company Ltd., questioning the quantum of compensation and vehemently

contended that the compensation awarded by the Tribunal is excessive, exorbitant and also without basis and justification and also vehemently

contended that the Tribunal is wrong in fixing the monthly income as Rs. 6,000/- and also there is no basis for the same . Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. The learned Counsel appearing for the Respondents/claimants 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 and perused the documents available on record. On the side of the claimants the wife of the deceased was examined as PW1

and one Saravanan, who is the eye witness, was examined as PW2 and documents Exs.A1 to A9 were marked. On the side of the Respondents

no one was examined and no document was marked to substantiate their claim. Ex.A1 is the copy of the First Information Report. Ex.A2 is the

copy of the post mortem certificate. Ex.A3 is the copy of the National Trade Certificate. Ex.A4 is the Certificate issued by the Bharath Heavy

Electricals Ltd., Tiruchirapalli. Ex.A5 is the Indian Passport in the name of the deceased. Ex.A6 is the Health Card. Ex.A7 is the Renewal

Passport. Ex.A8 is the Training Programme Certificate. Ex.A9 is the Certificate issued by the Bharath Heavy Electricals Ltd., Tiruchirapalli. 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 lorry belonging to the sixth Respondent herein. It is a question of fact and the findings are based on

valid materials. Therefore, the same is confirmed.

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

(Emphasis supplied)

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 Gnanasekaran was aged about 45 years. Ex.A2 is the Post-mortem report, in which it is stated that

the deceased was 45 years old at the time of accident. Therefore, the Tribunal fixed the age of the deceased at 45 years at the time of the accident.

PW1, in her evidence, stated that her husband was running STD Booth and DTP Centre and also doing real estate business. Further, he was

working as a fitter in Dubai and earning a sum of Rs. 8,000/-per month. Further, he underwent training programme from 23.04.1984 to

22.04.1985 and from 16.01.1991 to 30.03.1991, Ex.A8 is the Training Programme Certificate, issued by the Bharath Heavy Electricals Ltd.,

Tiruchirappalli, which confirms the same. Ex.A5 is the passport of the deceased and Ex.A7 is the renewal of the passport, which also confirms that

the deceased was working in Dubai and returned by 2000. After taking into consideration of the facts and circumstances of the case, the Tribunal

fixed the monthly income at Rs. 6,000/-. Out of the said sum, 1/3rd was deducted towards personal expenses and the balance amount of Rs.

4,000/-taken as the monthly contribution of the deceased to the family and determined the annual contribution of Rs. 48,000/-. After taking into

consideration the age of the deceased, the Tribunal adopted a multiplier ''14'' and arrived at the loss of income at Rs. 6,72,000/-(Rs. 4,000/-X 12

X 14). The learned Counsel appearing for the Appellant vehemently contended that there is no proof to prove that the deceased was earning a

sum of Rs. 6,000/-per month. Therefore, it is reasonable to fix the monthly income at Rs. 5,000/-and determined the annual income of Rs.

60,000/-Out of the said sum, 1/3rd was deducted towards personal expenses and the balance amount of Rs. 40,000/-taken as the contribution of

the deceased to the family and determined the annual contribution of Rs.

5,60,000/-(Rs. 40,000/-X 14). The claimants are entitled to modified

compensation of Rs. 5,60,000/-towards loss of income as against Rs. 6,72,000/- arrived by the Tribunal. Further, the Tribunal awarded a sum of

Rs. 10,000/-towards loss of consortium. After considering the age of the wife at 45 years, the amount awarded by the Tribunal is very reasonable

and therefore the same is confirmed. Further, the Tribunal also awarded a sum of Rs. 5,000/-towards funeral expenses and Rs. 3,000/-towards

transport expenses. These are very reasonable. Therefore, awards under these heads are confirmed. Further, the Tribunal awarded a sum of Rs.

1,000/-towards attender charges and Rs. 5,000/-towards loss of estate. They are unwarranted and deleted. Further, the Tribunal awarded a sum

of Rs. 30,000/-towards medical expenses. The deceased took treatment NIMHANS Hospital at Bangalore from 16.10.2005 to 22.10.2005 and

inspite of treatment he died. Therefore, the amount awarded under the head of medical expenses is very reasonable and the same is confirmed.

Further, the Tribunal has not awarded any amount towards loss of love and affection to the children and parents of the deceased. After considering

the age of the children and parents of the deceased, it is reasonable to award a sum of Rs. 20,000/-towards loss of love and affection. The

Tribunal has fixed the rate of interest at 6% per annum. Considering 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. 5,60,000/-

Loss of consortium Rs. 10,000/-

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

Medical expenses Rs. 30,000/-

Funeral expenses Rs. 5,000/-

Transport expenses Rs. 3,000/-

Total Rs. 6,28,000/-

Therefore, the claimants are entitled to the modified compensation of Rs. 6,28,000 /-with interest at 6% p.a. as against the compensation of Rs.

7,28,000/-awarded by the Tribunal.

10. The Appellant-Insurance Company is directed to deposit the modified compensation of Rs. 6,28,000/-with interest at 6% p.a. from the date of

petition, within a period of six weeks, from the date of receipt of a copy of this order, less the amount already deposited. On such deposit, the

major claimants are permitted to withdraw their respective shares, by making proper application. In respect of minor claimant''s share, the same is

directed to be deposited in any one of a nationalised bank till she attaining majority. The mother of the minor is permitted to withdraw the accrued

interest once in three months from the bank by making proper application.

11. With the above modification, the Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed. No

costs.