

---

**(2010) 09 MAD CK 0156**

**In the Madras High Court**

**Case No : C.M.A. (MD) No. 1585 of 2008**

The Manager, National Insurance Company Limited

APPELLANT

Vs

Saranya @ Nivedida and Others

RESPONDENT

---

**Date of Decision :** 06-09-2010

**Acts Referred:**

**Citation :** (2010) 09 MAD CK 0156

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

**Bench :** Single Bench

**Advocate :** S. Ramachandran, for the Appellant; Jayaprakash Narayan, for R1 and R2 and Jayaram, for R3 and R4, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Insurance Company against the award the award dated 21.04.2006 made in MACOP No. 723 of 2004 passed by the Motor Accident Claims Tribunal, I Additional Sub Court, Tiruchirappalli.

2. Background facts in a nutshell are as follows:

The deceased Elangovan met with motor vehicle accident that took place on 12.10.2003 at about 8.30 a.m. The deceased-Elangovan was proceeding in a scooter bearing Registration No. TN-45-4872 from Kaveri Bridge from North to South direction. At that time, a Mahindra Van bearing Registration No. TN-57-Y-9141 belonging to the fifth Respondent and insured with the Appellant/ Insurance Company, came from the opposite direction in a rash and negligent manner at high speed and hit the scooter. Due to the said impact, the deceased was thrown out of the vehicle and died on the spot. The claimants are the parents and daughters of the deceased. They claimed a sum of Rs. 25,00,000/- as compensation. 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

Mahindra Van's driver?

2. Whether the claimants are entitled to compensation? If so to what extent?

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 van belonging to the fifth Respondent and awarded a sum of Rs. 21,62,000/- as compensation with interest at 7.5% p.a. from the date of petition. The details of the compensation are as follows:

Rupees

|                    |             |              |          |                          |          |                  |         |       |       |      |             |
|--------------------|-------------|--------------|----------|--------------------------|----------|------------------|---------|-------|-------|------|-------------|
| Loss of dependency | 20,80,000/- | Mental agony | 50,000/- | Loss of love & affection | 30,000/- | Funeral expenses | 2,000/- | ----- | Total | .... | 21,62,000/- |
| =====              |             |              |          |                          |          |                  |         |       |       |      |             |

Aggrieved by that award, the insurance company has filed the present appeal.

3. Learned Counsel for the Appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Further, it is submitted that the Tribunal is wrong in taking the monthly income of the deceased as Rs. 20,000/-. 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 Respondents 1 to 4/claimants have 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.

5. Heard the learned Counsel and perused the materials available on record. On the side of the claimants, P.W.1 to P.W.2 were examined and Ex.P1 to P8 were marked. On the side of the Insurance company, no one was examined and no documents were marked. P.W.1-Duraiswamy is the father of the deceased. P.W.2-Asokan is an eye witness to the accident. Ex.P1 is the certified copy of the First Information Report. Ex.P2 is the charge sheet. Ex.P3 is the salary slip. Ex.P4 is the judgment rendered in CC No. 834 of 2003 by Judicial Magistrate No. 1, Trichy. Ex.P5 is the Post Mortem Report. Ex.P6 is the Motor Vehicle Inspector's Report. Ex.P7 is the driving license of the driver. Ex.P8 is the salary particulars of the deceased. 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 Mahindra Van and the finding is 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.

(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. v. 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, P.W.1, in his evidence, has stated that the deceased was 47 years old and was earning a sum of Rs. 25,225/- per month. Further, in his evidence, he has stated that only the driver of the Mahindra Van caused the accident. Ex.P1 is the F.I.R., in which the age of the deceased was mentioned as 47 years old. Therefore the Tribunal fixed the age of the deceased as 47 years. In Ex.P3-Salary Certificate given by BHEL, it is stated that the salary of the deceased was Rs. 25,225/-. After deductions, the Tribunal fixed the monthly salary of the deceased as Rs. 20,000/-. Out of the said sum, the Tribunal deducted 1/3rd of the amount i.e. Rs. 6666.66 and arrived at Rs. 13,333.34 as the monthly contribution of the deceased to the family, and determined the annual contribution at Rs. 1,60,000/- (Rs. 13333.34 x 12). After taking into consideration the age of the deceased as 47, the Tribunal adopted a multiplier of 13 and arrived at Rs. 20,80,000/- (Rs. 1,60,000/- x 13) towards loss of dependency. Learned Counsel for the Appellant vehemently contended that the Tribunal has not deducted any sum towards statutory deduction from the monthly salary of the deceased. Counsel on both the sides have fairly stated that Rs. 1000/- has to be deducted from the monthly salary towards statutory deductions. If Rs. 1000/- is deducted from the monthly salary, it works out to Rs. 19,000/- and the annual salary works out to Rs. 2,28,000/- (Rs. 19000/- x 12). If 1/3rd of the amount is deducted, it works out to Rs. 1,52,000/-. After taking into consideration the age of the deceased as 47 years, the Tribunal has correctly adopted the multiplier of 13. Taking the multiplier as 13, the loss of dependency works out to Rs. 19,76,000/- (Rs. 1,52,000/- x 13). Therefore, the loss of dependency is modified from Rs. 20,80,000/- to Rs. 19,76,000/-. There is no

dispute regarding the same by the Counsel on either side. The Tribunal has awarded a sum of Rs. 50,000/- towards mental agony. Counsel for the Appellant vehemently argued that this amount should not have been awarded to the claimants. There is no serious dispute regarding the same by the Counsel for the claimants. Hence the amount awarded by the Tribunal at Rs. 50,000/- towards mental agony is set aside. Further, the Tribunal has awarded a sum of Rs. 30,000/- towards loss of love and affection. After taking into consideration of the two daughters and parents of the deceased, it would be reasonable to award Rs. 40,000/- towards this head. Hence the amount awarded by the Tribunal towards loss of love and affection at Rs. 30,000/- stand modified to Rs. 40,000/-. The Tribunal has awarded a sum of Rs. 2,000/- towards funeral expenses and not awarded any amount towards transport. After taking into consideration the facts and circumstances of the case, it would be appropriate to award Rs. 4,000/- towards funeral and transport expenses, altogether. With regard to the interest at 7.5% p.a., fixed by the Tribunal, after taking into consideration the date of accident and date of award, I am of the view that the same has to be confirmed and accordingly it is confirmed.

9. The details of the modified compensation as per the above discussion are as under:

|        |                          |             |                              |         |                  |
|--------|--------------------------|-------------|------------------------------|---------|------------------|
| Rupees | Loss of dependency       | 19,76,000/- | Funeral & Transport expenses | 4,000/- |                  |
|        | Loss of love & affection | 40,000/-    | -----                        | Total   | .... 20,20,000/- |
| =====  |                          |             |                              |         |                  |

Therefore, the claimants are entitled to the modified compensation of Rs. 20,20,000/- with interest at 7.5% p.a from the date of petition.

10. It is stated by the Counsel for the Insurance Company that 50% of the award amount has already been deposited and the parents of the deceased have withdrawn their respective proportionate shares from the deposit. The Appellant/ Insurance Company is directed to deposit the modified amount of compensation, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. It is submitted by the learned Counsel for the claimants that all the claimants are majors. Hence, on such deposit of the entire award amount, the claimants are permitted to withdraw their respective proportionate shares, on making proper application.

11. With the above modification, the Civil Miscellaneous Appeal is disposed of. Consequently, M.P.(MD) No. 2 of 2008 is closed. No costs.