**(2011) 01 MAD CK 0449**

**In the Madras High Court**

**Case No :** C.M.A. No. 3558 of 2010 and M.P. No. 1 of 2010

The Manager National Insurance Company Ltd. APPELLANT

Vs

Janaki and Balusamy RESPONDENT

**Date of Decision :** 25-01-2011

**Acts Referred:**

**Citation :** (2011) 01 MAD CK 0449

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

**Bench :** Single Bench

**Advocate :** K.S. Narasimhan, for R 1, for the Appellant; R. Jayaprakash, for the Respondent

## Judgement

P.P.S. Janarthana Raja, J.—When the appeal came up for admission, by consent, the main appeal itself is taken up for final hearing.

2. The appeal is preferred by the Appellant-Insurance Company against the judgment and decree dated 26.02.2010 made in M.C.O.P. No. 2 of 2009 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Namakkal.

3. The background facts in a nutshell, are, as follows:

On 29.10.2008, at about 09.00 a.m., the deceased Rajendran was riding in the bicycle on the left side of the road near Mettupudur E.B. Office situated at Namakkal to Tiruchengode. At that time, a Mahendra van bearing Registration No. TN-28 P-7243, belonging to the second Respondent herein, came in a rash and negligent manner and hit the cyclist. In that impact, the deceased was thrown out and he sustained fatal injuries. Immediately after the accident, he was taken to C.M. Hospital, Namakkal, where he died. The claimant is the wife of the deceased. She claimed a sum of Rs. 10,00,000/-as compensation before the Tribunal. The said van was insured with the Appellant-Insurance Company, who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident took place only due to the rash and negligent driving of

the driver of the Mahendra Vehicle bearing Registration No. TN-28-P-7243 on the left side of the Namakkal to Tiruchengode road at the time of the accident in question?

2. Whether the Respondent 1 and 2 are jointly and severally liable to pay compensation to the claimant in the Claim Petition?

3. How much amount of compensation the claimant is entitled in the Claim Petition?

4. To what relief?

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 and awarded a compensation of Rs. 6,55,000/-with interest at the rate of 7.5% per annum from the date of the claim petition and till the date of realisation. The details of the same are as under:

Loss of income to the claimant Rs. 6,40,000/- Funeral expenses Rs. 5,000/- Loss of consortium Rs. 10,000/- -------------------- Total... Rs. 6,55,000/- --------------------

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

4. The learned Counsel appearing for the Appellant-Insurance Company has questioned only the quantum of compensation awarded by the Tribunal by contending that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification. He further submitted that the Tribunal has wrongly fixed the monthly income. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. Learned Counsel appearing for the first Respondent/claimant 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 learned Counsel on either side and perused the materials available on record. On the side of the claimants P. Ws.1 to 3 were examined and documents Exs.P.1 to P.9 were marked. On the side of the Appellant-Insurance Company, no one was examined and no document was marked to substantiate their claim. P.W.1 is the wife of the deceased. P.W.2-Balusamy is an eye witness to the accident. P.W.3-Selvamani is the employer of the deceased. Ex.P.1 is the copy of First Information Report. Ex.P.2 is the copy of Post mortem Certificate. Ex.P.3 is the Medical bills. Ex.P.4 is the Original death certificate. Ex.P.5 is the Legal heir certificate. Ex.P.6 is the Discharge summary. Ex.P.7 and Ex.P.8 are the copies of the Registration certificate. Ex.P.9 is the Salary certificate. 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 van. 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

(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 Rajendran was aged about 38 years. In Ex.P2, copy of Post mortem Certificate also, it is mentioned that at the time of accident, the deceased was 38 years old. Therefore, the Tribunal had fixed the age of the deceased as 38 years at the time of the accident. In the evidence of P.W.1, it is stated that the deceased was working as Loom Superintendent and was earning a sum of Rs. 10,000/-per month. P.W.3-Selvamani, who is the proprietor of Sri Kumaran Tex, also stated that the deceased Rajendran was working in his company for a period of eight months and he issued Ex.P.9 salary certificate. After considering the same, the Tribunal had fixed Rs. 5,000/-as monthly income of the deceased and determined the annual income at Rs. 60,000/-(Rs. 5,000 x 12). Out of the said sum, 1/3rd i.e. Rs. 20,000/-(Rs. 60,000 x 1/3) was deducted towards personal expenses and the balance amount of Rs. 40,000/-was taken as annual contribution to his family. The tribunal, after taking into consideration Schedule II of the Motor Vehicles Act,1988, adopted multiplier of ''16'' and arrived at the loss of income at Rs. 6,40,000/-(Rs. 40,000/-x 16). The learned Counsel appearing for the Appellant-Insurance Company vehemently contended that there is no basis for the Tribunal to fix the

 

monthly income at Rs. 5,000/-and the same is on the higher side. After considering the facts and circumstances of the case, it is reasonable to fix the monthly income of the deceased at Rs. 4,500/-. Out of the said sum 1/3rd i.e. Rs. 1,500/-(Rs. 4,500 x 1/3) was deducted towards personal expenses and the balance amount of Rs. 3,000/-was taken as monthly contribution to his family and the annual contribution works out to Rs. 36,000/-(Rs. 3,000 x 12). After considering the age of the deceased at 38 years, the Tribunal had correctly adopted multiplier method in this case. Hence, the loss of income works out Rs. 5,76,000/-(Rs. 36,000 x 16) as against Rs. 6,40,000/-awarded by the Tribunal. The Tribunal has awarded Rs. 10,000/-under the head of loss of consortium to the first Respondent, the wife of the deceased, who is aged about 35 years at the time of the accident. After taking into consideration, the age of the deceased, the amount awarded under this head is very low and it would be reasonable to award Rs. 15,000/-as against Rs. 10,000/-awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 5,000/-towards funeral expenses. Hence, the amount awarded under this head is excessive and it would be reasonable to award Rs. 4,000/-as against Rs. 5,000/-awarded by the Tribunal. The Tribunal has not awarded any amount under the heads of medical and transport expenses. Immediately, after the accident the deceased was admitted in Namakkal C.M. Hospital. Ex.P.3 series are the medical bills. It was the actual expenditure incurred by the claimant. Hence, I feel that it would be reasonable to award Rs. 5,000/-under the head of medical expenses and also to award Rs. 5,000/-under the head of transport expenses. The Tribunal has awarded interest at the rate of 7.5% p.a. from the date of petition till the date of realisation. The accident occurred on 29.10.2008. Keeping in view the prevailing rate of interest at the time of the accident and the date of award, I feel that the rate of 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 to the claimant Rs. 5,76,000/- Funeral expenses Rs. 4,000/- Loss of consortium Rs. 15,000/- Medical expenses Rs. 5,000/- Transport expenses Rs. 5,000/- ---------------------- Total... Rs. 6,05,000/- ----------------------

Therefore, the first Respondent/claimant is entitled to the modified compensation of Rs. 6,05,000/-with interest at 7.5% per annum from the date of petition as against the compensation of Rs. 6,55,000/ awarded by the Tribunal.

10. In these circumstances, the Appellant-Insurance Company is directed to deposit the compensation amount of Rs. 6,05,000/-with interest at the rate of 7.5% per annum, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the amount of Rs. 6,05,000/-with interest at 7.5% per annum from the date of petition, after adjusting the amount, if any, already withdrawn on making proper application.

11. In view of the above, the Civil Miscellaneous Appeal is disposed. No costs. Consequently, connected Miscellaneous Petition is closed.

 