courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(2010) 07 MAD CK 0072

In the Madras High Court

Case No : C.M.A. No. 2808 of 2004

The Manager, New India Assurance Co. Ltd. — APPELLANT

Vs

Mrs. Glary Franklin and Others — RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Citation : (2010) 07 MAD CK 0072

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

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; David Thangaraj, for RR1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the appellant-Insurance Company against the award dated 31.07.2003 made in

MACTOP No. 3679 of 1996 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai.

2. Background facts in a nutshell are as follows:

The deceased Franklin met with motor vehicle accident that took place on 22.06.1996 at about 3.00 p.m. The said deceased was travelling in a

motor car bearing Regn. No. TMR 4854. While the car was nearing Medavakkam Road, a lorry bearing Regn. No. TN21X 2592 driven by the

driver, who is the fifth respondent in a rash and negligent manner and hit the car and caused the accident. Due to the same, the deceased sustained

multiple grievous injuries. Immediately, he was admitted in Tamil Nadu Hospital and took treatment from 22.06.1996 to 29.07.1996 and

thereafter, he was discharged. On 30.08.1996, the deceased died. The claimants are wife, son and daughter of the deceased. They claimed a sum

of Rs. 8,25,000/- as compensation. The said lorry was insured with the appellant-Insurance Company, who resisted the claim. On pleadings the

Tribunal framed the following issues:

1 Whether the accident happened due to the rash and negligent driving of the driver of the lorry?

2. Whether the petitioners are entitled for compensation as prayed for?

3. 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 lorry and awarded a compensation of Rs. 3,40,825/- with interest at 9% per annum from the date of petition and the details of the

same are as under:

Pecuniary Loss Rs. 80,000/-

Medical Expenses Rs. 2,36,325/-

Transport Charges Rs. 15,000/-

Loss of consortium Rs. 5,000/-

Loss of estate Rs. 2,500/-

Funeral expenses Rs. 2,000/-

Total Rs. 3,40,825/-

Aggrieved by that award, the appellant/Insurance Company has filed the present appeal.

4. The learned Counsel appearing for the appellant/Insurance Company vehemently contended that death of the deceased is not due to the injury

sustained in the accident and also he died only in his residence. Further, the learned Counsel for the appellant contended that the amount awarded

by the Tribunal is excessive, exorbitant and also without basis and justification and 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 has 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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-manager-new-india-assurance-c...

accordance with law and the same has to be confirmed.

6. Heard the learned Counsel and perused the materials available on record. On the side of the claimants, P.W.1 to P.W.3 were examined and

Ex.P1 to P28 were marked. P.W.2 is the wife of the deceased. P.W.3 is Dr. Saichandran. Ex.P19 is the Hospital Settlement report for the

deceased. Ex.P20 is the Death Certificate. Ex.P21 is the Medical Bills for the deceased. Ex.P22 is the Discharge summary of the deceased

Franklin. Ex.P23 is the case summary of deceased Franklin. Ex.P24 is the Travel bills for the deceased Franklin. Ex.P25 is the Death Certificate.

Ex.P26 is the copy of pension book. On the side of Insurance Company, no one was examined and no document was marked to substantiate their

claim. The deceased died in the road accident. Exs.P22 and P23 are the discharge summary and case summary of the deceased Franklin.

Immediately, after the accident, the deceased was admitted in the Tamil Nadu Hospital on 22.06.1996 and it was diagnosed that he was having

compression fracture as follows: 1. D3 D4 with paraplegia 2. contusion of right lung with hemothorax 3. fracture of left 2nd rib and 4. laceration on

the left forearm. Due to the above injury, the injured was unable to move his lower limbs. He undergone surgery on 22.06.1996 and discharged on

29.07.1996. Ex.P23 is the case summary, in which, it is stated that the injured was in critical position for nearly one month after the accident due to

the respiratory failure and after the discharge, the deceased was given treatment at his home. Further, he deposed that the deceased was

completely paralysed from the mid-chest downwards and also having severe infections of the bladder and he was also having many bed sores.

Later, he developed severe bronchitis, which resulted in the paralysis of the respiratory muscles and he died of respiratory failure on 30.08.1996.

Ex.P25 is the death certificate which proves the death of the deceased. After considering the above oral and documentary evidence, the Tribunal

had given a categorical finding that the deceased died due to the injuries sustained in the accident. Therefore, the finding is based on valid materials

and evidence and 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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-manager-new-india-assurance-c…

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.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-manager-new-india-assurance-c...

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 ï¿½ virtually adopting a multiplier of 45 ï¿½ 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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-manager-new-india-assurance-c...

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 1, M.N. Venkatachaliah, J. (as His Lordship then was) had observed that: (SCCp.181, para 5)

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-manager-new-india-assurance-c…

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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-manager-new-india-assurance-c...

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 age of the deceased was 58 years. Ex.P26 - copy of the Pension Book proves the age of the deceased. Hence,

the Tribunal fixed the age of the deceased at 58 years. He was a retired Chief Engineer, PWD., Government of Tamil Nadu and it was claimed

that subsequent to his retirement, he was earning a sum of Rs. 10,000/- by way of consultation. But no proof has been produced to prove the

same. Therefore, the Tribunal has fixed the annual income at Rs. 15,000/- per year and out of the said amount, it had deducted 1/3 of Rs. 5,000/-

towards personal expenses and the balance sum of Rs. 10,000/- was taken as the annual contribution to the family of the deceased. After taking

into consideration, the age of the deceased was 58 years, the Tribunal has adopted the multiplier of ''8'' and arrived at the loss of income at Rs.

80,000/- (Rs. 10,000 x 8). Considering the oral and documentary evidence, I am of the view that the Tribunal is correct in fixing the monthly as

well as annual income and applied the correct multiplier of 8. Accordingly, the amount awarded towards loss of income is very reasonable and the

same is confirmed. The Tribunal further awarded a sum of Rs. 2,36,325/-

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-manager-new-india-assurance-c...

towards Medical expenses. Ex.P21 is the series of Medical Bills. It is an actual expenditure incurred by the claimants during his treatment in the Tamil Nadu Hospital and also treatment at his residence. Therefore, the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 15,000/- towards transport charges. Taking into consideration the fact that the deceased took treatment in the hospital and discharged, the amount awarded by the Tribunal under this head is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/- towards loss of consortium, which is reasonable and the same is confirmed. Further, the Tribunal awarded a sum of Rs. 2,500/- towards loss of estate and Rs. 2,000/-towards Funeral Expenses, which are also very reasonable and the same are confirmed. The Tribunal has awarded interest at 9% p.a. The accident occurred on 22.06.1996. Considering the prevailing rate of interest during that period, the interest awarded by the Tribunal is very reasonable and the same is confirmed. The finding is based on valid materials and evidence. There is no error or illegality in the order of the Tribunal so as to warrant interference by this Court. It is a question of fact. It is not a perverse order. Therefore, the award passed by the Tribunal is in accordance with law and the same is confirmed.

10. It is stated by the learned Counsel appearing for the appellant-Transport Corporation that the entire award amount has already been deposited by the order of this Court dated 13.10.2004 and the claimant was also withdrawn 50% of the award amount. Under these circumstances, the claimant is permitted to withdraw the balance amount, less the amount already withdrawn, on making proper application. The Appeal is devoid of merits and accordingly dismissed. No costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-manager-new-india-assurance-c…