(2011) 03 MAD CK 0146

In the Madras High Court

Case No : C.M.A. No. 524 of 2011 and M.P. No. 1 of 2011

The Managing Director, Tamil Nadu State Transport Corporation Ltd.	APPELLANT
Vs	
Nagamalli, Raghupathi, Marimuthu and Chinnan	RESPONDENT

Date of Decision : 02-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0146

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

Bench : Single Bench

Advocate : V. Ramesh, for the Appellant; R. Jaya Prakash, for the Respondent

Final Decision : Dismissed

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-Transport Corporation against the judgment and decree dated 17.12.2009 made in M.C.O.P. No.

150 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

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

On 03.12.2008, at about 02.00 p.m., the deceased Sivasami met with motor vehicle accident. While he was walking near Namakkal Bus Stand,

the Appellant-Transport Corporation bus, bearing Registration No. TN-30-N-0249, was driven by its driver in a rash and negligent manner and

hit against the deceased. Due to the said impact, the deceased sustained fatal injuries. Immediately, after the accident, he was taken to C.M.

Hospital, Namakkal where he died. The claimants are the wife, sons and father of the deceased. They claimed a sum of Rs. 10,00,000/- as

compensation before the Tribunal. The Appellant-Transport Corporation resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred only due to rash and negligent driving of the bus bearing Registration No. TN-30-N-0249 at Namakkal Bus

Stand at the place of accident in question?

2. Whether the Appellant-Transport Corporation is liable to pay the compensation to the Respondents?

3. How much amount of compensation the Petitioners in M.C.O.P. No. 150/2009 are entitled?

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 bus and awarded a compensation of Rs. 5,37,000/- 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 family Rs. 4,80,000/-

Funeral expenses Rs. 5,000/-

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

Loss of consortium Rs. 10,000/-

Medical Bills Rs. 12,000/

Total Rs. 5,17,000/

4. Learned Counsel appearing for the Appellant-Transport Corporation 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 Appellant-Transport Corporation is not liable to pay compensation since the deceased himself caused the accident. 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 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 learned Counsel on either side and perused the materials available on record. On the side of the claimants P. Ws.1 and 2 were

examined and documents Exs.P.1 to P.6 were marked. On the side of the Respondents, Saravanan driver of the bus was examined as R.W.1 and

Ex.R1 - certified copy of F.I.R closed order was marked. P.W.1 is the wife of the deceased. P.W.2-Rajagopal is an eye witness to the accident.

Ex.P.1 is the xerox copy of First Information Report. Ex.P.2 is the xerox copy of Post mortem Certificate. Ex.P.3 is the death certificate (original).

Ex.P.4 is the Legal heir ship certificate (original). Ex.P.5 is the Medical Bills. Ex.P.6 is the discharge summary. 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 bus. 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 selfmaintenance 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 wellestablished. 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 onefourth 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. Veluswami4, 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 13 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 Sivasami was aged about 40 years. In Ex.P2, copy of Post mortem Certificate also, it is mentioned

that at the time of accident, the deceased was 40 years old. Therefore, the Tribunal had fixed the age of the deceased as 40 years at the time of

accident. In the evidence of P.W.1, it is stated that the deceased was working as Coolie and was earning a sum of Rs. 4,000/- per month.

Considering the above evidence, the Tribunal was of the view that even a coolie worker can earn not less than Rs. 4,000/- per month, fixed the

income of the deceased at Rs. 4,000/- per month and determined the annual income at Rs. 48,000/- (Rs. 4,000/- x 12). The tribunal, after taking

into consideration, Schedule II of the Motor Vehicles Act,1988 adopted multiplier of ''15'' and arrived at a loss of income at Rs. 7,20,000/- (Rs.

48,000/- x 15 = Rs. 7,20,000/-). Out of the said sum, 1/3rd was deducted towards personal expenses i.e. Rs. 2,40,000/- (Rs. 7,20,000/- x 1/3)

and the balance amount of Rs. 4,80,000/- (Rs. 7,20,000/- - Rs. 2,40,000/-) was taken as loss of income. Therefore, the Tribunal awarded a sum

of Rs. 4,80,000/- towards loss of income to the family. There is no dispute regarding the monthly income, age of the deceased and 1/3rd

deduction towards his personal expenses. Therefore, the Tribunal is correct in determining the loss of income, which is very reasonable and the

same is confirmed. The Tribunal has awarded Rs. 5,000/- towards funeral expenses. Hence, the amount awarded under this head is very

reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 10,000/- towards loss of love and affection. The children lost their

father and the father lost his son. Hence, the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has

awarded a sum of Rs. 10,000/- towards loss of consortium. After considering the age of the widow, i.e. 38 years, the amount awarded under this

head is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 12,000/- towards medical bills. Immediately, after the

accident, the deceased was admitted in C.M. Hospital, Namakkal. Ex.P.5 series is the medical bills produced by the claimants before the Tribunal.

It is an actual expenditure incurred by the claimants. Hence, the amount awarded under this head is very reasonable and the same is confirmed.

The Tribunal has awarded interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. The accident occurred on 03.12.2008. 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 finding given by the Tribunal is based on valid materials and evidence

and I do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. It is not a fit case for admission and the

award passed by the Tribunal is in accordance with law and the same is confirmed. Accordingly the Civil Miscellaneous Appeal is dismissed. No

costs. Consequently, connected Miscellaneous Petition is closed.

10. The Appellant-Transport Corporation is directed to deposit the compensation amount of Rs. 5,17,000/- with interest at the rate of 7.5% per

annum, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this order. It is represented

by the learned Counsel appearing for the Respondents/claimants that the third Respondent/claimant has now become major. In these

circumstances, the claimants are permitted to withdraw their respective shares in the award of Rs. 5,17,000/- with interest at the rate of 7.5% per

annum from the date of claim petition as apportioned by the Tribunal, after adjusting the amount, if any, already withdrawn on making proper

application.