

(2010) 03 MAD CK 0163
In the Madras High Court
Case No : C.M.A. No. 2033 of 2005

The Managing Director, Tamil Nadu State Transport
Corporation Ltd. Division II

APPELLANT

Vs

Naimaa and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 304(A)

Citation : (2010) 03 MAD CK 0163

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

Bench : Single Bench

Advocate : P. Jagadeeswaran, for the Appellant; S. Meena Kumari, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the appellant-Transport Corporation against the award dated 10.12.2004 made in MCOP No. 1015 of 2003 by the Motor Accident Claims Tribunal (Sub Court), Krishnagiri.

2. Background facts in a nutshell are as follows:

The deceased K. Nawab met with a motor vehicle accident that took place on 21.08.2001 at about 11.00 a.m. While the deceased was proceeding in his motor cycle TVS50 bearing registration No. CMJ 3743 from Kandili towards Tirupattur, the bus bearing registration No. TN-29-N-0807 belonging to the appellant-Transport Corporation, which came from opposite direction, driven by its driver in a rash and negligent manner dashed against the motor cycle, due to which, the deceased died on the spot. The claimants are wife and three minor children of the deceased. They claimed a sum of Rs. 30,36,250/- as compensation, but restricted their claim to Rs. 10,00,000/- before the Tribunal. The appellant-Transport Corporation has resisted their claim. On pleadings the Tribunal framed the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of

the driver of the appellant-Transport Corporation or not?

2. Whether the claimants are entitled to any claim? If so, how much?" 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 appellant-Transport Corporation and awarded a compensation of Rs. 2,29,000/- with interest at 9% per annum from the date of petition and the details of the same are as under:

Loss of income - Rs. 1,44,000/- Funeral expenses - Rs. 5,000/- Damages caused to TVS50 - Rs. 5,000/- Transport charges - Rs. 5,000/- Loss of consortium - Rs. 25,000/- Loss of love and affection - Rs. 20,000/- Loss of expectation of life - Rs. 25,000/- Total Rs. 2,29,000/-

Aggrieved by that award, the appellant-Transport Corporation has filed the present appeal.

3. The learned Counsel appearing for the appellant-Transport Corporation questioned only quantum of compensation awarded by the Tribunal and contended that the amount awarded by the Tribunal is excessive, exorbitant, without basis and justification and that therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. The learned Counsel appearing for the respondents 1 to 4/ claimants submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the correct conclusion and awarded a just, fair and reasonable compensation. Hence the order passed by the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the learned Counsel appearing on either side and perused the materials available on record. On the side of the claimants, PWs.1 and 2 were examined and Exs.P1 and P2 were marked. On the side of the appellant-Transport Corporation one witness was examined and no documents was filed to substantiate their claim. PW1- Naimaa is the wife of the deceased. P.W.2 "one Durai is the eye witness to the occurrence. Ex.P1 is the xerox copy of the First Information Report. Ex.P2 is the xerox copy of post mortem Report. 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 appellant-Transport Corporation and the finding is based on valid materials and evidence.

6. In the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Apex Court has considered the relevant factors to be taken into consideration before awarding compensation and held as follows:

10. 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 Railway Co. Ltd.* (1951) AC 601 and some adopting the Davies method enunciated in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) AC 601.

11. 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.

12. 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.

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 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.

10. 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 there from 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.

13. 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.

16. 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 there from 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 there from 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.

13. 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:

16. 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.

15. ...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 there from 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.

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. 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.

8. At the time of accident, the deceased-Nawab was aged about 27 years. He was running a provisional store in the village and also took lease of mango grooves and tamarind trees during season. P.W.1, who is the wife of the deceased, has deposed that at the time of accident, the deceased was earning Rs. 5,500/- per month. PW2, who is an eye witness to the occurrence deposed that the accident had occurred only due to the rash and negligent driving of the driver of the appellant-Transport Corporation and a case has been registered in Crime No. 486 of 2001 of Kandili Police Station u/s 304A IPC. Though PW1-the wife of the deceased deposed that the deceased was earning Rs. 5,500/- per month, no document has been produced to substantiate her claim. However, the Tribunal has fixed the monthly income of the deceased at Rs. 1,000/- per month and the annual income at Rs. 12,000/- (Rs. 1,000/- x 12). In this appeal, the claimants are wife and three minor children of the deceased. After taking into consideration the age of the deceased, the Tribunal adopted the multiplier of 18 and arrived at a sum of Rs. 2,16,000/- (Rs. 12,000 X 18) towards loss of income. There is no dispute regarding the said amount. Out of the said amount, the Tribunal has deducted 1/3rd towards personal expenses of deceased and determined the loss of income at Rs. 1,44,000/-. The learned Counsel appearing for the respondents 1 to 4 vehemently contended that the Tribunal awarded only a sum Rs. 1,44,000/- and the Tribunal ought to have considered that the deceased would not have spent 1/3 of the amount towards personal expenses and the Tribunal is wrong in deducting 1/3 towards personal expenses of the deceased. In the present case, the claimants are wife and three minor children. Therefore, the deceased would not have spent 1/3 towards personal expenses and the reasonable amount to be deducted towards personal expenses is 1/4 and

not 1/3. The Supreme Court in *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.* (cited supra) taken the view that the deduction towards personal expenses depends upon the number of members in the family and in para 49, held as follows:

49. As an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Therefore we are of the view that interest of justice would be met if one-fifth is deducted as the personal and living expenses of the deceased. After such deduction, the contribution to the family (dependants) is determined as Rs. 57,658 per annum. The multiplier will be 15 having regard to the age of the deceased at the time of death (38 years). Therefore the total loss of dependency would be Rs. 57,658 X 15 = Rs. 8,64,870.

After considering the principles enunciated in the above said judgment and also considering the family members of the deceased, it would be reasonable to deduct 1/4 as against 1/3 deducted by the Tribunal. In respect of the monthly salary of Rs. 1,000/-, there is no dispute. If 1/4th sum of Rs. 250/- is deducted from Rs. 1,000/-, the monthly income works out to Rs. 750/- (Rs. 1000/- - 250/-) and the annual income works out to Rs. 9,000/-. The multiplier adopted in this case is 18. There is no dispute regarding the multiplier adopted by the Tribunal. Hence, the loss of income works out to Rs. 1,62,000/- (9,000 x 18) as against Rs. 1,44,000/- awarded by the Tribunal. In this case, though appeal is preferred by the appellant-State Transport Corporation, taking into consideration the claimants are wife and three minor children and in the interest of justice, it is reasonable to deduct only 1/4 towards personal expenses as against 1/3 deducted by the Tribunal. Further, the Tribunal has awarded a sum of Rs. 5,000/- towards funeral expenses which is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/- towards damages caused to TVS 50, which is also very reasonable and the same is also confirmed. The Tribunal has also awarded a sum of Rs. 25,000/- towards loss of consortium. Considering the age of the wife of the deceased, the amount awarded under this head is also very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 20,000/- towards loss of love and affection. Considering the age of the wife and minor children of the deceased, the amount awarded under this head is also reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/- towards transport charges, which is reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 25,000/- towards future expectation of life. The amount awarded under this head is also very reasonable and the same is confirmed. The Tribunal awarded interest at the rate of 9% per annum. The accident took place on 21.08.2001. Keeping in view the prevailing rate of interest, the interest awarded by the Tribunal is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of income Rs. 1,62,000/- Funeral expenses Rs. 5,000/- Damages to TVS 50

Rs. 5,000/- Loss of consortium Rs. 25,000/- Loss of love and affection Rs.
20,000/- Loss of future expectation Rs. 25,000/- Transport charges Rs. 5,000/-
----- Total Rs. 2,47,000/- Already awarded Rs. 2,29,000/-
----- Enhanced amount Rs. 18,000/- -----

Therefore, the claimants are entitled to the enhanced compensation of Rs. 18,000/- with interest at 7.5% from the date of petition.

9. It is represented that entire award amount had already been deposited by the appellant-Transport Corporation as per order dated 22.08.2005 and also the first respondent-wife was permitted to withdraw 50% of the award amount as apportioned by the Tribunal. In such circumstances, the appellant-Transport Corporation is directed to deposit the enhanced compensation of Rs. 18,000/- with interest at 7.5% from the date of petition within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent-wife is permitted to withdraw her share as apportioned by the Tribunal including the balance award amount of 50% awarded by the Tribunal, after adjusting the amount already withdrawn, on making proper application. In respect of respondents 2 to 4-minor claimants, it is seen that their shares had already been invested under reinvestment scheme till they attain majority. The said arrangement is directed to be continued and the shares of the minors in the enhanced compensation as apportioned by the Tribunal shall be deposited in the Fixed Deposit in the same Nationalised Bank for a period of three years and renewable thereafter, till they attain majority and the first respondent/mother is permitted to withdraw accrued interest thereon, once in three months directly from the bank.

10. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.