(2011) 02 MAD CK 0400

In the Madras High Court

Case No : C.M.A. No. 128 of 2011 and M.P. No. 1 of 2011

The Managing Director,Tamil Nadu State Transport Corporation APPELLANT

Vs

Vaijayanthimala and Vishal RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0400

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

Bench : Single Bench

Advocate : V. Rameshm, for the Appellant;

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The Civil Miscellaneous Appeal is filed by the Appellant-Transport Corporation against the Decree and judgment dated 25.06.2009 made in MCOP No. 195 of 2007 by the Motor Vehicle Accidents Claims Tribunal (Principal District Judge) Thiruvallur.

2. Background facts in a nutshell are as follows:

On 25.01.2007 at about 23.15 hours, the deceased Jayakumar met with motor vehicle accident. While the deceased was proceeding in his motor cycle bearing registration No. TN-22 v 7671 from Thiruvallur towards Poonamallee, a bus bearing registration No. TN-21-N-0475 belonging to the Appellant-Transport Corporation was driven by its driver in a rash and negligent manner and hit the deceased. Due to the said impact, the deceased was thrown away and sustained fatal injuries and died on the spot. The claimants are the wife, son and mother of the deceased They claimed a sum of Rs. 8,00,000/- as compensation. The Appellant-Transport Corporation resisted the claim. On pleadings, the following issues were framed by the Tribunal:

a) Whether the accident occurred due to the rash and negligent driving of the Respondent''s bus driver?

b) Whether the claimants are entitled to obtain compensation as claimed in the petition?

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. 4,88,000/- with interest at 7.5% p.a. from the date of petition. The details of the compensation are as under:

Loss of dependency Rs. 4,68,000/-

Loss of consortium Rs. 10,000/-

Funeral charges Rs. 10,000/-

Total. Rs. 4,88,000/-

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

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

4. 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. P1 to P8 were marked. On the side of the Respondents, no one was examined and no documents were marked to substantiate their claim. P.W. 1 is the wife of the deceased. P.Ws. 2 and 3 are the eye witnesses to the accident. Ex. P1 is the xerox copy of the first information report. Ex. P2 is the xerox copy of the Post Mortem certificate. Ex. P3 is the death certificate of Jayakumar. Ex. P4 is the xerox copy of charge sheet. Ex. P5 is the legal heir ship certificate. Ex. P6 is the driving licence. Ex. P7 is the authorisation letter of Manivannan. Ex. P8 is the salary certificate. After considering the above oral and documentary evidence, the Tribunal has 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 of the Tribunal is based on valid materials and evidence.

5. In the case of Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. (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 (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 (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)

6. 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 Thomas2, 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 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.

7. At the time of the accident, the deceased was aged about 30 years. Ex.P2 is the post mortem certificate, in which, the age of the deceased was mentioned as 30 years. Considering the same, the Tribunal has fixed the age of the deceased at 30 years at the time of the accident. PW1, the wife of the deceased, deposed in her evidence that the deceased was working as driver and was earning a sum of Rs. 6,000/- per month. Though PW1 deposed that the deceased was earning Rs. 6,000/- per month, no document has been filed to prove the same. Considering the facts and circumstances of the case, the Tribunal, following the decision of Apex Court reported in 2007(1) TNMAC 1, has fixed the monthly income of the deceased at Rs. 4,500/- and adopted the multiplier of ''13'' and determined the loss of income at Rs. 7,02,000/- (Rs. 4,500x 12 x 13). Out of the said amount, the Tribunal has deducted 1/3rd of Rs. 2,34,000/- towards personal expenses and the balance sum of Rs. 4,68,000/- was taken as the loss of income due to the death of the deceased. Taking into consideration the judgment cited supra and also the facts and circumstances of the case, I am of the view that the Tribunal has correctly fixed the monthly income of the deceased and adopted the correct multiplier of ''13'' and hence, a sum of Rs. 4,68,000/- awarded towards loss of income is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 5,000/- towards loss of consortium. Taking into consideration the age of the widow was 21 years at the time of the accident, 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. 10,000/- towards funeral expenses, which I feel is very reasonable and the same is confirmed. The Tribunal has awarded interest at 7.5% per annum from the date of petition. The accident occurred on 25.01.2007. Keeping in view the prevailing rate of interest during that period and the date of award, the rate of interest awarded by the Tribunal is very reasonable and the same is confirmed. Taking into consideration the total circumstances of the case, I am of the opinion that the amount awarded by Tribunal is based on valid materials and there is no error or illegality in the order of the Tribunal so as to warrant interference by this Court and it is not a fit case for admission. Therefore, the Civil Miscellaneous Appeal is liable to be dismissed and accordingly, it is dismissed. No costs. Consequently, MP No. 1 of 2011 is also dismissed.

8. The learned Counsel appearing for the Appellant-Transport Corporation is directed to deposit the entire award amount of Rs. 4,88,000/- with interest at 7.5% per annum from the date of petition within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited. The claimants viz., Respondents 1 and 3 herein are permitted to withdraw their respective shares as apportioned by the Tribunal, after adjusting the amount, if any, already withdrawn, on proper application. The share of the minor second Respondent is concerned, the Tribunal is directed to deposit the same in a fixed deposit in any one of the nationalised bank till he attains majority. The first claimant-mother of the minor is permitted to withdraw accrued interest thereon once in three months on making proper application.