(2010) 11 MAD CK 0107

In the Madras High Court

Case No : C.M.A. (MD) No''s. 917 and 918 of 2006

The New India Assurance Co. Ltd. APPELLANT

Vs

Aandiammal and Others RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, 304(A), 337, 338

Citation : (2010) 11 MAD CK 0107

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

Bench : Single Bench

Advocate : M. Ramaratnam, for the Appellant; P. Subbaraj, for the Respondent

Final Decision : Dismissed

Judgement

1. These appeals are preferred by the Insurance Company against the judgment and decree made in MCOP Nos. 710 and 110 of 2002 dated

09.02.2005 on the file of the Motor Accidents Claims Tribunal-cum-Additional District and Sessions Court (Fast Track Court), Dindigul. Both

these appeals arise out of a same accident and hence they are taken up together and being disposed of by a common judgment.

2. Background facts in a nutshell are as follows:

The deceased-Palanichamy in CMA No. 917 of 2006 (MCOP No. 710 of 2002) and the deceased-Palanichamy in CMA No. 918 of 2006

(MCOP No. 110 of 2002), met with motor traffic accident that took place on 18.06.2001 at about 5.00 p.m. Both the deceased went to

Karnataka and purchased cattle for the purpose of selling the same in Tamil Nadu, and brought the cattle in a lorry bearing Registration No. TN-

38-H-8937 belonging to the fifth Respondent in both the appeals. The said lorry was driven by its driver in a rash and negligent manner. When the lorry reached near Kuganapalli, the driver turned the lorry in a rash and negligent manner, due to which the lorry turned turtle. Due to the said

impact, both the deceased died and some of the cattle were also killed. The claimants in CMA 917 of 2006 claimed a sum of Rs. 5,00,000/-and

the claimants in CMA 918 of 2006 claimed a sum of Rs. 5,00,000/-before the Tribunal. 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 had occurred due to the rash and negligent driving of the driver of the lorry?

2. Whether the claimants are entitled to compensation? If so to what amount?

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 sum of Rs. 4,85,000/-as compensation in CMA No. 917 of 2006 (MCOP No. 710 of 2002) and a sum of

Rs. 5,00,000/-as compensation in CMA No. 918 of 2006 (MCOP No. 110 of 2002), with interest at 9% p.a. from the date of petition. The

details of the compensation are as under:

CMA No. 917 of 2006 (MCOP No. 710 of 2002):

Rupees

Loss of dependency 4,48,000/-

Funeral expenses 5,000/-

Loss of consortium 15,000/-

Mental agony 17,000/-

Total.... 4,85,000/-

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CMA No. 918 of 2006 (MCOP No. 110 of 2002):

Rupees

Loss of dependency 4,76,000/-

Funeral expenses 5,000/-

Loss of consortium 10,000/-

Mental agony 9,000/-

Total.... 5,00,000/-

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Aggrieved by that award, the Appellant / Insurance Company has filed the present appeals.

3. Learned Counsel for the Appellant / Insurance Company in both these appeals, questioned only the quantum of compensation awarded by the

Tribunal and submitted that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence the

order passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. In spite of notice served and the names of the Respondents were also printed in the cause-list, there is no representation on behalf of the

Respondents in CMA 917 of 2006. Learned Counsel for the Respondents 1 to 4 / claimants in CMA 918 of 2006, has submitted that the Tribunal

had considered all the materials and evidence available on record and awarded the compensation which is just, fair and reasonable and it is also

based on valid materials and evidence. Hence the order passed by the Tribunal is in accordance with law and the same has to be confirmed.

5. Heard the counsel on either side and perused the materials available on record. On the side of the claimants, P.W.1 to P.W.3 were examined

and documents Exs.P1 to P7 were marked. On the side of the Insurance Company, one Rameshbabu was examined as R.W.1 and document

Ex.R1 was marked. P.W.1 is the first Respondent in CMA 917 of 2006. P.W.2 is the first Respondent in CMA 918 of 2006. P.W.3 is one

Veerappan. Ex.P1 is the F.I.R. in Kannada Language. Ex.P2 is the translated version of F.I.R. in English Language. Ex.P3 is the copy of Post

Mortem Report of the deceased in CMA 917 of 2006. Ex.P4 is the Death Certificate of the deceased in CMA 917 of 2006. Ex.P5 is the Legal

Heirship Certificate in respect of CMA 917 of 2006. Ex.P6 is the copy of Post Mortem Report of the deceased in CMA 918 of 2006. Ex.P7 is

the Legal Heirship Certificate in respect of CMA 918 of 2006. Ex.R1 is the Insurance Policy. 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

lorry. The finding given by the Tribunal is based on valid materials and evidence, and it is a question of fact. Hence the same is confirmed.

6. 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 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

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 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. 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. The deceased was 37 years old at the time of accident. In the evidence of P.W.1, it is stated that the deceased was a cattle broker and he used

to buy cattle and sell the same. Further in her evidence it is stated that the deceased was earning a sum of Rs. 12,000/-per month. She further

stated that only the driver of the lorry caused the accident and the driver was also charge-sheeted by Muneerabagh Police Station in Crime No. 97

of 2001 under Sections 279, 337, 338 and 304A IPC. Ex.P3 is the Post Mortem Report of the deceased, in which it is stated that the age of the

deceased was 35 years old. Even though in Ex.P3-Post Mortem Report, it is stated that the deceased was 35 years old, in the claim petition, the

age of the deceased is stated as 37 years. Therefore, the Tribunal fixed the age of the deceased as 37 years at the time of accident. In respect of

the income of the deceased, since there is no concrete evidence available on record to prove that the deceased was earning Rs. 12,000/-per

month, the Tribunal fixed the monthly income at Rs. 3500/-and calculated the annual income at Rs. 42,000/-. Thereafter, the Tribunal deducted

1/3rd of the amount towards personal expenses of the deceased, i.e. Rs. 14,000/-and arrived at a sum of Rs. 28,000/-, adopted the multiplier of

16 and arrived at Rs. 4,48,000/-towards loss of dependency. The Tribunal has correctly fixed the age, monthly income and annual income and

also adopted the correct multiplier and arrived at Rs. 4,48,000/-towards loss of dependency. It is also very reasonable and hence the same is

confirmed. The amounts awarded by the Tribunal at Rs. 5000/-towards funeral expenses, Rs. 15,000/-towards loss of consortium and Rs.

17,000/-towards mental agony are very reasonable and hence they are confirmed. The Tribunal has awarded interest rate at 9% p.a., from the

date of petition. Taking into consideration the date of accident, date of award and also the prevailing rate of interest during the relevant time, the

rate of interest fixed by the Tribunal at 9% p.a. is very reasonable and hence the same is confirmed. I do not find any error or illegality in the order

of the Tribunal so as to warrant interference. The order of the Tribunal is based on valid materials and evidence. It is a question of fact and it is not

a perverse order. Therefore, the award passed by the Tribunal is in accordance with law and hence the same is confirmed. The Civil Miscellaneous

Appeal is devoid of merits and accordingly the same is dismissed. Consequently, M.P.(MD) No. 1 of 2006 is closed. No costs.

9. It is stated that the Insurance Company has already deposited the entire compensation awarded by the Tribunal and the claimants were also

permitted to withdraw 50% from the deposited amount by order of this Court dated 23.08.2006. Under the circumstances, since the claimant is

entitled to the compensation of Rs. 4,85,000/-with interest at 9% p.a. from the date of petition, as awarded by the Tribunal, the claimants are

permitted to withdraw the balance amount lying in the deposit on making proper application.

10. The deceased was 35 years old at the time of accident. In the evidence of P.W.2, it is stated that the deceased was a cattle broker and he

used to buy cattle and sell the same. Further in her evidence it is stated that the deceased was earning a sum of Rs. 20,000/-per month. She further stated that only the driver of the lorry caused the accident and the driver was also charge-sheeted by Muneerabagh Police Station in Crime No. 97

of 2001 under Sections 279, 337, 338 and 304(A) IPC. Ex.P6 is the Post Mortem Report of the deceased, in which it is stated that the age of the

deceased was 35 years old. Therefore, the Tribunal fixed the age of the deceased as 35 years old at the time of accident. In respect of the income

of the deceased, since there is no concrete evidence available on record to prove that the deceased was earning Rs. 20,000/-per month, the

Tribunal fixed the monthly income at Rs. 3500/-and calculated the annual income at Rs. 42,000/-. Thereafter, the Tribunal deducted 1/3rd of the

amount towards personal expenses of the deceased, i.e. Rs. 14,000/-and arrived at a sum of Rs. 28,000/-, adopted the multiplier of 17 and

arrived at Rs. 4,76,000/-towards loss of dependency. The Tribunal has correctly fixed the age, monthly income and annual income and also

adopted the correct multiplier and arrived at Rs. 4,76,000/-towards loss of dependency. It is also very reasonable and hence the same is

confirmed. The amounts awarded by the Tribunal at Rs. 5000/-towards funeral expenses, Rs. 10,000/-towards loss of consortium and Rs.

9,000/-towards mental agony are very reasonable and hence they are confirmed. The Tribunal has awarded interest rate at 9% p.a., from the date

of petition. Taking into consideration the date of accident, date of award and also the prevailing rate of interest during the relevant time, the rate of

interest fixed by the Tribunal at 9% p.a. is very reasonable and hence the same is confirmed. I do not find any error or illegality in the order of the

Tribunal so as to warrant interference. The order of the Tribunal is based on valid materials and evidence. It is a question of fact and it is not a

perverse order. Therefore, the award passed by the Tribunal is in accordance with law and hence the same is confirmed. The Civil Miscellaneous

Appeal is devoid of merits and accordingly the same is dismissed. No costs.

11. It is stated that the Insurance Company has already deposited the entire compensation awarded by the Tribunal by order of this Court dated

23.08.2006. Under the circumstances, the the major claimants are permitted to withdraw their respective shares, from the deposit, on making

proper application. In respect of the share of the minor, the second Respondent, his share shall be deposited in a fixed deposit in a Nationalised

Bank till the minor attains majority. The first Respondent, who is the mother of the minor, is permitted to withdraw the accrued interest from the

bank, once in three months, on making proper application.

