(2011) 02 MAD CK 0445

In the Madras High Court

Case No : C.M.A. No. 472 of 2011 and M.P. No. 1 of 2011

The New India Assurance Co. Ltd. — APPELLANT

Vs

Saraswathi Sharma, Seetha Sharma, 2nd respondent rep. by his mother and next friend 1st Respondent and S. Vijaya — RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0445

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

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; N.M. Muthurajan, for R1 and R2, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Appellant-Insurance Company, against the judgment and decree dated 20.07.2010 made in MCOP No. 1330 of 2007 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. The learned Counsel for the Respondents/claimants vehemently opposed the admission and hence by consent of both parties, the appeal was taken up for final hearing at the admission stage itself.

3. Background facts in a nutshell are as follows:

The deceased one Raju Sharma met with a motor traffic accident on 28.01.2007 at about 19.00 hours. The said deceased was riding his bicycle from his apartment to nearby shop along Old Mahabalipuram Road, South to North direction. While he was proceeding opposite to Avin Tele Company, at that time, a van bearing Regn. No. TN-07-U-3197 came in a rash and negligent manner and hit the cyclist. Due to the impact, the deceased sustained fatal injury and he died on the spot. The claimants are wife and minor daughters of the deceased and they claimed a compensation of Rs. 12,00,000/- . The said van was insured with the Appellant-Insurance Company, who resisted the claim. On pleadings the

Tribunal framed the following issues:

1. Whether the accident had happened due to the rash and negligent driving of the driver of the Van TN-07-U-3197?

2. Whether the Respondents are liable to pay the compensation?

3. To what relief the Petitioners are entitled to?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to rash and negligent driving of the driver of the van and awarded compensation of Rs. 7,18,000/- with interest at 7.5; per annum from the date of petition and the details of the same are as under:

Loss of Income

Rs.6,48,000/-

Loss of consortium

Rs. 25,000/-

Funeral Expenses

Rs. 5,000/-

Loss of love and affection

Rs. 40,000/-

Rs. 7,18,000/-

Aggrieved by that award, the Appellant-Insurance Company has filed the present appeal.

4. The learned Counsel appearing for the Appellant-Insurance Company, questioned only the quantum of compensation and vehemently contended that the compensation awarded by the Tribunal is excessive, exorbitant, without basis and justification. 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 had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. It is a question of fact. It is not a perverse order. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the counsel and perused the document on record. On the side of the claimants/Respondents, P. Ws.1 and 2 were examined and documents Exs.P1 to P6 were marked. Wife of the deceased was examined as P.W.1. One Mr. B. Kesav Prasath Sharma, the eye witness to the accident was examined as P.W.2. Ex.P1, is the copy of the FIR. Ex.P2, is the postmortem certificate. Ex.P3, is the death certificate, Ex.P4, is the legal heir certificate. Ex.P5, is the School Character /

Transfer Certificate of Deceased. Ex.P6, School Character / Transfer Certificate of 1st Petitioner. On the side of the Appellant-Insurance Company, R. Ws.1 and 2 were examined and documents Exs.R1 to R3 were marked. One Mr. M. Kasali Nagimudeen, Inspector of the Insurance Company was examined as RW1. RW2, is the officer from RTO. Ex.R1, is the extract of driving license. Ex.R2, is the Authorization letter and Ex.R3, is the policy. After considering the oral and documentary evidence, the Tribunal has given a categorical finding that the accident has occurred due to rash and negligent driving of the driver of the van. It is a question of fact and based on valid materials and evidences and so the same is confirmed.

7. The Tribunal has also given a finding that the driver of the van does not possess valid driving license to drive the vehicle. Therefore the Insurance company is not liable to pay compensation as it is only a breach of condition and therefore, the Tribunal has directed the insurance company to pay the amount to the claimants and recover the same by filing execution petition against the owner of the vehicle in accordance with law. This finding given by the Tribunal is in conformity with the law pronounced in the Division bench judgment of this Court in Bajaj Allianz General Insurance Company Ltd., Pune v. P. Manimozhi and 4 Ors. reported in 2010 (2) TN MAC 542, wherein it is held that Insurance-Company should be directed to make payment with liberty to recover the same. So, the order of the Tribunal in respect of pay and recovery is also confirmed.

8. 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 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 capitalized 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 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.

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 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

(emphasis supplied)

9. 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 neighbors 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, who 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 capitalizing 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.

10. At the time of the accident, the deceased was 27 years old. To prove the age of the deceased, the claimants filed Ex.P2, postmortem certificate and Ex.P5, School Transfer certificate of the deceased, wherein, the date of birth of the deceased is stated as 10.12.1980. Therefore, the tribunal fixed the age of the deceased at 27 years at the time of the accident and adopted multiplier ''18'', as per the schedule. In respect of the income of the deceased, PW1 the wife of the deceased has stated in her evidence that the deceased was a security in Studio One Apartment, Chennai and earning Rs. 5,000/- per month. But there is no documentary evidence to show that he is earning Rs. 5,000/- per month Therefore, the Tribunal has taken the monthly notional income of the deceased at Rs. 4,500/- and out of the said sum, 1/3 was deducted towards personal expenses and the Tribunal has taken Rs. 3,000/- as monthly contribution to the family. The loss of income works out to Rs. 6,48,000/- (Rs. 3,000/- x 12 x 18). The counsel for the Appellant-Insurance Company vehemently contended that as per Sarla Varma''s case, for the age group between 26 to 30 years, the correct multiplier to be adopted is ''17''. So following Sarla Varma''s case (cited supra), the multiplier to be adopted in the present case is ''17''. Therefore, the loss of income is computed as follows:

Rs.3,000/- x 12 x 17 = Rs. 6,12,000/-

Therefore, a sum of Rs. 6,12,000/- is awarded as against Rs. 6,48,000/- , awarded by the Tribunal under the head loss of income. The tribunal has also awarded a sum of Rs. 5,000/- towards funeral expenses. After considering the facts and circumstances of the case, the amount awarded towards funeral expenses is very reasonable and the same is confirmed. The Tribunal has awarded a sum of Rs. 25,000/- towards loss of consortium. The age of the widow is 23 years, at the time of the accident. Therefore, after considering the age of the widow, the award of Rs. 25,000/- towards loss of consortium, is also very reasonable and the same is confirmed. The tribunal has also awarded a sum of Rs. 40,000/- towards loss of love and affection to the minor daughter and mother of the deceased. The minor daughter was 2 years old at the time of the accident and after considering the same, the tribunal has awarded a sum of Rs. 40,000/- towards loss of love and affection and it is very reasonable and the same is confirmed. The Tribunal has awarded interest at the rate of 7.5% per annum. After taking into consideration the date of accident, date of award and also the prevailing rate of interest during that period, the interest awarded by the Tribunal is very reasonable and the same is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of Income

Rs.6,12,000/-

Loss of consortium

Rs. 25,000/-

Funeral Expenses

Rs. 5,000/-

Loss of love and affection

Rs. 40,000/-

Rs. 6,82,000/-

Therefore, the claimants are entitled to the modified compensation of Rs. 6,82,000/- with interest at 7.5% from the date of petition as against Rs. 7,18,000/- awarded by the Tribunal.

11. In this case as there is breach of insurance policy, the Tribunal has directed the Insurance Company to pay and recover the same from the owner of the vehicle, the 4th Respondent. Under these circumstances, the Appellant-Insurance Company is directed to deposit the modified compensation of Rs. 6,82,000/- with interest at the rate of 7.5% per annum, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On deposit of the same, the wife and the mother of the deceased are permitted to withdraw their share less the amount already withdrawn, on making proper application. In respect of the share of the minor daughter of the deceased, the amount shall continue to be deposited in fixed deposit in any one of the nationalized bank, which offers high rate of interest, till she attains majority and the mother of the minor child is permitted to withdraw the accrued interest once in three months on making proper application. It is also made clear that the Appellant-Insurance Company is at liberty is to proceed against the owner of the vehicle i.e., S. Vijaya, the 4th Respondent, by initiating execution petition for recovery of the same in accordance with law.

12. With the above directions, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently the connected Miscellaneous Petition is closed.