(2011) 03 MAD CK 0492

In the Madras High Court

Case No : C.M.A. No. 578 of 2011 and M.P. No. 1 of 2011

The New India Assurance Co. Ltd. APPELLANT

Vs

Vijayalakshmi and Others RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0492

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

Bench : Single Bench

Advocate : M. Krishnamoorthy, for the Appellant; C. Ananda Raman, for Respondents 1 to 4/Caveators, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—When the matter came up for admission, the same was opposed by the learned Counsel appearing for caveators and by consent, the matter was taken up for final disposal.

2. The appeal is preferred by the Appellant-Assurance Company against the order dated 24.02.2010 made in MCOP. No. 80 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Tiruppur.

3. Background facts in a nutshell are as follows:

The deceased Thangaraj met with a Motor Traffic Accident on 23.06.2005 at about 23.00 hours. The said deceased Thangaraj parked his motor cycle bearing registration No. TN-37-J-7609 on eastern side of the mud road near Koppanguttai, Sengaduri. At that time, another Yamaha Libero Motor Cycle bearing registration number TN-39-AC-5978 came in a rash and negligent manner and also with high speed hit the motor cycle parked by Thangaraj and also came forward and dashed against Thangaraj also. Due to the same, the deceased sustained fatal injury and immediately he was taken to the CMC Hospital, Coimbatore and on the way to hospital, he died. The claimants are wife, son and parents of the deceased and they claimed compensation of Rs. 20,00,000/- . The offending two wheeler -Yamaha Libero Motor Cycle bearing registration number TN-39-AC-5978 was insured with the Appellant-Assurance Company, who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Who is responsible for the accident ?

2. Whether the Petitioners are entitled to any compensation and if so, what is the quantum of amount payable to them and by whom ?

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 Yamaha two wheeler-offending motor cycle and awarded a compensation of Rs. 14,42,409/- (rounded to Rs. 14,42,400/-) with interest at 7.5% per annum from the date of the claim petition and the details of the same are as under:

Loss of income to the family

Rs.13,84,409/-

Transport

Rs. 3,000/-

Funeral expenses

Rs. 5,000/-

Loss of love and affection for son

Rs. 25,000/-

Loss of consortium

Rs. 25,000/-

Total

Rs.14,42,409/-

(rounded to Rs. 14,42,400/-)

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

4. The learned Counsel appearing for the Appellant/Assurance Company 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 Tribunal has fixed the annual income of the deceased at Rs. 1,59,739/- which is on the higher side and also without basis and justification. Moreover, the interest awarded at the rate of 7.5% per annum is also on the higher side and 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 Respondents1 to 4 / 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 based on valid materials and it is on the question of fact and 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 learned Counsel and perused the materials available on record. On the side of the claimants, P Ws.1 to PW.3 was examined and documents Exs.P1 to P14 were marked. On the side of the Respondents, no one was examined and no document was marked to substantiate their claim. PW1 is the wife of the deceased Thangaraj. PW2 S.M. Ramasamy is the eyewitness to the accident. PW.3 is the co-employee of the deceased. Ex.P1 is the certified copy of the First Information Report. Ex.P2 is the Postmortem certificate. Ex.P3 is the Inquest Report. Ex.P4 is the Observation Mahazar. Ex.P5 is rough sketch. Ex.P6is the copy of the report of Motor Vehicle Inspector. Ex.P7 is the death certificate of Thangaraj. Ex.P8 is the copy of legal heir certificate. Ex.P9 is the Identification card. Ex.P10 is the salary certificate. Ex.P11 is the PAN card of deceased Thangaraj. Ex.P12is the Registration Certificate in respect of Friends Cable System. Ex.P13 is Saral Form. Ex.P14 is Authorization letter. After considering the above or a land 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 Yamaha two wheeler bearing registration number TN-39-AC-5978 and the finding is based on valid materials and evidence. It is a question of fact and the same is confirmed.

7. In the case of Sarla Verma and Ors. v. Delhi Assurance Company and Anr. reported in (2009) 4 MLJ 997, the Apex Court has considered there Levant 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 Assurance Company 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 Assurance Company 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 ate 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 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. 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, 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.

9. The age of the deceased Thangaraj was 45years, at the time of the accident. Ex.P2 is the Postmortem certificate, in which also it is mentioned that the age of the deceased was 45 years. Therefore, the Tribunal fixed the age of the deceased as 45 years at the time of the accident. Further, in the evidence of PW.1, it is stated that the deceased Thangaraj was a mill employee and also a cable operator and the deceased was also an agriculturist and earning a sum of Rs. 5811.64 per month as salary and Rs. 60,000/- per annum from cable operation and Rs. 30,000/- per annum from agriculture work. The deceased was an income tax Assessee and his PAN Card number is AEE PT 0913 K and copy of the I.T return for the assessment year 2004-2005 was also filed. Further it is stated that the deceased was working in M/s. Lakshmi Spinning Mills. Ex.P9 is the Identification card. Ex.P10 is the salary certificate. Ex.P11 is the PAN card of deceased Thangaraj. Ex.P12 is the Registration Certificate in respect of Friends Cable System. PW.1 also stated that the total annual income of the deceased was Rs. 1,59,739/- . PW.3, co-employee of the deceased was also examined and he also confirmed the same. Hence, the Tribunal accepted the annual income of the deceased at Rs. 1,59,739/- on the basis of the oral evidence ofPW.1 and PW.3 as well as documentary evidence. Out of the said sum, 1/3rd amount, viz., Rs. 1,59,739/- x 1/3 = Rs. 53,246/- has been deducted towards personal expenses. The balance of Rs. 1,06,493/- is the annual contribution to the Family. The Tribunal, after taking into consideration the age of the deceased Thangaraj as 45 years at the time of the accident, has adopted the multiplier of 13 and arrived the loss of dependency at Rs. 13,84,409/- (Rs. 1,06,493/- x 13= Rs. 13,84,409/-). The learned Counsel for the Appellant -Assurance Company vehemently contended that the besides the annual salary income of Rs. 69,739.68p (Rs. 5811.64p x12), no concrete evidence was available to say that the deceased was earning a sum of Rs. 60,000/- from cable operation and Rs. 30,000/- from agriculture. After considering the facts and circumstances, it is reasonable to fix the monthly income at Rs. 7,500/- andthere is no dispute regarding the same. Out of Rs. 7,500/- , 1/3rd amount, viz., Rs. 2,500/- (Rs. 7,500/- x 1/3) is deducted towards personal expenses, and the balance sum of Rs. 5,000/- is taken as the monthly contribution to the family and the annual contribution works out to Rs. 60,000/- (Rs. 5,000/- x 12). The Tribunal has adopted the multiplier of 13. The learned counsel for the Appellant fairly submitted that the correct multiplier for the age group 40 to 45 is 15 and not 13 as adopted by the Tribunal. Hence, the correct multiplier to be adopted in this case is 15 as per the Schedule. If multiplier 15 is adopted, the loss of income to the family works out as follows:

Rs. 60,000/- x 15 = Rs. 9,00,000/-

Therefore, the loss of income is modified to Rs. 9,00,000/- as against Rs. 13,84,409/- awarded by the Tribunal. The Tribunal awarded a sum of Rs. 25,000/- towards loss of consortium, which I feel is excessive and hence it is reasonable to award Rs. 20,000/- towardsloss of consortium. The Tribunal has awarded a sum of Rs. 25,000/- towards loss of love and affection. After considering the age of the son of the deceased, it is reasonable to award a sum of Rs. 20,000/- towards loss of love and affection for the son as against Rs. 25,000/- awarded by the Tribunal. The Tribunal has not awarded any sum towards loss of love and affection for parents. Parents also lost their son''s love and affection. Hence, it is reasonable to award a sum of Rs. 20,000/- towards loss of love and affection for parents. The Tribunal also awarded a sum of Rs. 5,000/- towards funeral expenses, which is reasonable and the same is confirmed. The Tribunal awarded a sum of Rs. 3,000/- towards transport, which is low and it is reasonable to award a sum of Rs. 5,000/- towards transport. The Tribunal has fixed the rate of interest at 7.5% p.a from the date of petition. The date of accident is 23.06.2005. Keeping in view the prevailing rate of interest at the time of the accident, the rate of interest awarded by the Tribunal is also reasonable and the same is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of income

Rs.9,00,000/-

Loss of consortium

Rs. 20,000/-

Loss of love and affection for son

Rs. 20,000/-

Loss of love and affection for parents

Rs. 20,000/-

Funeral Expenses

Rs. 5,000/-

Transport

Rs. 5,000/-

Total

Rs. 9,70,000/-

Therefore, the claimants are entitled to the modified compensation of Rs. 9,70,000/- as against the compensation of Rs. 14,42,409/- awarded by the Tribunal, with interest at the rate of 7.5% per annum from the date of the petition.

10. It is stated by the learned Counsel for the claimants that all the claimants are major. In these circumstances, the Appellant-Assurance Company is directed to deposit the modified compensation of Rs. 9,70,000/- with interest at the rate of 7.5% p.a from the date of petition, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On deposit of the same, the claimants are permitted to withdraw their respective shares with interest, as apportioned by the Tribunal, less the amount already withdrawn, on making proper application.

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