

(2010) 07 MAD CK 0071
In the Madras High Court
Case No : C.M.A. No. 2172 of 2005

The Oriental Insurance Co. Ltd., Direct Agents Branch	APPELLANT
Vs	
C. Ranganathan, R. Santhamani, S. Senthilkumar and K.S. Elangovan	RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Citation : (2010) 07 MAD CK 0071

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

Bench : Single Bench

Advocate : R. Sivakumar, for the Appellant; K. Kalyanasundaram, for RR1 and 2, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the appellant - Oriental Insurance Co. Ltd. against the award and Decree dated

21.09.2004 made in M.C.O.P. No. 590 of 2000 passed by the Motor Accident Claims Tribunal cum Additional District Court, (Fast Track

Court-V), Coimbatore at Tiruppur.

2. Background facts in a nutshell are as follows:

The deceased Devaraj met with motor vehicle accident that took place on 25.05.2000 at about 11.00 p.m. He was a pillion-rider of the Motor

vehicle bearing Registration No. TN 37 S 2031 and one Senthilkumar was riding the said motorcycle and they were proceeding to Palladam.

When they were nearing the curve at the western side of Chinthamani-Pudur Bye Pass Road, the rider drove the motorcycle in a rash and negligent

manner and hit on a milestone situated on the road-side. As a result of the said accident, rider and the pillion rider were thrown out and they had

sustained grievous injuries. Immediately, the deceased was taken to the Hospital and died on 26.05.2000. The claimants are father and mother of

the said deceased and they have claimed for a sum of Rs. 14,00,000/- as compensation. The said vehicle was insured with the Insurance

Company, who resisted the claim. On pleadings the Tribunal framed the following issues:

1. Who is responsible for the accident? Whether the compensation has to be awarded? If so, who is responsible to pay the compensation?

2. What is the quantum of compensation?

After considering the oral and documentary evidence, the Tribunal has awarded a compensation of Rs. 7,58,993/- with interest at 9% p.a. The

details of the compensation are as follows:

Loss of income - Rs. 7,19,304.00

Loss of love and affection - Rs. 20,000.00

Funeral - Rs. 3,000.00

Medical Expenses - Rs. 16,689.00

Total - Rs. 7,58,993.00

Aggrieved by that award, the insurance company has filed the present appeal.

3. The learned Counsel for the appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and

contended that the amount awarded by the Tribunal is excessive, exorbitant and without basis and justification. Further, it is submitted that the

Tribunal has wrongly fixed the monthly income and also wrongly adopted a multiplier of 17. 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/claimants submitted that the Tribunal has considered all the relevant materials and evidence

on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal is in

accordance with law and the same has to be confirmed.

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

Ex.P1 to P12 were marked. P.W.1 - Santhamani is the mother of the deceased. P.W.2-M. Venkatesan is an eye witness of the accident. P.W.3-

Vijayakumar is the Time Keeper of the Selvaraj Mills Pvt. Ltd. Ex.P1 is the certified copy of the First Information Report. Ex.P2 is the certified

copy of the Charge Sheet. Ex.P3 is the certified copy of the Motor Vehicle's Inspector's Report. Ex.P4 is the copy of the postmortem Report.

Ex.P5 is the Death Certificate of the deceased. Ex.P6 is the Legal heir Certificate of the deceased. Ex.P7 is the Salary slip of the deceased. Ex.P8

is the copy of the Insurance Policy of TN37S 2031. Ex.P9 is the Medical Bill stands in the name of the deceased. Ex. PIO is the authorization

letter given to one B. Vijayakumar to give evidence. Ex.P11 is the copy of Salary Certificate and Salary Slip of the deceased. Ex.P12 is the copy

of Muster Roll of Selvaraj Mills. On the side of Insurance Company, no one was examined and no document was marked to substantiate their

claim. 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 rider of the motorcycle and the finding is based on valid materials.

6. 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 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 Thomas¹, M.N. Venkatachaliah, J. (as His Lordship then was) had observed that: (SCCp.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 the accident, the deceased was aged about 30 years. He was working as Mill Worker and was earning a sum of Rs. 5,000/- per

month and the salary certificate was marked as Ex.P7. P.W.1, the mother of the deceased deposed that the deceased was earning Rs. 4,500/- to

Rs. 5,000/- p.m. and if her son is alive, he would have earned Rs. 7,000/- p.m. and there is possibility of promotion. P.W.3, the Time Keeper of

the Mill deposed that the deceased was working in the Rolling Department and during April 2000, he was earning Rs. 4,563/- and Ex.P11 is the

salary slip. He further deposed that the deceased was earning Rs. 700/- to Rs. 1000/- as over time salary. After considering the exhibits and oral

evidence of the PW.3, the Tribunal fixed the monthly income at Rs. 3,526/- p.m. The Tribunal taking into consideration his future opportunities

since the age of the deceased at the time of the accident was 30 years and he would have got increments and he would have earned more at the

time of his retirement, fixed the monthly income at Rs. 5,289/- p.m. and considering the age of the deceased as 30 years, the Tribunal adopted the

multiplier of "17" and determined the loss of income as follows:

Rs. 5,289/- $\times \frac{1}{2}$ 12 $\times \frac{1}{2}$ 17 $\times \frac{1}{2}$ 3 $\times \frac{1}{2}$ 2 = Rs. 7,19,304/-

9. The learned Counsel appearing for the claimants submitted that in the case of Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and

Anr. Cited supra, considered that while awarding compensation towards loss of income, the future prospects should be taken into account and

para 11 of the Judgment reads as follows:

11. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati

Bezbaruah the income was increased by a mere 7%. In view of imponderable and uncertainties, we are in favour of adopting as a rule of thumb, an

addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job

and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax").

The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more

than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different

yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary

(without provision for annual increments, etc.), the Courts will usually take only the actual income at the time of death. A departure therefrom

should be made only in rare and exceptional cases involving special circumstances.

Following the above Judgement, the monthly income of the deceased is taken at Rs. 4,563/- on the basis of the Ex.p11. If 50% i.e. Rs. 2,281/- is

added actual salary towards future prospects, the total salary of deceased is fixed at Rs. 6,844/- p.m. as against a sum of Rs. 5,289/- fixed by the

Tribunal. The learned Counsel appearing for the Insurance Company vehemently contended that the Tribunal ought to have deducted 50%

towards personal expenses of the deceased bachelor, instead of 1/3 amount deducted. The judgment of the Supreme Court in Sarla Verma v.

Delhi Transport Corporation, considered the said issue wherein the deceased was a Bachelor, 50% of the amount has been deducted towards

personal expenses and para 15 it has been held as follows:

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors,

normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even

otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be

cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent

and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as

dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus, even if the deceased is survived

by parents and sibling, only the mother would be considered to be dependent, and 50% would be treated as the personal and living expenses of

the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the

deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living

expenses may be restricted to one-third and contribution to the family will be taken as two-third.

Following the above said Judgment, 50% is deducted towards personal expenses from Rs. 6,844/-, the balance sum of Rs. 3,422/- is taken as the

monthly contribution of the deceased to his family. The learned Counsel appearing for the appellant vehemently contended that the Tribunal has

wrongly adopted the multiplier of "17" and the age of the claimants should be taken into consideration. In the present case, the Tribunal fixed

multiplier "17" on the basis of the age of the deceased. In the case of Branch Manager, New India Assurance Co. Ltd., Thiruvannamalai v.

Banumathi and 2 Ors. reported in 2009 (2) TN MAC 602, this Court has held that the age of the mother should be taken into consideration for

adopting multiplier. At the time of the accident, the age of the mother is 50 years. Following the above said judgment, the correct multiplier is to be

adopted "13". If multiplier "13" adopted, the loss of income works out to Rs. 5,33,832/- (Rs. 3,422/- p.m. $\times \frac{1}{2} \times 12 \times \frac{1}{2} \times 13$). Therefore, the

claimant is entitled to loss of income of Rs. 5,33,832/- as against a sum of Rs. 7,19,304/- awarded by the Tribunal. The Tribunal also awarded a

sum of Rs. 20,000/- towards loss of love and affection and awarded a sum of Rs. 3,000/- towards funeral expenses which are very low. The

claimants are father and mother of the deceased and they lost their only son. Taking into consideration of the same, it is reasonable to award a sum

of Rs. 30,000/- towards loss of love and affection as against a sum of Rs. 20,000/- already awarded by the Tribunal, and a sum of Rs. 10,000/-

towards funeral as well as transport expenses as against a sum of Rs. 3,000/- already awarded by the Tribunal. A sum of Rs. 16,689/- was

awarded by the tribunal towards medical expenses. Ex.P9 is the series of Medical Bills. It is an actual expenditure incurred by the claimants.

Hence, the amount awarded under this head is very reasonable and the same is confirmed. The Tribunal has awarded interest at 9% p.a. The

accident occurred on 22.06.1996. Considering 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. 5,33,832/-

Love and affection - Rs. 30,000/-

Funeral & Transport

Expenses - Rs. 10,000/-

Medical expenses - Rs. 16,689/-

Total - Rs. 5,90,521/-

Rounded off to Rs. 5,90,500/-

Therefore, the claimant is entitled to the modified compensation of Rs. 5,90,500/- with interest at 9% p.a as against the compensation of Rs.

7,58,993/- awarded by the Tribunal.

10. The learned Counsel appearing for the appellant-Insurance company has submitted that the entire award amount has already been deposited.

Therefore, the claimants are permitted to withdraw the modified award amount of Rs. 5,90,500/- with interest at 9% p.a. from the date of petition,

less the amount already withdrawn, on making proper application. The appellant-Insurance company is also permitted to withdraw the balance

amount on making proper application.

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