(2010) 07 MAD CK 0288

In the Madras High Court

Case No : C.M.A. No. 2894 of 2004

United India Insurance Co. Ltd. — APPELLANT

Vs

K. Kumudham, U. Mohanakrishnan and C.E.S. Onyx Pvt. Ltd. — RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Citation : (2010) 07 MAD CK 0288

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

Bench : Single Bench

Advocate : K.S. Narasimhan, for the Appellant; V. Mohan Chowdry, for R1 and R2, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is filed by the insurance company against the award dated 01.04.2004 made in M.C.O.P. No. 2676 of 2001 by the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2. Background facts in a nutshell are as follows:

The deceased Unnikrishnan met with motor vehicle accident on 05.04.2001 at about 17.30 hours. The said deceased was travelling as a pillion rider in the motor cycle bearing registration No. TN-07-H-8632. While the motor cycle was proceeding from south to north direction from Porungudi towards Besant Nagar, a lorry bearing registration No. TN-01-R-6439 came in a rash and negligent manner in the same direction and hit the rear side of the motor cycle and caused the accident and due to the same, the pillion rider was thrown out and sustained multiple grievous injuries. He was died in his way to the hospital. The claimants are wife and son of the deceased. They claimed a compensation of Rs. 15,00,000/-. The lorry was insured with the appellant-Insurance company who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident happened due to the rash and negligent driving of the driver of the lorry bearing registration No. TN-01-R-6439?

2. Whether the claimants are entitled to compensation as claimed for?

3. To what relief?

After considering the oral and documentary evidence, the Tribunal held that the accident was occurred only due to the rash and negligent driving of the driver of the lorry and awarded compensation of Rs. 8,89,140/- with interest @ 9% per annum from the date of claim and the details of the same are as under:

Loss of dependency = Rs. 8,66,640/- Loss of consortium = Rs. 7,500/- Loss of love and affection = Rs. 5,000/- Funeral expenses = Rs. 5,000/- Loss of expectation of life = Rs. 5,000/-

---

Total = Rs. 8,89,140/-

Aggrieved by that award, the appellant-Insurance company has filed the present appeal.

3. The Learned Counsel appearing for the appellant-Insurance company questioning only the quantum of the award and vehemently contended that the award passed by the Tribunal is excessive, exorbitant, and also without any basis and justification. Further, the Tribunal wrongly fixed the monthly income of the deceased and arrived at the loss of income. Therefore, the order passed by the Tribunal is not in accordance with law and the same should be set aside.

4. The Learned Counsel appearing for the claimants submitted that the Tribunal has considered all the facts and circumstances of the case and awarded just, fair and reasonable compensation is based on valid materials and evidence and it is a question of fact. Therefore, the order passed by the Tribunal is in accordance with law and the same should be confirmed.

5. Heard the counsel. On the side of the claimant, P. Ws.1 to 3 were examined and documents Exs. P1 to P6 were marked. On the side of the appellant, no one was examined and no document was marked to substantiate their claim. The wife of the deceased was examined as P.W.1. P.W.2 is one Srinivasan, who is the Assistant Manager in Reserve Bank of India was examined. P.W.3 is one Arunagiri who is the eye witness to the accident was also examined. Ex. P1 is the copy of First Information Report. Ex. P2 is the copy of post-mortem certificate, Ex. P3 is the death certificate, Ex. P4-legal heir ship certificate, Ex. P5-Salary certificate of the deceased, Ex. P6-Service particulars of the deceased were marked. After considering the above oral and documentary evidence, the Tribunal has given a categorical finding that the accident was occurred only due to the rash and negligent driving of the lorry and awarded compensation and it is a question of fact. Therefore, the same is confirmed.

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 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 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 aged about 54 years at the time of the accident and was working as a Peon in Reserve Bank of India, Chennai, and earned Rs. 14,000/- per month. Ex.P5 is the salary certificate in which, it is stated that the deceased was paid salary of Rs. 13311.60 for the month of March 2001. Ex.P6 is the service particulars of the deceased in which, it is stated that the retirement age of the deceased is 60 years and it also reveals the date of birth of the deceased i.e., 10.03.1947. After taking into consideration of Ex.P5 salary certificate, the Tribunal fixed the monthly salary at Rs. 13,300/- and deducted Rs. 1,500/- for income tax and professional tax. The net salary of the deceased is works out to Rs. 11,800/- (Rs. 13,300-Rs.1,500). Out of the said sum, 1/3 of Rs. 3,930/- was deducted towards personal expenses and determined the monthly contribution of the deceased at Rs. 7,870/- (Rs. 11,800-Rs.3,930) After taking into consideration of the age of the deceased at 54 years and also taking into consideration of the future service of 6 years, the Tribunal works out the loss of dependency at Rs. 5,66,640/-(Rs. 7,870x12x6). In respect of the above computation there is no dispute regarding the same and therefore, the same is confirmed. Further, the Tribunal has considered the fact that after retirement, he would have definitely employed. Therefore, the Tribunal fixed the monthly income at Rs. 7,500/- and out of the said sum 1/3 of Rs. 2,500/- was deducted towards personal expenses and the balance amount of Rs. 5,000/- taken as the

monthly contribution of the deceased and adopted multiplier ''5'' and determined the loss of dependency at Rs. 3,00,000/- (Rs. 5,000x12x5). In respect of the said sum, the Learned Counsel appearing for the appellant-Insurance company contended that he would not have earned the salary of Rs. 7,500/- after retirement. Therefore, it is reasonable to fix a sum of Rs. 6,000/- per month and out of the said sum 1/3 of Rs. 2,000/- was deducted towards personal expenses and Rs. 4,000/- is taken as the monthly contribution of the deceased and the annual contribution is works out to Rs. 2,20,000/-(Rs. 4,000x12x5). The total loss of dependency is works out to Rs. 7,86,640/- (Rs. 5,66,640+Rs.2,20,000) as against Rs. 8,66,640/- awarded by the Tribunal. Further, the Tribunal awarded a sum of Rs. 7,500/- for loss of consortium. After taking into consideration of the age of the widow, it is reasonable to award a sum of Rs. 10,000/- under that head. The Tribunal awarded a sum of Rs. 5,000/- towards loss of expectation of life which is reasonable and therefore, the same is confirmed. Further, the Tribunal awarded a sum of Rs. 5,000/- for loss of love and affection. The son lost the love and affection of the father. After taking into consideration of the same, it is reasonable to award a sum of Rs. 10,000/- for loss of love and affection. The Tribunal awarded a sum of Rs. 5,000/- for funeral expenses which is reasonable and the same is confirmed. The rate of interest awarded by the Tribunal is 9%. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during that period, it is reasonable to award the interest rate at 7.5% per annum. The modified amount of the compensation are as under.

____

Loss of dependency = Rs. 7,86,640/- Loss of consortium = Rs. 10,000/- Loss of love and affection = Rs. 10,000/- Loss of expectation of life = Rs. 5,000/- Funeral expenses = Rs. 5,000/- ____ Total = Rs. 8,16,640/- ____

9. In the result, the claimants are entitled to modified compensation of Rs. 8,16,640/- with interest @ 7.5% per annum from the date of claim. It is stated by the appellant-Insurance company that the entire award amount has already been deposited by the Court order dated 11.10.2004. The claimants also permitted to withdraw 50% of the award amount. Under these circumstances, the claimants are permitted to withdraw the modified compensation of Rs. 8,16,640/- with interest @ 7.5%, 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.

10. With these observations, the appeal is disposed of. No costs.