(2010) 10 MAD CK 0040

In the Madras High Court

Case No : C.M.A. (MD) No. 1374 of 2010 and M.P. (MD) No. 1 of 2010

United India Insurance Co. Ltd. APPELLANT

Vs

M. Arumugam, Sakunthala and Others RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0040

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

Bench : Single Bench

Advocate : S. Muthalraj, for the Appellant; R. Sundar, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—This appeal is preferred by the Appellant-Insurance Company against the judgment and Decree dated

19.03.2010 made in M.C.O.P No. 643 of 2008 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Additional District Judge,

Dindigul.

2. When the matter came up for adjourned admission, the first Respondent, who is the caveator has been represented by the learned Counsel Mr.

R. Sundar and by consent of the learned Counsel of both the parties, this appeal is taken up for final disposal.

3. Background facts in a nutshell are as follows:

The deceased-Suppammal met with motor vehicle accident that took place on 10.06.2008 at about 7.00 a.m. The said deceased was walking on

the left side of the road in the Dindigul-North Madurai bypass road, along with her husband. At the time, a bus bearing registration No. TN57-J-

8669, belonging to the sixth Respondent, came from the opposite direction in a rash and negligent manner and hit the deceased. Due to the impact, she died on the spot. The claimants are the husband, daughters and sons of the deceased. They claimed a sum of Rs. 10,00,000/- as

compensation. The said bus 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 only due to the rash and negligent driving of the driver of the bus?

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 rash and negligent driving of the

driver of the bus belonging to the sixth Respondent and awarded a compensation of Rs. 6,03,000/- with interest at 7.5% per annum from the date

of the claim petition. The details of the compensation are as under:

Loss of income Rs. 5,88,000/-Loss of love and affection Rs. 10,000/-Funeral expenses Rs. 5,000/-Total... Rs. 6,03,000/-Aggrieved by that

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

4. Learned Counsel appearing for the Appellant/Insurance Company questioned only the quantum of compensation awarded by the Tribunal and

vehemently contended that the Tribunal has not deducted 1/3rd of the amount towards personal expenses. It is also further stated that the Tribunal

is wrong in relying the judgments reported in 2008 (2) TAC 934 (Rajasthan) and Shri Rahul Gupta and Others Vs. The Oriental Insurance Co.

Ltd. and Others, , which are not applicable to the facts of the present case. These judgments related to the case of house wives, but in the present

case, the deceased was working as a Noon-Meal Organiser. Therefore, the order passed by the Tribunal is not in accordance with law and hence

the same should be set aside.

5. Learned Counsel appearing for the Respondents 1 to 5/claimants submitted that the Tribunal had considered all the facts and circumstances of

the case and rightly came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus and

awarded the compensation, which is just, fair and reasonable. It is a question of fact. Hence the order of the Tribunal is in accordance with law and

the same should be confirmed.

6. Heard the counsel on either side and perused the materials available on record. On the side of the Respondents/claimants, P. Ws.1 and 2 were

examined and documents Exs.P1 to P6 were marked. On behalf of the Appellant/ Insurance Company no one was examined and no document

was marked to substantiate their claim. P.W.1 Arumugam is the husband of the deceased. P.W.2 Gurusamy, is the Superintendent of Social

Welfare Department in Children Development Scheme, North Madurai. Ex.P1 is the certified copy of the First Information Report. Ex.P.2 is the

certified copy of the Postmortem Certificate. Ex.P3 is the xerox copy of the Charge Sheet. Ex.P.4 is the certified copy of the Motor Vehicle

Inspector''s Report. Ex.P5 is the Legal Heir Certificate. Ex.P6 is the Salary Certificate. 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

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

7. 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)

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 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. 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, 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.

9. At the time of the accident, the deceased was aged about 43 years. P.W.1, who is the husband of the deceased, in his evidence has stated that

the deceased was working as a Noon Meal Organiser and she was earning Rs. 3,500/- per month. Ex.P2 is the Postmortem Certificate, in which

the age of the deceased is stated as 45 years. Therefore, the Tribunal has fixed the age of the deceased as 45 years. P.W.2, Gurusamy, in his

evidence,has stated that the deceased was working as a Noon Meal Organiser in his office and she was earning a sum of Rs. 3,573/-. Ex.P.6 is

the Salary Certificate. After considering the oral and documentary evidence, the Tribunal fixed the monthly income of the deceased at Rs. 3,500/-

and determined the annual income at Rs. 42,000/- (3,500X12). After considering the age of the deceased, the Tribunal adopted the multiplier of

''14'' and determined the loss of income at Rs. 5,88,000/- (42,000X14). The Tribunal was of the view that it is not necessary to deduct 1/3rd of

the amount towards personal expenses in the case of house wives and relied on Rajasthan and Delhi High Court judgments cited supra. I am of the

view that, these judgments are not relevant for the present case, as they deal with the case of house wives. In the present case, the deceased was

working as a Noon-Meal Organiser and earning a sum of Rs. 3,573/- per month. In the present case, the salary and age of the deceased are not in

dispute. The Tribunal has also adopted the correct multiplier in accordance with the Schedule. Therefore, the point that requires for consideration

is only as to whether 1/3rd deduction is applicable in the present case or not. As the deceased was employed, necessarily she would have incurred

personal expenses. Therefore, 1/3rd deduction towards personal expenses is necessary in the present case. The Tribunal has correctly fixed the

monthly income of the deceased at Rs. 3,500/-. Out of the said sum, if 1/3 of the amount i.e., Rs. 1166/- is deducted towards personal expenses

of the deceased, the monthly contribution of the deceased to the family works out to Rs. 2,333/- and the annual contribution works out to Rs.

27,996/-(Rs. 2,333X12). After taking into consideration of the age of the deceased, the Tribunal has correctly adopted the multiplier of ''14''. If

''14'' multiplier is adopted, the loss of income works out to Rs. 3,91,944/- (27,995X14). Therefore, the loss of income is modified to Rs.

3,91,944/- as against Rs. 5,88,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs. 10,000/- towards loss of love and affection, which is very low and meagre. Two sons and two daughters have lost the love of their mother. Therefore, I am of the view that it is

reasonable to award a sum of Rs. 40,000/- towards loss of love and affection as against Rs. 10,000/- awarded by the Tribunal. The Tribunal has

awarded a sum of Rs. 5,000/- towards funeral expenses, which is also very reasonable and hence the same is confirmed. The Tribunal has not

awarded any amount towards loss of consortium. After taking into consideration of the age of the husband, I am of the view that it is reasonable to

award a sum of Rs. 15,000/- towards loss of consortium. The Tribunal has not awarded any amount towards loss of estate. After taking into

consideration of the facts and circumstances of the case, it is reasonable to award a sum of Rs. 15,000/- towards loss of estate. The Tribunal has

awarded interest at 7.5% per annum. After taking into consideration of the date of accident, date of award and the prevailing rate of interest during

that time, the interest awarded by the Tribunal is confirmed. The details of the modified compensation as per the above discussion are as under:

Loss of income Rs. 3,91,944/-

Loss of consortium Rs. 15,000/-

Loss of love and affection Rs. 40,000/-

Funeral expenses Rs. 5,000/-

Loss of estate Rs. 15,000/-

Total... Rs.4,66,944/-

(Rounded off to Rs. 4,67,000/-)

Therefore, the claimants are entitled to the modified compensation of Rs. 4,67,000/- with interest at 7.5% p.a. from the date of petition.

10. Under the circumstances, the Appellant-Insurance Company is directed to deposit the modified compensation of Rs. 4,67,000/- with interest

at 7.5% p.a. from the date of petition, less the amount if any already deposited within in a period of four weeks from the date of receipt of a copy

of this order. On such deposit, the claimants are permitted to withdraw the entire amount on making proper application.

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

costs.

