

**(2010) 06 MAD CK 0012**  
**In the Madras High Court**  
**Case No : C.M.A. NPD No. 913 of 2003**

United India Insurance Co. Ltd.

APPELLANT

Vs

Saraswathi, Sugumar Pillai, Vijayan Pillai and S. Deivanai

RESPONDENT

---

**Date of Decision :** 14-06-2010

**Acts Referred:**

**Citation :** (2010) 06 MAD CK 0012

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

**Bench :** Single Bench

**Advocate :** Revathi Muralidharan, for the Appellant; V. Kumaravellan, for U. Karunakaran, for R1 to R3, 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

17.04.2002 made in MCOP No. 861 of 2000 on the file of the Motor Accident Claims Tribunal (I Additional District Judge), at Krishnagiri.

2. Background facts in nutshell are as follows:

The deceased Chandrasekara Pillai @ Harikumar met with motor vehicle accident on 20.04.2000 at about 13.15 hours. The said deceased

Chandrasekara Pillai and two others were travelling in the Maruti Car bearing Registration No. KL04/G8200 from Kirshnagiri to go to

Dharmapuri on the extreme left side of the road. When they were proceeding near old Dharmapuri Sri Murugan Naveen Rice Mill, the Lorry

bearing Registration No. TDJ 5211 belonging to one Deivanai/4th Respondent herein, which was insured with the Appellant-Insurance Company

came in a rash and negligent manner and dashed against the Maruthi Car. Due to the same, the deceased died on the spot. The claimants are

father, mother and brother of the deceased. The claimants claimed a sum of Rs. 37,47,000/- but restricted their claim to Rs. 10,00,000/- as

compensation before the Tribunal. The Appellant-Insurance Company resisted the claim. On the pleadings the Tribunal framed the following issues:

1. Whether the accident was due to the rash and negligence of the part of the driver of the lorry?
2. Whether the claimants are entitled to get compensation, and if so, to what amount?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of

the driver of the lorry and awarded a compensation of Rs. 4,10,000/- with interest at 9% per annum from the date of petition and the details of the

same are as under:

Loss of dependency Rs. 4,08,000/- Funeral expenses Rs. 2,000/- Total... Rs. 4,10,000/-

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

3. The learned Counsel appearing 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, without basis and justification and therefore, the same has to be

set aside.

4. 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. Further, the learned Counsel appearing for the

Respondents/claimants submitted that the Tribunal has not awarded any amount towards Transport and loss of love and affection and the Tribunal

awarded a sum of Rs. 2,000/- towards Funeral expenses which is very low and the same has to be enhanced.

5. Heard the learned Counsel on either side and perused the materials available on record. On the side of the claimants, One Saraswathi, who is

the mother of the deceased, was examined as P.W2 and also given her oral evidence. Ex.P7 is the Postmortem Report of the deceased. On the

side of the Appellant-Insurance Company, no one was examined and no

documents were 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 driver of the lorry belonging to the fourth the Respondent and the finding is based on valid materials and evidence.

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 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 After considering the principles enunciated in the judgments cited supra, let me consider the facts of the present case.

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*<sup>2</sup>, 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*<sup>4</sup>, 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.

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 28 years. Ex.P17 is the First Information Report. In the said First Information Report, the age of the deceased was mentioned as 28 years at the time of the accident. P.W.2-the mother of the deceased also stated in her evidence that the deceased was aged about 28 years at the time of accident. Further, P.W.2-the mother of the deceased deposed that the deceased was a Manager in Private Finance and also doing Coconut business and he was earning Rs. 6,000/- p.m. but no documentary evidence was produced to

substantiate her claim. After considering the above oral and documentary evidence, the Tribunal has fixed the monthly income of the deceased at

Rs. 3,000/-. Out of the said sum, 1/3rd is deducted towards his personal expenses i.e. Rs. 1,000/-, the balance amount of Rs. 2,000/- was taken

as the contribution of the deceased to his family and determined the annual income at Rs. 24,000/- (Rs. 2,000 x 12). After taking into

consideration of the age of the deceased as 28 years at the time of accident, the Tribunal also correctly adopted the multiplier ""17"" and determined

the loss of income at Rs. 4,08,000/- (Rs. 2,000 x 12 x 17). The Tribunal has correctly fixed the monthly income as well as the annual income of

the deceased and also correctly applied the multiplier of ""17"".

9. Therefore, the amount awarded towards loss of income is very reasonable and the same is confirmed. Further, the Tribunal has awarded a sum

of Rs. 2,000/- towards Funeral expenses which is very low and meagre. Considering the facts and circumstances of the case, it would be

reasonable to award a sum of Rs. 5,000/- as against Rs. 2,000/- awarded by the Tribunal under this head. The Tribunal has not awarded any

amount towards transport expenses. The accident was occurred between Krishnagiri and Dharmapuri. Immediately after the accident, the

deceased was taken to Salem Government Hospital and later taken to Kerala. Therefore, the Respondents/claimants would have certainly incurred

transport expenses. Hence, I feel that it would be reasonable to award a sum of Rs. 7,500/- under this head. It is also seen that the claimants are

mother, father and brother, who was mentally retarded. The age of the mother and the father is 50 and 70 years respectively. The Respondents R1

and R2 /claimants lost their son. Considering the facts and circumstances of the case, it would be reasonable to award a sum of Rs. 7,500/-

towards loss of love and affection. The Tribunal has awarded interest at 9% p.a. from the date of accident. The accident had occurred on

20.04.2000. During the said period, the prevailing rate of interest is at 7.5% p.a. Therefore, the interest is modified to 7.5% p.a. instead of 9%

p.a. The details of the modified compensation are as under:

Loss of income Rs. 4,08,000/- Funeral Expenses Rs. 5,000/- Transport Rs. 7,500/- Loss of Love and Affection Rs. 7,500/- Rs. 4,28,000/-

Therefore, the Respondents/claimants are entitled to the modified compensation

of Rs. 4,28,000/- with the interest at 7.5% p.a.

10. The learned Counsel for the Appellant/Insurance Company submitted that already the entire award amount has been deposited as per the

order of this Court dated 30.04.2003 and also the claimants are permitted to withdraw 50% of the award amount by the date of this Court dated

31.07.2003. Under these circumstances, the Respondents/claimants are permitted to withdraw the modified award amount of Rs. 4,28,000/- with

interest at 7.5% p.a. from the date of petition after adjusting the amount already withdrawn. The Appellant/Insurance Company is also permitted to

withdraw the balance amount, if any, on making proper application. It is made clear that if the modified amount of Rs. 4,28,000/- with interest at

7.5% per annum works out to more than the amount deposited by the Appellant-Insurance company viz., 4,18,000/- with interest at 9%, the

difference of enhanced compensation should be deposited within a period of six weeks from the date of receipt of a copy of this order. If the

deposited award amount of Rs. 4,18,000/- with interest at 9% is more or less equal with the modified amount of Rs. 4,28,00/- with interest at

7.5%, the observation made earlier has to be followed.

11. With the above observations, the Civil Miscellaneous Petition is disposed of. No costs.