

R. Kumudhini, Vs. the General Superintendent

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Court : Chennai

Decided On : Jun-07-2006

Reported in : 2007ACJ2494

Judge : V. Dhanapalan, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 163A

Appeal No. : C.M.A. (NPD) No. 294 of 1998

Appellant : R. Kumudhini, ;r. Vijay Sankar (Minor), ;r. Saravanan (Minor) and R. Premalakshmi (Minor)

Respondent : The General Superintendent

Advocate for Def. : Senthilnathan, Addl. Govt. Pleader, C.S.

Advocate for Pet/Ap. : M. Swamikkannu, Adv.

Judgement :

V. Dhanapalan, J.

1. The wife and children of the deceased S. Ramasubramanian have preferred this Civil Miscellaneous Appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') in M.A.C.T.O.P.99 of 1995 on the file of the III Judge, Court of Small Causes,

Madras.

2. The appellants herein who were the claimants before the Tribunal have filed a petition claiming compensation of Rs. 10,75,000/- for the death of their family head. In support of their claim, the first claimant who is the wife of the deceased was examined as P.W.1 and one Pandiarajan, an eye-witness to the accident was examined as P.W. 2 besides marking documents in Exs.P.1 to P.7. On the side of the respondent, one Muneer Basha, the driver of the tractor-trailer, was examined as R.W.1. and no document was marked in support of its defence.

3. The Tribunal, after analyzing the oral and documentary evidence and after holding that the accident was caused due to the rash and negligent driving of the driver of the tractor-trailer, has passed an award fixing the compensation as Rs. 5,89,600/- with interest at the rate of 12% per annum from the date of petition till the date of deposit, aggrieved by which, the appellants have preferred this appeal for enhancement of compensation.

4. Heard Mr. M. Swamikkannu, learned Counsel for the appellants and Mr. S. Senthilnathan, Additional Government Pleader (C.S.), learned Counsel for the respondent.

5. Mr. Swamikkannu, learned Counsel for the appellants has contended that:

a. while fixing the quantum for the death of the deceased aged 44 years, who was a goldsmith by occupation, the Tribunal has awarded a meagre sum of Rs. 5,89,600/- as against the claim of Rs. 10,75,000/- without adducing any reason,

b. while it was the categorical evidence of P.W.1 that her husband was a goldsmith by occupation, earning around Rs. 10,000/- to Rs. 15,000/- per month and contributed the same to his family, the Tribunal has wrongly concluded that the deceased would have contributed only Rs. 5,000/- to his family and

c. as per the judgment of the Supreme Court reported in 2004 (2) TN MAC 262 (SC) and the Schedule attached to the [Motor Vehicles Act, 1988](#) , the proper multiplier would be only 15 in the case of a deceased aged 44 years and not 12.79 as applied by the Tribunal and the appeal has to be allowed on these grounds.

6. On the other hand, the learned Counsel for the respondent has contended that the Tribunal has not committed any error in awarding the compensation of Rs. 5,89,600/- with interest @ 12% per annum considering age of the deceased and the claimants and the fact that the deceased was only a goldsmith contributing Rs. 5,000/- per month to his family and as such, there is no need to interfere with the findings of the Tribunal.

7. I have considered the rival contentions of the learned Counsel on either side.

8. It is not disputed that the deceased who was aged 44 years, died due to the accident that took place on 02.02.1994 at 11 a.m. due to the driver of the tractor-trailer which dashed against the scooter in which the deceased was a pillion rider. It is also not disputed that the said accident took place due to the careless and negligent act of the driver of the tractor-trailer owned by the respondent.

9. The claimants have filed a Claim Petition claiming compensation of Rs. 10,75,000/- under the following heads:

S. No.	Name of the head	Amount (Rs.)
1	Damage to clothing and articles	500
2	Others	
a.	Loss of pecuniary benefits and loss of estate of the deceased	8,75,000
b.	Loss of expectation of life	1,25,000
c.	Loss of consortium and companionship to first claimant	35,000
d.	Loss of companionship to other claimants	24,500
e.	Funeral expenses	5,000
3	Pain and suffering	10,000
	Total	10,75,000

10. According to P.W.1, the wife of the deceased, her husband was doing jewellery business. Ex.P.4 series are the copies of Sale Deeds for purchase of properties by the deceased and Ex.P.5 series are the copies of deposit receipts in the name of their children. Thus, it is evident that the deceased was doing jewellery business, earned a sizeable sum, purchased properties and deposited a certain sum in the name of his children. As such, the wife of the deceased has deposed before the Tribunal that the deceased was giving Rs. 10,000/- to Rs. 15,000 /- to his family.

11. The Tribunal, after considering the oral and documentary evidence and also the arguments of the counsel for the respondents, has come to the conclusion that the deceased would have earned Rs. 5,000/- by doing jewellery business and accordingly, his annual income has been taken as Rs. 60,000/- and after deducting one-third of the income for his personal expenses had he been alive, the loss of income has been taken as Rs. 40,000/- per annum. As the age of the deceased was calculated as 44 years, as per the guidelines prescribed in 1987 ACJ 1052 (Bhagawan Das v. Mohd. Arif), the Tribunal has applied the multiplier of 12.79 and arrived at the sum of Rs. 5,11,600/- under the head loss of income for the family and loss of property. For damage to dress materials, the claim of Rs. 500/- has been granted in full. In respect of claim of Rs. 1,25,000/- towards future prospects, a sum of Rs. 20,000/- has been awarded since a certain amount has already been awarded under the head loss of income and property. Further, a sum of Rs. 20,000/- has been granted under the head loss of consortium for the first claimant as against her claim of Rs. 35,000/-. For the claim of Rs. 24,500/- by the claimants 2 to 4 under the heading of loss of property, a sum of Rs. 22,500/- has been awarded and for pain and suffering, a sum of Rs. 10,000/- has been awarded and finally, the claim for Rs. 5,000/- under the head funeral expenses has been granted in full. Thus, the Tribunal has awarded a total sum of Rs. 5,89,600/-.

12. Reliance has been placed by the learned Counsel for the appellants in a decision of the Supreme Court reported in 2004(2) TN MAC 262 (SC) (Manju Devi and Anr. v. Musafir Paswan and Anr.) and the relevant paragraphs read as under:

In the case of U.P. State Road Transport Corporation v. Trilok Chandra reported in , it has been held by this Court that there should be no departure from the multiplier method on the ground that payment being made is just compensation. It has been held that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is the method which brings uniformity and certainty to awards made all over the country. In view of this authority, it will have to be held that the award of compensation had to be made by the multiplier method.

5. As set out in the Second Schedule to the [Motor Vehicles Act, 1988](#), for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, sum of Rs. 15,000/- must be taken as income. Thus, the compensation comes to Rs. 2,25,000/-.

13. Further reliance has also been placed by the learned Counsel for the appellants on a decision of the Andhra Pradesh High Court reported in 1987 AJ 1052 (Bhagawan Das v. Mohd. Arif) wherein the relevant paragraph reads as under:

a. The Traditional Multiplier (Three stages):

17.1 Before the actuaries prepared multiplier tables, Judges were basing their selection of the multiplier on their intuition and experience. They proceeded on the basis that roughly 18 would be the highest multiplier for the youngest person aged (say) 20 years. This was obviously based on the premise that 100 divided by 5 + (applying a rate of discount of 5 + per cent for reducing future payments to present value) would roughly yield a maximum of 18 as multiplier. If the victims' age was higher, the multiplier was being reduced. But the Judges, as pointed out by Winfield and Jolowicz on Tort, 12 Edn., 1984, p.633, did not 'usually reveal the mathematical process (if such it be) by which they arrived at the appropriate multiplier'. Likewise Munkman on Damages, 17th Edn., 1985 at p.59, says that Judges have been selecting the multiplier 'without saying where they got it from'. In Mitchell v. Mulholand 1972 (1) QB 65 the Court of Appeal stated that the 'experience' of Judges and practitioners was the guide for picking up the traditional multiplier. Again in Taylor v. O'Connor (1971) AC 115 Lord Reid said 'Judges and counsel have a wealth of experience' which is the guide for selecting the multiplier.

The above discussion would incidentally explain the point raised by the majority in A.P.S.R.T.C. v. Ch. Narsava 1987 ACJ 419 (AP), to the effect that the Division Bench which decided Chairman, A.P.S.R.T.C. v. Shafiya Khatoon 1985 ACJ 212 (AP), did not spell out how the 'Judge's multiplier' is picked out. From the above rulings and opinions of jurists, it is clear that the 'Judge's traditional multiplier' is based on pure experience and practice.

17.2 The next stage was reached when in 1967, actuarial multipliers were prepared and published [see Kemp and Kemp, 1976 Tables prepared by J.H. Prevett, Actuary] and when the Judges proceeded to crosscheck their judicial or intuitive 'years' purchase' by referring to the multiplier from the Actuary's Tables. Prof. McLachlin has called this the 'cross-check' stage [See Can.Bar.Rev.1981, Vol.5, p.1 at p.20]. Hawley refers to this 'cross-check' and states: 'Generally, an award is made objectively and checked subjectively' 1975 (13) A.L.R.430. Kemp & Kemp, vol.1, Law & Practice, 1984, p.53, have also referred to this stage elaborately as one used by Judges for 'crosschecking' the years' purchase method with the multiplier given in the Actuary's Tables.

17.3 Today, fortunately, the third stage is practically reached when tables of Actuarial Multipliers have come to stay in several countries. The British Law Commission was the first to commend the Actuary's Tables in 1970-71.[See Working Paper 27]. In 1984, the British Government's Actuary Department has published multiplier Tables. [See Munkman, App.III, p.224]. The Privy Council has also recently in 1984 commended the use of the actuarial tables in *Lai Wee Lian v. Singapore Bus Service* 1984 (3) WLR 63. They, however, pointed out that while the Tables in England reflected both (i) mortality rates, and (ii) conversion of future earnings to present value, the Singapore Tables were defective as they omitted to take into account at least one of these two exercises. The Canadian Supreme Court has also accepted actuarial calculations in 1978. Dickson, J. said in *Andrew's case* 1978 (2) SCR 229: So long as we are tied up to lump sum awards (i.e. as opposed to periodic review awards), however, we are tied to actuarial calculations as the best available means of determining amounts.

14. A careful reading of the above decisions discloses that the proper multiplier has to be followed while calculating the quantum of compensation in cases of fatal accidents. In the instant case, the accident took place on 02.02.1994, i.e. prior to amendment of the [Motor Vehicles Act, 1988](#), i.e. 14.11.1994. In the *Bhagwan Das* case cited supra, the genesis of applying multiplier method has been clearly stated which would only go to show that the multiplier method was in practice even before the amendment of the Act. In my view, the Tribunal, instead of applying the proper multiplier, has applied the multiplier of 12.79 which is not correct as per the

proposition laid down in the decision cited supra.

15. In Manju Devi's case referred to above, since the deceased was a non-earning person, Rs. 15,000/- was taken as notional income per annum. But, in the instant case, the deceased was a goldsmith by occupation and he was an earning member and Exs.P.4 and P.5 show that he had purchased properties. As such, there is no need to adopt the notional income.

16. The next question that arises before me is whether the multiplier applied in this as 12.79 is correct or not. It has been held by the Supreme Court in various decisions that there should be no departure from the multiplier method on the ground that payment being made is just compensation. It has been held that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is the method which brings uniformity and certainty to awards made all over the country. In view of this authority, it will have to be held that the award of compensation had to be made by the multiplier method and that too, a proper multiplier to arrive at a just and fair compensation as the Motor Vehicles Act is a beneficial legislation aimed at giving an equitable compensation to the motor accident victims.

17. After the amendment to Section 163-A of the Motor Vehicles Act, guidelines have been issued in this regard. In the instant case, the wife of the deceased was aged 39 years at the time of accident. Taking into account the age of the deceased and the claimants, particularly, the age of the wife of the deceased as 39 years, for the age group of 35 to 40, the proper multiplier is 16. But, taking into consideration the overall aspects involved in the case, I feel that the proper multiplier to be applied is 15 and not 12.79 as done by the Tribunal. Thus, by taking the income of the deceased as Rs. 5,000/- and the annual dependency as Rs. 40,000/- and applying multiplier of 15, the pecuniary damages comes to Rs. 6,00,000/-. Accordingly, except the application of 12.79 multiplier by the Tribunal, all other aspects of the award of compensation are confirmed and the total compensation awarded by the Tribunal is enhanced from Rs. 5,89,600/- to Rs. 6,78,000/-. The rate of interest for the compensation awarded by the Tribunal shall be 12% per annum as it was the prevailing rate at that time and the enhanced

amount of compensation shall carry interest at the rate of 7.5% per annum.

In the result, the appeal is allowed in part. No costs.

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