

CASE NO.:
Appeal (civil) 1200 of 2007

PETITIONER:
Managing Director, TNSTC

RESPONDENT:
Sripriya and Ors.

DATE OF JUDGMENT: 08/03/2007

BENCH:
Dr. Arijit Pasayat & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

DR. ARIJIT PASAYAT, J.

1. leave granted

2. Challenge in this appeal is to the order passed by a Division bench of the Madras High Court dismissing the appeal under Section 173 of the Motor Vehicles Act, 1988 (in short the 'Act') filed by the appellant-Tamil Nadu State Transport Corporation (hereinafter referred to as the 'Corporation').

3. One Sathyabalan (hereinafter referred to as the deceased') was the driver of the appellant-Corporation and was traveling in the corporation bus. The vehicle met with an accident, the driver of the bus tried to avoid collision with a lorry, dashed against the bridge. The wall of the bridge broke and the bus capsized and fell into the river and the deceased who was sitting in the front seat got buried in the sand and died. The respondent i.e. the widow of the deceased, his minor daughter and his parents filed a claim petition before the Motor Accidents Claims Tribunal, Maylladutturai, (hereinafter referred to as the 'Tribunal') claiming compensation of Rs. 15,00,000/-. In the claim petition, it was indicated that the monthly salary of the deceased was Rs. 6,040/- and he had agricultural income and was aged about 37 years.

4. The appellant-Corporation took the stand that the accident was purely an act of God. There was no negligence which can be attributed to the driver of the bus. The Tribunal allowed the claim petition by the present respondents and awarded a sum of Rs. 7,72,000/- with 9% interest from the date of petition till payment. Aggrieved by the compensation awarded the appellant-Corporation filed an appeal before the Madras High Court. The same was dismissed as noted above by the impugned judgment. It is to be noted that the tribunal had adopted a multiplier of 16 on annual income of Rs. 6,000/- and after deduction of 1/3 for personal expenses worked out the entitlement of the claimants.

5. In support of the appeal, learned counsel for the appellant-Corporation submitted that the multiplier as adopted is high and same is the case with the rate of interest applied. It was pointed out that the loss of income on the ground of death was fixed at Rs. 7,48,000/- and that for loss of happiness of married life and loss of love and affection Rs. 10,000/- each was allowed and for funeral and transportation expenses Rs. 2,000/- each was awarded. Therefore, the total entitlement was fixed at Rs. 7,72,000/-.

6. Certain principles were highlighted by this Court in the case of Municipal Corporation of Delhi v. Subhagwanti, [1966] 3 SCR 649 in the matter of fixing the appropriate multiplier and computation of compensation. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result to the death. "How much has the widow and family lost by the

father's death?" The answer to this lies in the of quoted passage from the opinion of Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.*, All ER p. 665 A-B) Which says:

"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent and other like matters of speculation and doubt."

7. There were two methods adopted to determine and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in *Davies case* (supra) and the second in *Nance v. British Columbia Electric Railway Co. Ltd.*, [1951] 2 All ER 448.

8. 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.

9. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in *Mallett v. Mc Mongle*, [1969] 2 All ER 178 where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

"The starting point in any estimate of the amount of the 'dependency' is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But...there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4-1/2% the present value of an annuity for 20 years of which the first ten years are at \$ 100 per annum and the second ten years at \$ 200 per annum, is about 12 years purchase of the arithmetical average annuity of \$ 150 per annum, whereas if the first ten years are at \$200 per annum and the second ten years at \$ 100 per annum the present value is about 14 years purchase of the arithmetical mean of \$ 150 per annum. If therefore the chances of variations in the 'dependency' are to be reflected in the multiplicand of which the years purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the 'dependency' used for the purpose of assessing the damages."

10. In regard to the choice of the multiplicand the Halsbury's Laws of

England in vol34, para 98 stated the principle thus:

"98. Assessment of damages under the Fatal Accident Act, 1976 - The courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death."

As to the multiplier, Halsbury states:

"However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds the intention being that the dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure."

11. In *G.M. Kerala S.R.T.C. v. Susamma Thomas*, AIR (1994) SC 1631 and *U.P. State Road Transport Corpn. v. Trilok Chand*, (1996) 4 SCALE 22 the multiplier appears to have been adopted taking note of the prevalent banking rate of interest.

12. In *Susamma Thomas's* case (supra) it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequently be raised. Therefore, instead of 16 the multiplier of 18 as was adopted in *Trilok Chandra's* case (supra) appears to be appropriate. In fact in *Trilok Chand's* case (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when as ordinary Indian Citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70 which is the normal retirement age. [See: *New India Assurance Co. Ltd. v. Charlie and Anr.*, [2005] 10 SCC 720].

13. The above position was highlighted in *U.P. State Road Transport Corporation v. Krishna Bala and Ors.*, [2006] 6 SCC 249, Managing Director

TNSTC Ltd. v. K.I. Bindu, [2005] 8 SCC 473, T.N State Transport Corporation Ltd. v. S. Rajapriya, [2005] 6 SCC 236, Municipal Corpn. of Greater Bombay v. Laxman Iyer, [2003] 8 SCC 731, State of Haryana v. Jasbir Kaur, (2003) 7 SC 484, The new India/Assurance Company Ltd. v. Smt Kalpana and Ors. (2007) 2 SCALE 227, New India Assurance Co. Ltd. v. Satender and Ors., JT (2006) 10 SC 234.

14. Considering the age of the deceased appropriate multiplier would be 12. The income fixed by the Tribunal and the deduction for personal expenses do not warrant any interference. Worked out on that basis, the entitlement of the loss of income is Rs. 5,76,000/-. The other expenses awarded remain unaltered. In other words, total entitlement of the claimants is fixed at Rs.6,00,000/- It would be appropriate to fix the rate of interest at 7.5% instead of 9% as done by the Tribunal and maintained by the High Court.

15. Pursuant to the directions of this Court by Order dated 4.3.2005, it is stated that a sum of Rs. 4,00,000/- was deposited with the Tribunal. The balance amount on the basis of the judgment shall be deposited within a period of eight weeks. Out of the total amount a sum of Rs. 1,00,000/- shall be kept as fixed deposit in respect of respondent No. 1. Further a sum of Rs. 4,00,000/- shall be kept in fixed deposit in the name of minor, respondent No.2 - Sarojini. Fixed deposit of Rs.50,000/- Each shall be made in the names of respondent No. 3, Lakshmi and respondent No.4-Duraisingam. The balance amount shall be paid to respondent No.1 widow of the deceased Sripriya. The fixed deposits shall be initially for a period of five years in the name of respondent Nos. 1,3,and 4. The fixed deposit in the name of respondent No.2 will be for a similar period but it shall be renewed from time to time till she attains majority.

16. The appeal is allowed to the aforesaid extent.