

CASE NO.:
Appeal (civil) 2765 of 2005

PETITIONER:
Tamil Nadu State Transport Corporation Ltd

RESPONDENT:
S. Rajapriya and two others

DATE OF JUDGMENT: 20/04/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

(Arising out of SLP(C) No.6144 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Tamil Nadu State Transport Corporation Ltd. (hereinafter referred to as the 'Corporation') calls in question legality of the judgment rendered by a Division Bench of the Madras High Court dismissing the appeal filed by the Corporation. By the impugned order the Division Bench confirmed the compensation awarded to the respondents by the Motor Vehicle Accident Compensation Claim Tribunal, Principal District Judge, Thanjur (in short the 'Tribunal').

Background facts in a nutshell are as follows:

On 30.8.2001 one Sathyamurthy (hereinafter referred to as the 'deceased') lost his life in an automobile accident. His widow (respondent no.1) and minor son (respondent no.2) filed petition claiming compensation under the Motor Vehicles Act, 1988 (in short the 'Act'). Deceased's mother was impleaded as respondent no.2 in the claim petition, while the Corporation was impleaded as respondent no.1. It was stated in the claim petition that the accident occurred due to rash and negligent driving of the Corporation's driver. Claim of Rs.20 lakhs was made. Tribunal noted that the deceased was about 38 years of age and was getting monthly salary of Rs.4688/- (annually Rs.56,208/-) from the Corporation. After deductions one-third for personal expenses contribution of the deceased was fixed at Rs.37,472/- per annum. As the deceased was about 38 years of age, multiplier of 16 was applied. Accordingly, the compensation was worked out at Rs.6,09,552/-. The award was questioned in appeal before the Madras High Court and the Division Bench as noted above, dismissed the same.

In support of the appeal, learned counsel for the appellant submitted that quantum as arrived at by applying multiplier of 16 is high. There is no appearance on behalf of the respondents in spite of the notice. While issuing notice on 22.3.2004 the dispute was restricted to the appropriate multiplier to be adopted. The question regarding appropriate multiplier has been considered by this Court in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994 (2) SCC 176) and U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. 1996 (4) SCC 362).

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 of the death. "How much has the widow and family lost by the father's death?" The answer to this lies in the oft quoted passage from the opinion of Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942 AC 601) 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 into a lump sum by taking a certain number of years' purchase. That 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."

The rule in common law in *Baker v. Bolton* (1979 (1) All ER 774) enunciated by Lord Ellenborough was that "in a Civil Court, the death of a human being could not be complained of as an injury". Indeed, the maxim *action personalis moritur cum persona*, had the effect that all actions in tort, with very few exceptions, also became extinguished with that person. Great changes were brought about by the Fatal Accidents Act, 1846 (now Fatal Accidents Act, 1976) and the Law Reforms (Miscellaneous Provisions) Act, 1934. Under the statute, as indeed under the Indian Statute as well, there are two separate and distinct cause of action, which are maintainable in consequence of a person's death. There were the dependant's claim for the financial loss suffered and acclaim for injury, loss or damage, which the deceased would have had, had he lived, and which survives for the benefit of his estate.

The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages." Lord Wright in the *Davies's* case (*supra*) said, "The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever sources comes to him by reason of the death." These words of Lord Wright were adopted as the principle applicable also under the Indian Act in *Gobald Motor Service Ltd. v. R.M.K. Veluswami* (1962 (1) SCR 929) where this Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimant of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources 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.

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 together.

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 capitalized by multiplying it by a figure representing the proper number of year's purchase.

Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered.

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) .

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.

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."

In regard to the choice of the multiplicand the Halsbury's Laws of England in vol. 34, para 98 states the principle thus:

"98. Assessment of damages under the Fatal Accident Act, 1976 \026 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."

In both Susamma Thomas and Trilok Chand's cases (supra) the multiplier appears to have been adopted taking note of the prevalent banking rate of interest.

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 consequentially 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 an 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.

Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs.4,50,000/- (in round figures). The Tribunal has fixed interest @ 9% per annum from the date of the claim petition. Taking note of the prevailing rate of interest in bank deposits, the same is fixed at 7.5% per annum. It is stated that a sum of Rs.4,00,000/- has been deposited pursuant to the order dated 22.3.2004. The balance amount shall be deposited with the Tribunal within four weeks from today. Out of the total deposit 90% of the amount shall be kept in fixed deposit in the name of widow (respondent no.1), minor child (respondent no.2) and the mother (respondent no.3) in the proportion of 35%, 40% and 15% respectively. Rest 10% shall be paid in cash equally to the widow and the mother. Fixed deposits shall be made initially for a period of five years and no withdrawal permitted and only monthly interest will be paid, so far as the fixed deposits in the names of the widow and the mother are concerned. So far as the minor child is concerned, fixed deposit shall be made initially for a period of five years and shall be renewed till the child attains majority. The monthly interest on the deposit shall also be released to the mother as the guardian of the minor.

No loan advance of any kind and/or pre-mature encashment shall be permitted in respect of the fixed deposits. However, on an application being made to the Tribunal and it being satisfied about the urgency of any need and absence of financial resources to meet any urgent financial need may permit loan or advance or pre-mature encashment by a reasoned order.

Appeal is allowed to the extent indicated. No costs.