

## **General Manager, Kerala S.R.T.C vs Susamma Thomas on 6 January, 1993**

**Equivalent citations: 1994 AIR 1631, 1994 SCC (2) 176, AIR 1994 SUPREME COURT 1631, 1994 (2) SCC 176, 1994 AIR SCW 1356, 1994 SCC(CRI) 335, 1995 (1) BOM CJ 334, 1995 BOMCJ 1 334, (1995) 2 RAJ LW 19, 1993 ( ) JT (SUPP) 573, (1994) 1 ANDH LT 1, (1994) 1 KER LT 67, (1994) 1 TAC 323, (1994) 2 KER LJ 167, (1994) 3 KANT LJ 39, (1994) MAH LJ 1049, (1994) MPLJ 520, (1994) 1 ACC 346, (1994) 1 ACJ 1**

**Author: G.N. Ray**

**Bench: G.N. Ray**

PETITIONER:

GENERAL MANAGER, KERALA S.R.T.C

Vs.

RESPONDENT:

SUSAMMA THOMAS

DATE OF JUDGMENT 06/01/1993

BENCH:

VENKATACHALLIAH, M.N. (J)

BENCH:

VENKATACHALLIAH, M.N. (J)

RAY, G.N. (J)

CITATION:

1994 AIR 1631

1994 SCC (2) 176

JT 1993 Supl. 573

1993 SCALE (4) 643

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The Kerala State Road Transport Corporation seeks special leave to appeal to this Court from the judgment dated March 9, 1992 of the High Court of Kerala in M.F.A. No. 661 of 1986 enhancing compensation in a fatal accident action from a sum of Rs 58,760 to a sum of Rs 2,64,000. The respondents-claimants are the parents, widow and the children of Thomas Philip, aged 38 years who died in an unfortunate motor-accident that occurred on February 19, 1984 at a place called Plamood Junction at Pullad on Thiruvalla-Kothancherry in the State of Kerala involving a bus owned by the appellant. We have heard learned counsel on both sides. Special leave granted.
2. The deceased Thomas Philip at the time of his unfortunate and untimely death was employed in the newspaper establishment of Malayala Manorama on a monthly salary of Rs 1032. These facts and the fact that the accident was the result of actionable negligence on the part of the driver of the bus are not disputed.
3. The Motor Accidents Claims Tribunal, Alleppey in O.P. (M.V.) No. 330 of 1984 on some calculations of its own, which we find it difficult to approve, determined a compensation of Rs 58,760 to the respondents claimants. On appeal by them, the High Court has enhanced the compensation to Rs 2,64,000. The High Court, in addition to the usual award for loss of dependency, made award for special damages for funeral expenses, journey to the hospital, treatment expenses, etc. The High Court has also determined the amount of compensation on account of loss of dependency to the tune of Rs 1,80,000. The High Court awarded a sum of Rs 50,000 under the head "Loss of future earnings in the United States of America". This sum of Rs 2,64,000 was directed to be paid together with interest @ 12% per annum from the date of the petition i.e. June 15, 1984 till payment.
4. Shri Krishnamurty Iyer, learned Senior Counsel appearing in support of this appeal, urged that this is a clear case of claimants being overcompensated and that the principles of assessment of compensation do not support the award of Rs 1,80,000. He submitted that admittedly the income of the deceased was Rs 1032 per month from which, if the usual deductions for personal living expenses of the deceased are made, the loss of dependency could not be more than Rs 600-700 per month and if that multiplicand is capitalized on the number of years' purchase appropriate to the age of the deceased (or that of the claimants whichever may be higher) the amount would not exceed Rs 70,000 to Rs 80,000. Shri Krishnamurty Iyer further submitted that even if the usual awards for loss of consortium and loss of expectation of life, which are awards in conventional figures are added the total compensation ought not to exceed Rs 1,00,000 in this case. Shri E.M.S. Anam, learned counsel for the respondents-claimants, however, strongly sought to support the award under appeal.
5. We are afraid, the reasoning of the High Court cannot be said to be along the settled principles governing the matter. The reference to and reliance upon the principle in *Pickett v. British Rail Engineering Ltd.* as we may indicate presently, appears to us somewhat misplaced. It is a different matter that case itself was statutorily overruled in England. 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 neighbors 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". All this means that the sum awarded must be fair and reasonable by

accepted legal standards.

6. The rule in common law in *Baker v. Bolton*<sup>2</sup> enunciated by Lord Ellenborough was that "[i]n a Civil Court, the death of a human being could not be complained of as an injury;". Indeed, the maxim *actio 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 causes of action, which are maintainable in consequence of a person's death. There were the dependant's claim for the financial loss suffered and a claim for injury, loss or damage, which the deceased would have had, he lived, and which survives for the benefit of his estate.

7. In a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered by them as a result of the death.

1 (1078) 3 WLR 955; (1979) 1 All ER 774 (HL) 2 (1808) 1 Camp 493 "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.*<sup>3</sup> 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."

8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependent of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependent in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages." (Per Lord Macmillan in *Davies v. Powell*.) Lord Wright in the same case 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 source 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*<sup>4</sup> where the Supreme 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 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 dependent by the death, must be ascertained.

9. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderable, e.g., the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents 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.

10. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct therefrom such part of his income as the deceased was accustomed 3 (1942) AC 601, 617: (1942) 1 All ER 657 (HL) 4 AIR 1962 SC 1: (1962) 1 SCR 929: 1962 MLJ (Cri) 120 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 dependents. Then that should be capitalised by multiplying it by a figure representing the proper number of year's purchase.

11. 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.

12. There were two methods adopted for determination and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in Davies case' and the second in Nance v. British Columbia Electric Railway Co. Ltd.<sup>5</sup>

13. 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.

14. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in Mallett case<sup>6</sup> 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 dependents 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 dependents. 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 dependents 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 5 (1951) AC 601: (1951) 2 All ER 448 (PC) 6Mallett v. McMonagle, (1970) AC 166: (1969) 2 All ER 178 (HL) 41/2 per cent the present value of an annuity for 20 years of which the first ten years are at pound 100 per annum and the second ten years at pound 200 per annum, is about 12 years' purchase of the arithmetical average annuity of pound 150 per annum, whereas if the first ten years are at pound 200 per annum and the second ten years at pound 100 per annum the present value is about 14 years' purchase of the arithmetical mean of pound 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."

15. 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 Accidents Act, 1976. The courts have evolved a method for calculating the amount of pecuniary benefit that dependents could reasonably expect to have received from the deceased in the future. First the annual value to the dependents 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 elapsed between the death and the trial is deducted from a multiplier 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 dependents 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 dependents 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."

16. 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. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be 'just', the statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

17. The multiplier represents the number of years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs 10,000. If a sum of Rs 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and

not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs 10,000 would be 20. Then the multiplier, i.e., the number of years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.

18. Here we may say a word on *Pickett v. British Rail Engineering Ltd.*<sup>7</sup> referred to by the High Court. In an action for damages for personal injuries, the House of Lords overruling the decision of the Court of Appeal in *Oliver v. Ashman*<sup>8</sup> held that damages for loss of future earnings should include the whole period of earning life and not merely the post-accident expectancy. In other words, the plaintiff was held entitled to claim damages for lost earnings of lost years when the accident shortened his expectation of working life. On the same lines, the House of Lords in *Gammell v. Wilson*<sup>8</sup> held that in addition to conventional and moderate damages for loss of expectation of life, damages for loss to the estate should include damages for loss of earnings of the lost years. *Gammell* case<sup>8</sup> was followed by a Division Bench of the Madhya Pradesh High Court in *Ramesh Chandra v. M.P. State Road Transport Corpn.*<sup>9</sup> It was pointed out that the decision in *Gammell* case<sup>8</sup> was in line with the Supreme Court's decision in *Gobald Motor Service Ltd. v. R. M. K. Veluswami*<sup>4</sup> in which it was held that "the capitalised value of his income subject to relevant deductions would be loss caused to the estate of the deceased". The annual loss to the estate was computed in *Gammell* case<sup>8</sup> to be the amount that the deceased would have been able to save, spend or distribute after meeting the cost of his living, and damages for loss to the estate were computed after applying, a suitable multiplier to the annual loss. So, in computation of annual loss the amount that the deceased would have spent on dependents was not taken into account. The result of such a computation was that in cases where the dependents were not the persons to whom the estate devolved, there was likelihood of duplication of damages. To remove this risk, Parliament amended in 1982 the Law Reforms (Miscellaneous Provisions) Act, 1934, by providing that damages recoverable for the benefit of the estate will not include any damages for loss of income in respect of any period after the victim's death (Administration of Justice Act, 1982 Section 4; Winfield & Jolowicz, Tort, Twelfth Edn. pp. 659-60).

19. In the present case the deceased was 39 years of age. His income was Rs 1032 per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment<sup>7</sup> (1961) 3 All ER 323 : (1962) 2 QB 210 (CA) 8 (1981) 1 All ER 578 : (1981) 2 WLR 278 9 1962 MPLJ 426: 1983 ACJ 221 (MP) of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs 1032 per

month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs 2000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was Spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier. In the present case we can take about Rs 1400 per month or Rs 17,000 per year as the loss of dependency and if capitalized on a multiplier of 12, which is appropriate to the age of the deceased, the compensation would work out to (Rs 17,000 x 12 Rs 2,03,000) to which is added the usual award for loss of consortium and loss of the estate each in the conventional sum of Rs 15,000.

20. We think, in all, a sum of Rs 2,25,000 should be a fair, just and reasonable award in the circumstances of this case. The claim made for loss of future earnings of Rs 50,000 on the prospects of future employment in USA was rightly negated by the Tribunal. The award under this head is clearly unjustified in the facts of the case.

21. The rate of interest of 12% from the date of the petition till payment is, in the facts and circumstances of the case, left undisturbed.

22. Pursuant to the earlier orders of this Court a sum of Rs 3,98,000 had been invested out of which a sum of Rs 3,60,000 is invested in a Nationalised Bank. It is appropriate that the appellant shall deposit the balance of the amount together with accrued interest in the Tribunal. The Tribunal will take into account what measures of safety are required to be adopted to protect the interests of the minors. It is also necessary to bear in mind that even in respect of the claimants who are sui juris, their interests, if they are illiterate or semi-literate, must also be protected from possible exploitation.

23. In a case of compensation for death it is appropriate that the Tribunals do keep in mind the principles enunciated by this Court in *Union Carbide Corp. v. Union of India*<sup>10</sup> in the matter of appropriate investments to safeguard the fund from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptibility to exploitation. In that case approving the judgment of the Gujarat High Court in *Muljibhai Ajarambhai Harijan v. 10* (1991) 4 SCC 584 *United India Insurance Co. Ltd.*] this Court offered the following guidelines: (Guj LR pp. 759-60) "(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;



(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in

(ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims 11 (1982) 1 Guj LR 756 Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be liquidated."

These guidelines should be borne in mind by the Tribunals in the cases of compensation in accident cases.

24. In the result this appeal succeeds in part and the compensation is determined at Rs 2,25,000. The judgment of the High Court is modified accordingly. No costs.

25. The Tribunal will take all this into account and invest as much of the amount as it thinks reasonable in several deposits yielding adequate returns permitting the claimants to withdraw the interest periodically to be used for their maintenance and upkeep. The Tribunal will make appropriate orders within two months from the date of the deposit of the balance to be made by the appellant with interest @ 12% per annum.