

* **HIGH COURT OF DELHI : NEW DELHI**

FAO. No.447 of 2002

% Judgment reserved on: 20th August, 2008

Judgment delivered on: 29th August, 2008

1. Sh. Dharamvir S/o. Sh. Guru Dass Mal

2. Shrimati Taripata Rani
W/o. Sh. Dharamvir

R/o. B-630, Transit Camp
Govind Puri, Klkaji
New Delhi.

....Appellants

Through: Mr. M.P. Sharma, Adv.

1. Sh. Subhrati @ Shabu
S/o. Abdul Hammi
R/o. C-242, J.J. Colony
Khanpur, New Delhi

2. Sh. Khub Chand S/o. Sh. Kanwar Bhan
R/o. R-7, ShriNiwas Puri (Pvt. Colony)
New Delhi.

3. The Oriental Insurance Company Ltd.
Oriental House A-25/27, Asaf Ali Road,
New Delhi. ...Respondents.

Through: Mr. Ram N. Sharma,
Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (for short as 'Act') for enhancement of the compensation awarded by the impugned award dated 29th April, 2002, passed by Sh. S.L. Khanna, Judge MACT, New Delhi.

2. The appellants are parents of the deceased Davinder Kumar, who died in a road accident on 19th May, 1997. It is alleged that deceased along with his brother, Darpan Kumar were going on two wheeler scooter No. DL-8S-B-1837 from their residence to their place of work. At about 10.45 p.m., when their scooter reached L Block, Kalkaji, near Gurdawara, a bus bearing No.DL-1P-3659 being driven by respondent

No.1 rammed into their scooter, as a result of which both of them fell down. The scooter was being driven by the deceased who was crushed under the wheel of the bus while his brother Darpan, who was sitting on the pillion seat escaped with minor injuries. It is stated that the said bus was being driven at a very high speed and in a reckless and negligent manner. Respondent No.2 is the owner of the bus and the offending bus was injured with respondent No.3.

3. Vide impugned judgment, the Tribunal awarded a compensation of Rs.2,10,000/- along with 9% interest from the date of filing of the petition till the date of payment.

4. It is contended by learned counsel for the appellant that the Tribunal has wrongly granted 1/3rd of the income of the deceased to the appellants who are the parents of the deceased and it has wrongly applied the judgment of Apex Court in ***Donat Louis***

Machado v. L. Ravindra and Ors., [1999] ACJ 1400, as in the present case, the deceased was only 20 years and he would not have married until reaching the age of 25/27 years and the Tribunal ought to have awarded 2/3rd of the income of the deceased at least for 7 years, whereas in **Donat Louis case (supra)**, the deceased was 31 years old.

5. The other grounds taken for enhancement is that the multiplier of 17 adopted is on the lower side. It should have not been less than 24 years and further, the Tribunal has awarded only a sum of Rs.25,000/- on account of loss of love and affection which is very low. This alone should have been at least Rs.1,00,000/-.

6. During the course of arguments, these two grounds were not urged at all.

7. On the other hand, it has been argued by learned counsel for respondent/Insurance Company that there

is no illegality or infirmity in the impugned order passed by the Tribunal. The Tribunal has rightly deducted 1/3rd income towards personal expenses of the deceased and moreover the multiplier of 17 adopted in this case by the Tribunal is on the higher side.

8. There is no dispute about the manner in which the accident took place and the income or age of the deceased.

9. The deceased was 20 years of age at the time of occurrence of the accident and was working as Telephone Operator with M/s Fair Deal, drawing a salary of Rs.1700/- per month.

10. Regarding multiplier, the Apex Court in the case of ***U.P. State Road Transport Corpn. v. Krishna Bala & Ors., III (2006) ACC 361 (SC)***, has highlighted the manner of fixing the appropriate

multiplier and computation of compensation and has observed as under:

“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 dependents 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.***, 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 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.”

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.”

Further Court held that;

“10. 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 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 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.”

11. 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 ***Smt. Sarla Dixit and Anr. v. Balwant Yadav & Ors., AIR 1996 SC 1272***, the Apex Court has observed;

“So far as the adoption of the proper multiplier is concerned, it was observed that 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 of the multiplicand is a more difficult exercise.

The average gross future monthly income could be arrived at by adding the actual gross income at the time of death to the maximum which he would have otherwise got had he not died a premature death and dividing that figure by two. Thus the average gross monthly income spread over his entire future career, had it been available, would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner.”

12. In ***Donat Louis Machado and others (supra)***, the Apex Court has observed as under;

“We may note certain salient features of the case which are not in dispute. The deceased was earning Rs. 2,500 per month in his vocation as a journalist at the relevant time. He was aged 31 years when his life was cut short because of the unfortunate accident. Learned counsel for the claimants contended that he was also earning extra income, but as there is no clear evidence, we will proceed on the basis that he was earning Rs. 2,500 per month at least. As he died at a comparatively younger age of 31 years, he had a very lucrative career before him for a number of years had he survived. Therefore, we can easily visualise that his total earnings would have gone up by at least Rs. 5,000 per month by the time he would have rested on his oars and given up his work as a journalist after exhausting his full earning career. Consequently, the total amount would work out at Rs. 7,500 per month during the whole span of future career and taking an average at 50 per cent, his future monthly income during the rest of the life could have worked out at Rs. 3,750. On that basis, 12 months' earning would have been Rs. 45,000 and adopting a multiplier of 15 looking to the young age of the deceased the total economical gain to his estate would work out at Rs. 6,75,000 at least. But taking a conservative figure of Rs. 6,00,000 it can easily be visualised that the claimants who are the parents and unmarried sister

and who are dependent on him would have got at least $1/3^{\text{rd}}$ amount as he would have spent the rest of $2/3^{\text{rd}}$ amount of his earnings on his own family which he would have raised and on himself. This would come to a figure of Rs. 2,00,000. This can easily be treated to be the appropriate compensation payable to the claimants on account of economical loss suffered by them as a result of the unfortunate accident to their breadwinner. The High Court has granted the compensation of Rs. 1,27,000 so that the remaining amount which can be assessed as payable by the respondents would be Rs. 73,000 more.”

13. In this regard, the Tribunal after taking the income of the deceased at Rs. 10,200 p.a. held as under;

“Now comes the question of multiplier to be applied in the instant case. Multiplier depends on the age of the deceased and the age of his dependants. In *Donat Louls Machado v. L. Ravindra & Ors.* (supra), the Hon’ble Supreme Court applied the multiplier having regard to the age of the deceased. In the instant case the mother of the deceased was 44 years of age and his father was 48 years. As per the IInd Schedule of the Act, multiplier of 15

would be applicable if we apply the multiplier having regard to the age of the dependants of the deceased and if the age of the deceased is to be considered for applying multiplier, the multiplier of 17 would be appropriate multiplier. The Hon'ble Supreme Court in the case referred to above applied the multiplier having regard to the age of the deceased. I feel that appropriate multiplier to be applied in the present case should also be on the basis of age of the deceased. Multiplier of 17, would, therefore, be the appropriate multiplier. The multiplicand of Rs.10,200/- is, therefore, required to be multiplied by 17. Petitioners are, therefore, entitled to receive a sum of Rs.1,73,400/- (Rs.10,200 x 17) as compensation on account of loss of dependency."

14. In view of the settled law, the multiplier has to be adopted keeping in view the age of the parents of the deceased and in the present case, the age of the mother of the deceased was 44 years and his father was 48 years and as per second Schedule of the Act, multiplier of 15 should have been adopted. So, the Tribunal has already adopted a higher multiplier and

as such the compensation awarded to the appellants is already on the higher side and no ground is made up for enhancing the compensation.

15. In a plethora of cases, the Apex Court and various High Courts have held that 1/3rd amount of the income should be deducted towards self-expenses of the deceased.

16. In ***New India Assurance Co. Ltd. V. Charlie and another, AIR 2005 Supreme Court 2157***, the Apex Court has observed as under;

“What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned counsel for the appellant, 1/3rd deduction has to be made for personal expenditure.”

17. Thus, I do not find any force in the contention of learned counsel for the appellants that the Tribunal has wrongly deducted 1/3rd of the income of the deceased.

18. So, the compensation awarded in the present case to the appellants is just, fair and equitable and I do not find any ambiguity in the impugned order passed by the learned Tribunal and no ground is made out for enhancement of the compensation, as awarded by the learned Tribunal.

19. No order as to costs.

20. Trial court record be sent back forthwith.

August 29, 2008
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V.B.GUPTA, J.