

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

MAC App. No.359/2007& CM No.12456/2008

% Judgment reserved on: 24th September, 2008

Judgment delivered on: 21st October, 2008

National Insurance Company Ltd.
RO-2, 2-E/9, Jahandewalan Extension
New Delhi-55. Appellant

Through: Mr.S.L.Gupta, Adv.

Versus

1.Ltd.Col.A.K.Dimri,
s/o Late Sh.P.R.Dimri,

2.Mrs.Sushma Dimri,
w/o Lt.Col.A.K.Dimri

Both residents of C-2,
Service Officer Flates,
DRDO Campus, Timarpur,
Delhi.

3.Hira Lal, s/o Sh.Brij Lal
r/o Pocket D/735, Dilshad Garden,
Delhi. ...Respondents.

Through: Ms.Manjeet Chawla for
Respondents 1 & 2.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes

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| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Appellant-Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short as 'Act') challenging the judgment dated 10th May, 2007 passed by Sh. V. K. Maheshwari, Judge, MACT, New Delhi (for short as 'Tribunal').

2. Brief facts of this case are that on 6th August, 2002 at about 9.45 a.m., Kamudi Dimri was standing at the bus stop South Moti Bagh, Delhi waiting for bus, when RTV Bus No.DL-IVA-1446 came from Safdarjung Hospital side in a rash and negligent manner and struck against her, as a result of which she fell down and sustained head injuries and expired on the spot.

3. The accident took place due to negligence of the driver of the offending vehicle, Fatah Khas.

4. Vide order dated 7th February, 2004 of the Tribunal, respondent No.1, Fatah Khas was allowed to be deleted from array of parties and thereafter amended memo of parties was filed.

5. It is stated that respondent No.3, herein, (Hira Lal) is vicariously liable to pay compensation as per the provisions of the Act, being the owner of the offending vehicle and the offending vehicle was insured with appellant-Insurance Company.

6. Vide impugned judgment, the Tribunal awarded compensation amounting to Rs.10 lacs to the claimants, who are respondent No.1 and 2 herein.

7. Being aggrieved by the award passed by the Tribunal, the Insurance Company has filed the present appeal.

8. It has been contended by learned counsel for appellant that the income of the deceased who was a student should have been taken as notional income at Rs.15,000/- per annum, when she was not earning any

amount and the multiplier is to be applied as per the age of the claimants or as per the age of the deceased, whichever is less.

9. Other contention is that the award of Rs.10,00,000/- is without any basis.

10. As regards to the income of deceased, it is contended by learned counsel for the claimants that the deceased was about 20 years of age and studying in B.A. III year (Economics Honours) Venketshwara College, Delhi. She was a brilliant student having sound health. She was preparing for MBA entrance examination of IIM and other prestigious institutes. She had joined IIM Coaching classes in Connaught Place in May 2002 and paid fee of Rs.11,900/- and was also earning Rs.5,000/- per month at the time of accident as she was a Computer Programmer and Analyst as well.

11. Claimants have produced the photocopies of the certificates of deceased, Ex.PW1/1 to 17.

12. In ***M.S. Grewal and another v. Deep Chand Sood and others, 2001 ACJ 1719***, the Apex Court has observed as under;

“Be it placed on record that while assessing damages, all relevant materials should and ought always be placed before the court so as to enable the Court to come to a conclusion in the matter of affection of pecuniary benefit by reason of the unfortunate death. Though mathematical nicety is not required but a rough and ready estimate can be had from the records claiming damages since award of damages cannot be had without any material evidence: whereas one party is to be compensated, the other party is to compensate and as such there must always be some materials available therefore. It is not a fanciful item of compensation but it is on legitimate expectation of loss of pecuniary benefits. In *Grand Trunk Railway Company of Canada v. Jennings*,¹³ Appeal Cases 800, this well accepted principle stands reiterated as below:

"In assessing the damages, all circumstances which may be legitimately pleaded in diminution of the damages must be considered. It is not a mere guesswork neither it is the resultant effect of a compassionate attitude."

As noticed above, a large number of decisions were placed before this Court as regards the quantum of compensation varying between 50,000 and Rs.1,00,000 in regard to unfortunate deaths of young children. We do deem it fit to record that while judicial precedents undoubtedly have some relevance as regards the principles of law, but the quantum of assessment stands dependent on the fact-situation of the matter before the court, than judicial precedents. As regards the quantum no decision as such can be taken to be of binding precedent as such, since each case has to be dealt with on its own peculiar facts and thus compensation is also to be assessed on the basis thereof though, however, the same can act as a guide: Placement in the society, financial status differ from person to person and as such assessment would also differ. The whole issue is to be judged on the basis of the fact-situation of the matter concerned though however, not on mathematical nicety."

13. In ***Lata Wadhwa and others v. State of Bihar and others, 2001 ACJ 1735***, cited by the Appellant Counsel, the Apex Court on the acceptability of the multiplier method, has observed as under;

"The multiplier method is logically sound and legally well established

method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases."

"The Court also further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principles, lack of uniformity and an element of unpredictability for the assessment of compensation. The Court disapproved the contrary views taken by some of the High Courts and explained away the earlier view of the Apex Court on this point. After considering a series of English decisions, it was held that 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. Perusal of the award shows that the Tribunal has awarded compensation of Rs.10 Lacs without taking into consideration any principles.

15. It is a settled legal position that under Section 168 of the Act, the compensation to be awarded in favour of the claimants, should neither be excessive nor on the lower side, but the same should be just, fair and equitable. No amount of compensation can compensate the loss of a life or can bring back happiness in the lives of the dependant family members.

16. The difficulty that arises in the cases of death of non-working students is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. Yet it cannot be said that the dependants have not suffered any pecuniary loss. Loss of dependency by its very nature is awarded for prospective or future loss.

17. In ***R.K.Malik and Ors. v. Kiran Pal & Ors.***

2007 ACJ 2010, this Court has observed as under;

“Then, how does one calculate the pecuniary compensation for loss of future earnings and loss of dependency of the parents, grandparents etc., in the case of a non-working student. Under the Second Schedule to the Act in the case of non-earning person, his income is notionally estimated at Rs.15,000/- per annum. The Second Schedule is applicable to the claim petitions under section 163-A of the Act, on the basis of principle of strict liability. The Second Schedule also provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable under Section 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases. [See *Arati Bezbaruah v. Dy. Director General, Geological Survey of India*, 2003 ACJ 680 (SC); *United India Insurance Co. Ltd. v. Patricia Jean Mahajan*, 2002 ACJ 1441 (SC) and *U.P. State Road Trans. Corpn. v. Trilok Chandra*, 1996 ACJ 831 (SC)].”

18. In ***Manju Devi and Ors. Musafir Paswan and Ors. IV (2005) ACC 15***, the Apex Court awarded

compensation of Rs.2,25,000/- on death of a boy aged 13 years in an accident. While doing so the Apex Court applied multiplier of 15 and since the deceased was a non earning person, it was held that Rs.15,000/- must be taken as his notional income as mentioned in the Second Schedule of the Act.

19. In ***New India Assurance Co. Ltd. v. Satender and Ors.(supra)***, the Apex Court granted the compensation of Rs.1,80,000/- on death of a child aged 9 years. The Apex Court has observed as under;

“In ***Mallett v. McMonagle, 1969 ACJ 312 (HL, England)***, Lord Diplock analysed in detail the uncertainties which arise at various stages in making a rational estimate and practical ways of dealing with them. In ***Davies v. Taylor 1973 ACJ 66 (CA, England)***, it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the necessity for compensating the real loss.”

20. Applying the principles of law as discussed above, it would be seen that the deceased was a bright child being gold medalist in class XII examination, she was a merit certificate holder of Kendriya Vidyalaya in class XI, also gold medalist of National Level English Elocution 1999 and National Level Exhibition 1999 and at the time of accident was a student of III year, B.A. (Economics Honours) and also doing the computer course.

21. Having regard to the uncertainties in regard to the academic pursuits, it is not possible to predict at such early stage as to what would be the monthly income of deceased but keeping in view her financial and social background, since the claimants have claimed that deceased was earning Rs. 5,000/- p.m., the income of the deceased is taken as Rs.5,000/- p.m., in the absence of any other evidence.

22. Regarding the multiplier, in ***Smt. Sarla Dixit and Anr. v. Balwant Yadav & Ors., AIR 1996 SC***

1272, where the Apex Court followed the decision of General Manager, ***Kerala State Transport Corporation, Trivandrum v. Mrs. Susamma Thomas & Ors*** AIR 1994 SC 1631, it has observed as under;

“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.”

23. In ***U.P. State Road Transport Corpn. v. Krishna Bala & Ors., III (2006) ACC 361 (SC)***, the Apex Court 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.”

24. Keeping in view the above said decisions, for applying the multiplier, the average age of the claimants i.e. 48 years ($52 + 45 = 97/2$) is taken into consideration.

25. As per Second Schedule of the Act, the appropriate multiplier for the age group of above 45 years but not exceeding 50 years is 13.

26. Since, the deceased was unmarried daughter, for awarding damages to the claimants, her contribution towards the claimants for their maintenance will have to be evaluated. Had the deceased, who was aged 20 years, been alive, she would have got married about

four or five years later and would have begotten children and major part of her earnings would have gone for the maintenance of her own matrimonial family.

27. Thus, the proper multiplier in the facts and circumstances of the case which is just and reasonable is 8.

28. Applying all these principles, the income of the deceased is taken at Rs.5,000/- per month and after making 1/3rd deduction towards the personal expenses, the financial dependency of the claimants is assessed at Rs.3,334/- per month, which is rounded off to Rs.3,335/- p.m. Thus, the annual loss of income comes to $(Rs.3,335/- \times 12) = Rs.40,020/-$ and after applying multiplier of 8, the total loss of dependency comes to Rs.3,20,160/-.

29. In view of the above discussion, the award given by the Tribunal is modified to the extent that appellants are entitled to compensation of

Rs.3,20,160/-, which is rounded off to 3,21,000/- on account of loss of dependency.

30. Further, there is no dispute with the proposition that future advancement in life and career of the deceased could form a valid factor or consideration for determination of his/her gross income as held by the Apex Court in a number of cases. But this is not to be done as a matter of course. Some proof is required to be furnished for this. In ***Bijoy Kumar Dugar v. Bidyadhar Dutta and Ors., AIR 2006 SC 1255***, the Apex court has observed as under;

“The mere assertion of the claimants that the deceased would have earned more than Rs. 8,000/- to Rs. 10,000/- per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before the MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income.”

31. Traditionally, Courts in India have been recognizing that a child of tender age could not show his future propensities and prospective loss to the parents, therefore, it would be impossible to determine the reasonable expectation of pecuniary benefit if the child had lived. But, a child above 10 years could show his acumen. Keeping in view the fact that the deceased was a brilliant student and the claimants can be said to have good expectations from such a child, Rs.1,00,000/- on account of future prospects is awarded to the claimants.

32. The claimants are also entitled for compensation of Rs. 50,000 on account of loss of love and affection and Rs. 50,000/- towards pain and sufferings.

33. In view of the above discussion, the award given by the Tribunal is set aside and the claimants are entitled to compensation of Rs.5,21,000/- under the following heads;

- | | |
|--|---------------|
| 1. Compensation on account of loss of dependency | Rs.3,21,000/- |
| 2. Compensation on account of future prospects | Rs.1,00,000/- |
| 3. Compensation on account of loss of love and affection | Rs.50,000/- |
| 4. Compensation on account of pain and sufferings | Rs.50,000/- |

Total: Rs.5,21,000/-

34. Claimants are also entitled to interest @ 7% per annum from the date of filing of the claim petition till realization.

35. Accordingly, the appeal of the appellant stands allowed to the above extent.

36. No order as to costs.

37. Trial Court record be sent back.

21st October, 2008
Bisht/rs

V.B.GUPTA, J.