

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

MAC. Appeal No. 250 OF 2008

% Judgment reserved on: 22nd April, 2008

Judgment delivered on: 28th April, 2008

1.Smt. Promilla Jain
W/o late Sh.Rajesh Kumar Jain

2.Sh.Rajat Kumar
s/o late Sh.RajeshKumar Jain

3.Mrs.Shikha
w/o Sh.Saurav Kumar Aggarwal

4.Ms.Shivani Aggarwal
d/o late Sh.Rajesh Kumar Jain

5.Ms.Saloni
d/o late Sh.Rajesh Kumar Jain

All residents of 4785, Gali Mohar Singh Jat,
Ahata Kidar, Pahari Dheeraj, Delhi Appellants

Through: Ms.Pooja Goel, Adv.
Versus

1.Ramesh
s/o Sh.Lala Ram
r/o B-241 A, Mange Ram Park,
Pooth Kalan, Delhi -110041.

2.Mrs. Krishna
w/o Sh.J.S.Chitola,
r/o L-469, J.J.Colony, Wazirpur,
Delhi-110052.

3.United India Insurance Company Ltd.
Kanchanjunga Building,
Barakhamba Road, New Delhi.

.....Respondents

Through: Nemo.

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.

The present appeal has been filed by the appellants against the impugned order dated 21-11-07 passed by Ms. Swarn Kanta Mehra, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), Delhi in suit no. 398 of 2005, seeking enhancement of the compensation for the untimely death of Sh. Rajesh Kumar Jain to Rs.15,00,000/- with costs and interest.

2. The brief facts of this case are that on 12.11.06 at about 5.30 p.m., the deceased Rajesh Kumar Jain was crossing Desh Bandhu Gupta Road, when the offending bus bearing no. DL IPA 7498 being driven by the respondent no. 1 in a rash and negligent manner came from the side of

Karol Bagh Terminal and hit the deceased, as a result, the deceased fell on the road and was crushed by the said offending vehicle and died at the spot. Respondent no. 1 was arrested by the police at the spot itself.

3. Vide impugned judgment, the Tribunal awarded a sum of Rs.5,18,000/- along with interest @ 6% p.a. as compensation to the appellants from the date of filing of the petition till the date of realization.

4. Aggrieved thereby, the appellants filed the present appeal before this Court.

5. The principal question that arises for determination in this appeal is as to “Whether the compensation awarded by the learned Tribunal is just or not?”

6. It has been contended by Learned Counsel for the appellants that the Tribunal erred in applying the multiplier of 13 years and it ought to have adopted a multiplier of 24 years for arriving at the economic loss suffered by the appellants in the sudden death of the deceased. The deceased was under regular employment and his income tends to increase in near future. The Tribunal has failed to consider the increase in earnings of

the deceased and the fact that the value of rupee denunciating due to high rates of inflation. No compensation was allowed on account of loss of consortium. Further, the Tribunal has awarded the rate of interest at very low rate. It ought to have been awarded the interest @ 18% p.a. instead of 6%.

7. It is well established before the tribunal by the testimony of PW-3 considered along with the other documents i.e. the charge sheet and FIR registered in this case Ex.PW-4/A and the postmortem report, that deceased Sh. Rajesh Kumar Jain died on 12-11-06 in roadside accident due to rash and negligent driving of the vehicle no. DL IPA 7498 by respondent no.1.

8. As per statement of Petitioner no.3 who is wife of deceased, the deceased was born on 05.05.60. The accident has taken place on 12.11.06. So, at that time deceased was 46 years. Now coming to the monthly income of the deceased, he was employed with Swami Ram Tirath Mission, Delhi as Peon-cum-Dispensary Attendant and as per last pay certificate, his salary was Rs. 4,500/- per month.

9. The Tribunal took the monthly salary of deceased as Rs.4,500/- and considering the age of deceased as 46 years, applied a multiplier of 13 and deducted 1/3 expenses of the deceased and arrived at the figure of Rs. 4,68,000/- for the loss of financial dependency. Besides this, learned Tribunal also awarded Rs. 40,000/- towards loss of love and affection, Rs. 5,000/- on account of funeral expenses and Rs. 5,000/- on account of loss of estate to the appellants.

10. The counsel for the appellants has relied upon the following decisions in support of his claim for enhancement- ***Smt. Sarla Dixit & Anr. v. Balwant Yadav***, 1996 III SC 13, ***Abati Bezbaruah v. Deputy Director General, Geological Survey of India***, (2003) 3 SCC 148, ***Jyotsna Dev v. State of Assam*** reported as 1987 ACJ p.172.

11. In Sarla Dixit (supra), it has been held that:-

“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 multiplicand 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. 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.”

12. 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.”

13. The Apex Court in ***Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya & Ors.***, III (2005) ACJ 1441 (SC), has observed as under;

“8. 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 altogether.

9. 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 there from 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 years' purchase.

10. 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 over-all picture that matters" and the court must try to assess as best as it can the loss suffered."

14. The sum and substances of the various decisions of the Apex Court and this Court is that the compensation paid to the dependent family members of the road victim should be just and reasonable and in every case it is the overall picture that matters and the Court must try to assess as best as it can for the loss suffered.

15. Considering the age of the deceased and the principles as set out above, the multiplier 13 as adopted by the Tribunal is clearly defensible. Calculated on that basis by taking monthly loss of dependency at Rs.3,000/- (after adjusting for personal expenses and likelihood of increase in salary) the compensation would be Rs.4,68,000/-. To the aforesaid sum, Rs. 50,000/- would be added for loss of love & affection, funeral expenses and loss of estate awarded by the Tribunal and, therefore, entitlement of the claimants is

Rs. 5, 18,000/-.The learned Tribunal has rightly allowed total compensation of Rs.5,18,000/-.

16. As regards the award of interest @ 6% per annum by the Tribunal, I do not find any justification for increasing the same to 18% p.a. as there has been variation in the rate of interest in various decisions given by the Supreme Court.

17. In ***Abati Bezbaruah case (supra)*** cited by learned counsel for the appellant, the Apex Court has observed that;

“The question as to what should be rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.”

18. In view of the above decisions, I am of the opinion that the award of interest @ 6% cannot be considered to be lower side if not on higher side. Even otherwise Counsel for the appellants has not given any justification for the award of higher rate of interest except placing reliance on the judgment passed by the higher Courts. There cannot be any dispute that in many other judgments of the Supreme Court it has granted lower rate of interest also at 6.5% and

in some cases it has been 7.5% and in some other matters it is 9% as well. I am, therefore, not inclined to interfere in the discretion exercised by the Tribunal in awarding 6% interest on the award amount.

19. Accordingly, no infirmity can be found with the order of learned Tribunal and the compensation awarded by the Tribunal is just, sufficient and reasonable.

20. The present appeal is, therefore, dismissed.

V. B. GUPTA, J.

April 28, 2008
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