

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

MAC App. No.329 of 2008 & CM No.7782/2008

% Judgment reserved on: 26th May, 2008

Judgment delivered on: 30th May, 2008

M/s. Royal Sundram Alliance
Insurance Company Ltd.,
Northern Regional Office,
Signature Tower,
9th Floor, Tower-2,
South City-1, NH-18,
Gurgaon, Haryana.

....Appellant

Through: Mr. Vishnu Mehra, Adv.

Versus

1. Shri Ram Rattan,
S/o. Late Sh. Duli Chand.

2. Smt. Raj Wati,
W/o. Sh. Ram Rattan,

3. Ms. Reema
D/o. Shri Ram Rattan
(Through Respondent No.1)

All presently R/o. RZ-A/71, Jal Vihar
Najafgarh, New Delhi

4. Akhil Kumar Gupta (Driver)
S/o. Late Sh. M.H. Gupta,
R/o. E-384, Tagore Garden Extn.,
New Delhi

5. M/s. Punj Lloyd Ltd. (Owner)
R/o. 17-18, Punj House,

Nehru Place,
New Delhi.

....Respondents.

Through:

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.

Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short as 'Act') against the award dated 29th January, 2008, passed by MACT in this case.

2. The facts in brief are that on 19th November, 2004 at about 9.10 a.m. deceased Devender was going on his Motor Cycle No. DL-4S-AR-3084. When the deceased reached near Chowk, Sector 8-9, Dwarka, an Optra Car No.DL-3C-AE-0339 came at a very high speed and hit the Motor Cycle of the deceased. The

car was being driven in a rash and negligent manner by respondent No.4. As a result of this impact by the car, Devender died at the spot. The deceased was aged about 22 years and was working with M/s. Carex Cargo Forwarders Pvt. Ltd. on a monthly salary of Rs.4,500/-. He possessed sound health, free from any kind of ailments. He was the only bread earner of the family. The offending vehicle was owned by respondent No.5 and it was insured with the appellant.

3. Vide the impugned judgment, the Tribunal awarded a compensation of Rs.7,22,000/- along with 7% interest from the date on which the appellant had made the payment of the interim award.

4. It has been contended by learned counsel for the appellant that the Tribunal has rejected the settlement of the claim for Rs.4,15,000/- offered by the appellant on the ground that it is not just compensation. Further, only the salary certificate of the deceased has been produced but not the salary slip/register or any

other basic document has been produced to prove the monthly income of the deceased in support of the salary certificate. The Tribunal has taken into consideration the future prospects but there is no evidence with regard to the future prospects and on this point learned counsel for the appellant cited a decision of Apex Court viz ***Bijoy Kumar Duggar vs. Bidhyadhar, AIR 2006 SC 1255.***

5. It is also contended that the Tribunal erred in applying a higher multiplier of 13 years.

6. There is no dispute with regard to factum of accident and the manner in which accident has taken place. There is also no dispute about the age of the deceased.

7. PW3, the employer of the deceased has proved the salary certificate of the deceased as Ex.PW3/1 before the Tribunal. There was nothing in cross examination of this witness to doubt the veracity of his statement or genuineness of the documents proved by

him. Thus, under these circumstances there is no reason to disbelieve the salary certificate.

8. As regard the contention of learned counsel for the appellant with regard to multiplier, in ***Bijoy Kumar Dugar (Supra)*** the Apex Court has observed;

“It is by now well-settled that the compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to them, due to the abrupt termination of life. To determine the quantum of compensation, the earnings of the deceased at the time of the accident and the amount, which the deceased was spending for the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a 'multiplier'. The multiplier is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family naturally is in proportion to one's earning capacity.”

9. 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:-

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“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 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.”

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

12. 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."

13. Thus, after taking judicial facts and circumstances, the Ld. Tribunal has taken into consideration the rising cost of living and more so in salaries in the passing years of service while assessing the loss of dependency and held the average gross earning of deceased are being assessed at $\text{Rs.}4,500 + 9,000 / 2 = \text{Rs.}6,750/-$ per month for assessing loss of dependency and after deducting $1/3^{\text{rd}}$

towards his personal expenses, the total income comes to Rs.4,500/- per month.

14. Considering the age of the deceased and the principles as set out above, the multiplier 13 as adopted by the Tribunal is clearly defensible. Therefore, the learned Tribunal has rightly awarded compensation of Rs.7,22,000/-.

15. As regards the contention of rejection of settlement of the claim, 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 compensate for the loss suffered.

16. In the present case, the Insurance Company offered Rs.4,15,000/- whereas the compensation comes to Rs.7,02,000/-. Thus under these circumstances, the Tribunal has rightly rejected the settlement offered by the Insurance Company.

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

18. The present appeal is, therefore, dismissed.

19. No orders as to costs.

**V. B. GUPTA
(JUDGE)**

**30th May, 2008
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