

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

MAC App. No.66/2005

% Judgment reserved on: 23rd September, 2008

Judgment delivered on: 17th October, 2008

1. Sh. Ram Pal S/o. Sh. Mangal,
2. Sh. Rakesh Kumar S/o. Sh. Ram Pal,
3. Ms. Neetu D/o. Sh. Ram Pal,
All R/o. A-1142, Shahbad Diary Delhi.
(Petitioner No.2 & 3 being minor through
Their Father and Natural Guardian Petition No.1)
....Appellants

Through: Mr. S.N. Parashar, Adv.

Versus

1. Deleted.
2. Sh. Sunil Kumar S/o. Sh. Prithvi Rai,
R/o. WZ-312-B, Rishi Nagar, Rani Bagh, Delhi.
3. The National Insurance Company Ltd.,
Jeevan Bharti Building, Connaught Place,
New Delhi.
4. Smt. Renu W/o. Sh. Dinesh Kumar,
R/o. Village Biampur, Distt. Lucknow, U.P.

...Respondents

Through: Ms. Shantha Devi Raman,
Adv. for R-3.

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 appellants, who are claimants in this case, have filed the present appeal under Section 173 of Motor Vehicles Act, 1988, for enhancement of compensation as awarded by Ms. Sujata Kohli, Judge, MACT (for short as 'Tribunal') vide judgment dated 27th April, 2004.

2. Brief facts of this case are that on 14th August, 2001, at about 5.45 p.m., deceased Smt. Kanti was standing at road side at Shiv Vihar Colony, at Main Bawana Road, Delhi, intending to cross the road, when a Tempo bearing No. DL-IL-7664 being driven allegedly at a very high speed, in a rash and negligent manner came from Shahbad Village side and hit the deceased, as a result thereof, the deceased fell down

and sustained grievous injuries. Later on, deceased succumbed to her injuries.

3. The Tempo was being driven by respondent No.1/Manoj Kumar and it is owned by respondent No.2/Sunil Kumar and insured with respondent No.3/National Insurance Company.

4. Vide order dated 8th July, 2002, passed by the Tribunal, respondent No.1 i.e. the driver of the offending vehicle was given up by the counsel for the claimant and as such name of respondent No.1 was deleted from the array of the claim petition.

5. Respondent No.2/Sunil Kumar, the owner was duly served but did not appear and as such he was proceeded ex-parte.

6. Respondent No.3/Insurance Company in its written statement has admitted the fact that the vehicle in question was insured with it. However, it is stated that the vehicle was being driven by a person without permission or authority of the insured and it

was being used contrary to the terms of the insurance policy and was being driven by its driver without holding a proper and valid driving licence. Therefore, the petition is liable to be dismissed.

7. Vide impugned judgment, the Tribunal awarded compensation to the tune of Rs.1,55,000/- along with interest @ 12% p.a. w.e.f. the date of filing of the petition till 31st December, 2001 and thereafter @ 9% p.a. till the date of judgment.

8. It has been contended by the counsel for appellant that the deceased was a labourer and was earning Rs.3,000/- per month. Beside this, she was looking after the entire household work. The testimony of the husband of deceased remained un rebutted and under these circumstances the Tribunal has not considered the income of the deceased properly and has taken notional income at the time of assessment of compensation.

9. Further, the Tribunal adopted a multiplier of 10 only despite the fact that the deceased was 35 years of age at the time of her demise. Thus, the Tribunal ought to have taken the multiplier of 17 as prescribed under the Second Schedule of the Act. The Tribunal without any legal basis has adopted the multiplier of 10 which is against the settled principles of law.

10. Other contention is that the Tribunal has failed to consider future prospects of the deceased.

11. Lastly, the Tribunal has awarded only a meager sum of Rs.5,000/- towards funeral expenses.

12. Learned counsel for the appellant has also relied upon the decisions of this Court in ***Mathura Dutt & Ors. v. DTC & Anr., 115 (2004) Delhi Law Times 567; Vijay Chadha & Ors. v. Jasbir Singh & Ors., FAO 627/2002 decided on 24th January, 2007*** and a decision of Apex Court in ***Lata Wadhwa & Ors. v. State of Bihar & Ors., AIR 2001 SC 3218***, in support of its contentions.

13. On the other hand, it is contended by learned counsel for Insurance Company that the Tribunal has rightly decided the matter on the basis of notional income for the purpose of calculation of compensation as the appellants themselves have admitted that the deceased was doing labour work and was self employed. The appellant failed to lead any evidence with regard thereto. It is pertinent to note that at one point, the appellant has stated to be self employed and at the other time he was stated to be employed with a factory. Thus, the deceased was having no income at the time of accident and the Tribunal has rightly granted a just and fair compensation after applying the appropriate multiplier.

14. As regard to the contention of income of the deceased, the appellant in evidence by way of affidavit has stated;

“That the deceased Smt. Kanti was aged 35 years old and she was working as a labourer and was earning a sum of Rs.3,000/- per month at the time of her demise. The

deceased was looking after the entire work of the household besides working as a labourer.”

15. There are various services that deceased who was a housewife, provided both to her husband as also to her children. To begin with, she is the housekeeper who sees to their board and lodging and furnishings of the house. Besides this, she also has her role in saving upon the expenses of the children’s clothes and their schooling and above all she affords that element of security, so essential both to the children and the husband in times of ill-health and also on occasions when the husband may be unemployed. If the wife happens to be gainfully employed, this would constitute another important loss. In determining the loss suffered by the husband, children or both, all these factors have to be kept in view. In other words, even gratuitous services rendered by the mother have

a monetary value and compensation in respect thereof is payable to the children and husband.

16. In ***U.P. State Road Transport Corporation, Allahabad and etc. v. Km. Deepti and others etc., AIR 1985 All. 197***, the Allahabad High Court has observed as under;

“It should not be presumed that working ladies would neglect their families and would not render gratuitous services to the members of their families in bringing up the children and looking after their husbands in their day-to-day needs.”

17. The Court further held that;

“We, therefore, see no reason to disentitle the claimants for compensation towards loss of gratuitous services which would have been rendered by the deceased to her husband and daughters merely because compensation had been allowed on the basis of pecuniary loss calculated on her prospective capacity to earn.”

18. In ***Kamlesh Kumar & Ors. v. Mohinder Singh & Ors., I (1986) ACC 167***, the Punjab and Haryana High Court has observed as under;

“There is indeed a pecuniary value to be attached to the services that a housewife renders to husband and children even though these are provided by her gratuitously. The measure of this loss being the cost of replacing these services. The pecuniary loss which can arise for the husband on the death of his wife has been catalogued in Kemp and Kemp on Quantum of Damages, Volume I. This being;

- (1) Loss of wife's contribution to the household from her own earnings;
- (2) Expenses of employing a housekeeper or servant to perform services which the wife had rendered gratuitously.
- (3) Expenses of providing boarding and lodging for such house keeper or servant.
- (4) Additional expenses caused by having the household run by housekeeper or servant instead of the wife.
- (5) Expenses of furnishing the room and providing requisite amenities for the housekeeper or servant.
- (6) Expense of sending children away to boarding school.
- (7) Expense of buying children's clothes instead of having them made by wife.
- (8) Expense of having his own clothes, etc. mended instead of having them cared for and mended by wife.
- (9) Having to eat meals out instead of having them cooked by the wife.

(10). Loss of element of security where husband's employment was insecure or his health bad, and where wife had been accustomed to go out to work to keep the home going, when the husband was not working.

It is apparent, therefore, that even in the case of a non-earning wife, there is a pecuniary loss for which the husband and children are entitled to compensation. If, on the other hand, the deceased wife was an earning hand, then computation of compensation would have to be done taking that into account too. Each case has, of course, to be considered on its own facts."

19. In the social condition of Indian society even if the wife is assumed to be only a housewife, her role as housewife cannot be underestimated.

20. The loss of a housewife cannot be evaluated in terms of money and can be calculated in the absence of a proof of definite income or loss by principle of fair estimate. Further, wife's or mother's loss cannot be evaluated by so much of the amount alone as paid to the servants, and so relegate her to the position of mere housekeeper.

21. In ***Sqdn. Ldr. D.D. Upadhyay & Ors v. U.P. State Road Transport Corporation & Anr., AIR 1993 Delhi 57***, this Court has observed as under;

“In Bingham's Motor Claims cases at page 417, it is noted, as held in a case ***Cults v. Chumley, (1967) 2 All ER 89***, that the claim for loss of wife due to motor accident can be both for loss of services as well as loss of society.

In ***Berry v. Humm and Co., 1915-1 KB 627***, the learned Judge observed:

“I can see no reason in particular why such pecuniary loss should be limited to the value of money lost, or the money value of things lost, as contributions of food or clothing and why I should be bound to exclude the monetary loss incurred by replacing services rendered gratuitously by a relative, if there was a reasonable prospect of their being rendered freely in future but for the death.”

22. The Court further observed as under;

“The principle is now well established that even on the death of a housewife, who was not an earning hand, the compensation on the principle of taking value of domestic services rendered by household lady are to be taken into consideration while assessing

compensation. This principle has been recognized in a judgment of this Court **1990 A.C.J. 116, Gurdeep Singh Narula and another v. Mali Singh and others**. In that case, the services of the lady as a housewife were evaluated at Rs.200/- per month.”

23. In **Lata Wadhwa & Ors. (supra)**, the Apex Court has observed as under;

“So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000/- per annum in cases of some and Rs. 10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given datas for determination of compensation, did not assist in any manner by providing the datas for estimating the value of services rendered by such housewives. But even in the absence of such datas and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3,000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives between the

age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be re-calculated, taking the value of services rendered per annum to be Rs. 36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs. 50,000/- instead of Rs. 25,000/- given under the report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000/- per annum and multiplier applied is eight. Though, the multiplier applied is correct, but the value of services rendered at Rs. 10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs. 20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs. 20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs. 50,000/- towards the conventional figure.”

24. In view of the matter, it would be proper to recalculate the compensation on the basis that the deceased housewife was earning a sum of Rs.3,000/- p.m. and after making 1/3rd deduction towards the personal expenses, the financial dependency of the claimants is assessed at Rs.2,000/- p.m. Thus, the

annual loss of income comes to Rs.24,000/- (Rs.2,000 x 12).

25. As regards to the multiplier, the Apex Court in ***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."

26. In ***Smt. Sarla Dixit and Anr. v. Balwant Yadav & Ors., AIR 1996 SC 1272***, the age of deceased was 27 years and the Apex Court has applied the multiplier of 15 only.

27. In ***General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and others, AIR 1994 SC 1631***, the age of deceased was 39 years and the Apex Court has applied the multiplier of 12 only.

28. In ***Managing Director, Tamil Nadu State Transport Corporation Ltd. v. K.I. Bindu and others, 2006 ACJ 423***, the age of deceased was 34 years and the Apex Court has applied the multiplier of 13 only.

29. In the present case, the deceased was stated to be 35 years old at the time of accident and in the post-mortem report Ex. PW1/3, the age of deceased, has been mentioned as 35 years.

30. Thus, in view of the above decisions, the multiplier of 13 is appropriate in the facts of the case. Thus, the total loss of dependency, after applying multiplier of 13, comes to Rs.3,12,000/- (Rs.24,000 x 13).

31. Regarding the future prospects, 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.”

32. Thus, the future prospects cannot be granted, unless there is evidence to this effect on record.

33. There is no evidence on record to prove that the deceased was in a trade where she would have earned more from time to time or she had special merit or qualification or opportunities, which would have led to an improvement in her income.

34. Thus, in view of the facts of the case, I do not find any force in the contention of learned counsel for the appellants that the Tribunal has not taken into consideration the future prospects in the income of deceased.

35. As regards to the contention of funeral expenses, the Tribunal has awarded the sum of Rs.5,000/- on this account.

36. The Second Schedule of the Act provides fixed amount of compensation towards funeral expenses as Rs.5,000/-.

37. Thus, no fault can be found with the findings of the Tribunal on this count.

38. In view of the above discussion, the award given by the Tribunal is modified to the extent that appellants are entitled to enhanced compensation of Rs.1,62,000/- (Rs.3,12,000/- – Rs.1,50,000/-).

39. Appellants shall also be entitled to interest @ 8% p.a. from the date of judgment of the Trial Court (i.e. w.e.f. 27.04.04) till realization, on this enhanced compensation only.

40. Accordingly, the present appeal stands allowed to the above extent, with costs.

41. Trial court record be sent back.

October 17, 2008
rs/Bisht

V.B.GUPTA, J.