

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th July, 2012

+ **MAC.APP. 523/2011**

LALITA PARASHAR & ANR. Appellant
Through: Mr. O.P. Mannie, Adv.

versus

RANJEET SINGH NEGI & ORS. Respondents
Through: Ms. Suman Bagga, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for enhancement of compensation of ₹4,60,920/- awarded in favour of the Appellants for the death of Ms. Neeraja Parashar who died in a motor vehicle accident which occurred on 01.08.2008.
2. On appreciation of evidence, Motor Accident Claims Tribunal (the Claims Tribunal) found that the accident was caused on account of rash and negligent driving of a DTC bus No.DL-1PB-7657 which struck against the two wheeler, on which the deceased was travelling as a pillion rider.
3. The finding on negligence has not been challenged by the driver, owner or the Insurance Company and thus, the same has become final between the parties.

4. On quantum of compensation, the Appellants proved a Salary Certificate Ex.PW-3/3 to show that the deceased was getting an annual salary of ₹3,31,126/-. The Claims Tribunal, however, did not take into consideration the amount paid by the deceased's employer towards the medical, LTA basket, Provident Fund and medi-claim premium. The Claims Tribunal thus took the deceased's income to be ₹11,539/- only i.e. the basic salary and HRA to award the loss of dependency.
5. Following contentions are raised on behalf of the Appellants:-
 - (i) The Claims Tribunal applied the multiplier of '7' as per the age of deceased's mother it should have been applied as per the age of the deceased. Reliance is placed on *P.S.Somanathan & Ors. v. District Insurance Officer & Ors. (2011) 3 SCC 566* and *Amrit Bhanu Shali & Ors. v. National Insurance Company Ltd. & Ors. (2012) 6 SCALE 1*.
 - (ii) The Claims Tribunal erred in assuming the deceased income to be ₹11,539/ per month. Her income should have been treated as ₹3,31,126/- per annum as was reflected in the Salary Certificate Ex.PW-3/3.
 - (iii) Deceased was a young girl of 33 years. She had good future prospects. The Claims Tribunal ought to have granted addition of 50% in the deceased's income towards the future prospects.

MULTIPLIER:-

6. It is true that in *P.S.Somanathan (supra)* and *Amrit Bhanu Shali (supra)* the multiplier was taken as per the age of the deceased. However, a reference may be made to a three Judge Bench decision of the Supreme Court in *U.P. SRTC v. Trilok Chandara, (1996) 4 SCC 362*; where the Supreme Court relied on *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176*; and reiterated that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is more. Para 12 of the report is extracted hereunder:-

“12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of *General Manager, Kerala State Road Transport, v. Susamma Thomas: (1994) 2 SCC 176*. In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed:

“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.

The principle was explained and illustrated by a mathematical example:

“The multiplier represents the number of Years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs.10,000 would be 20. Then the multiplier i.e., the number of Years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.”

7. There is another three Judge Bench decision of the Supreme Court in *New India Assurance Company Ltd. v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1, where in the case of death of a bachelor, who was aged only 25 years, the multiplier of 5 was

applied according to the age of the mother of the deceased, who was about 65 years at the time of the accident. Para 6 of the report is extracted hereunder:-

“6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3,500/-. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs.3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs.2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.”

8. In view of the decision in *Trilok Chandara (supra)* and *Shanti Pathak (supra)* the multiplier has to be as per the age of the deceased or the age of the Claimant whichever is higher. The Claims Tribunal was, therefore, right in applying the multiplier of ‘7’ according to the age of the deceased’s mother.

MULTIPLICANT

9. The deceased was getting a salary of ₹3,31,126/- per annum which included of flexi basket of ₹11,539/- per month. The deceased was an unmarried girl aged 33 years and was working in a renowned multi-national company. It has to be borne in

mind that the multi-national companies normally give choice to an employee as to how he/she wants to take the package to give advantage of deduction under the Income Tax Act. The deceased had a choice to get the amount of ₹11,539/- as reimbursement towards the conveyance, towards petrol, towards mobile phone usage charges, etc. etc. This aspect of the compensation package being offered by the multi-national companies was highlighted by the Supreme Court in *National Insurance Co. Ltd. v. Indira Srivastava & Ors.*, 2008 (2) SCC 763. Para 10 of the report is extracted hereunder:-

“10. Section 168 of the Act uses the word “just compensation” which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, gratuity and other perks to attract the people who are efficient and hard-working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.....”

10. In *Raj Rani v. Oriental Insurance Co. Ltd.* (2009) 13 SCC 654; while relying on *Indira Srivastava (supra)*, the Supreme Court

reiterated that apart from dearness allowance other allowances payable for the benefit of the family, have to be considered for the computation of the annual income.

11. In *Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.*, (1977) 2 SCC 745, it was held that dearness allowance, conveyance allowance and other allowances are to be treated as part of the deceased's income.
12. It is important to note that in case of a bachelor, 50% deduction is made towards the personal and living expenses and, therefore also no further deduction was required to be made towards any of the allowances payable to the deceased.

FUTURE PROSPECTS

13. The deceased was appointed with NIIT Technology Ltd. by an appointment letter dated 04.12.2007. She was on probation for a period of one year which could be extended at the discretion of her employer. In the circumstances and in the absence of any evidence as to the future prospects, the Appellants are not entitled to any addition in the deceased's income for computation of loss of dependency.
14. There was liability of about ₹15,000/- towards the payment of income tax on package of ₹3,31,126/-.
15. The loss of dependency thus works out as ₹11,06,441/- (3,31,126/- - 15,000/- x 1/2 x 7).

16. I would further make a provision of ₹25,000/- towards loss of love and affection, ₹10,000/- each towards funeral expenses and loss to estate.
17. The overall compensation comes to ₹ 11,51,441/-.
18. The enhanced compensation of ₹ 6,90,521/- shall carry interest @ 7.5 % per annum from the date of filing of the Petition till its payment, which shall be disbursed equally between the Appellants.
19. Respondent No.3 ICICI Lombard General Insurance Company Limited is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
20. 50% of the enhanced compensation shall be held in fixed deposit for a period of two years. Rest shall be released on to the Appellants on deposit.
21. The Appeal is allowed in above terms.
22. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 17, 2012

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