

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

Decided on: 31st January, 2012

+ **MAC.APP. No.889/2011**

RAJ KUMAR GUPTA & ANR. Appellants
Through: Mr. M. Shamikh, Adv.

versus

MOHD. SHAMSHAD & ORS. Respondents
Through: None.

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 in respect of death of Rahul Gupta, who was aged 23 years and a bachelor at the time of the accident.
2. The Tribunal took the deceased's income as per the income tax return for the assessment year 2008-09 (Financial year 2007-08) as ₹ 1,16,200/-, applied the multiplier of '14' as per the age of the deceased's mother and computed the loss of dependency as ₹ 8,13,400/-. After awarding notional sums under non pecuniary heads overall compensation of ₹ 8,13,400/- was granted.
3. The contention raised on behalf of the Appellants are: -

- (i) The deceased's income should have been considered as ₹ 1,99,007/- as per the income tax return for the assessment year 2009-10 (Financial year 2008-09).
 - (ii) The deceased was a young boy of 23 years. He had bright future prospects. 50% addition should have been made on account of the future prospects.
 - (iii) The multiplier should have been applied according to the age of the deceased.
4. During evidence PW-1 stated that the deceased was in the business of raw cotton. The income tax returns for AY 2006-07, 2007-08, 2008-09 and 2009-10 show that the deceased returned an income of ₹ 93,995/-, ₹ 1,01,950/-, ₹ 1,16,200/- and ₹ 1,99,910/- respectively for these years. The income tax return filed by the deceased shows that there was gradual increase in his income. Under these circumstances, the Tribunal committed an error in rejecting the income tax return for AY 2009-10 (FY 2008-09).
5. The deceased was in business for a few years. Considering the imponderables the Tribunal rightly did not grant any addition on account of future prospects.
6. As far as the selection of multiplier is concerned, the law is settled that the choice of multiplier is determined by the age of the deceased or that of the claimants whichever is higher. There

is a three Judges Bench judgment of the Supreme Court in *U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors.*, (1996) 4 SCC 362, where the Supreme Court relied on *G.M., Kerala SRTC v. Susamma Thomas*, (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 Judges’ 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 the 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. The deceased's mother was aged 43 years. The multiplier of '14' taken by the Tribunal was appropriate.
9. The loss of dependency in view of the above discussion has to be recomputed as ₹ 13,99,370/- ($₹ 1,99,910 \div 2 \times 14$).
10. The Claims Tribunal awarded a sum of ₹ 1,00,000/- towards loss of love and affection. I may mention that, where the Claimants are entitled to loss of dependency on actual basis, normally a nominal sum is awarded under the head of loss of love and affection. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹ 25,000/- only.

11. The overall compensation works out as ₹ 14,39,370/-.
12. The enhanced compensation shall carry interest @ 7.5% per annum from the date of filing of the Appeal till the date of the payment.
13. The enhanced compensation of ₹ 8,38,400/- along with interest shall be deposited by the Respondent No.3 (New India Assurance Co. Ltd.) within 30 days. 30% of the enhanced amount along with interest shall be payable to the first Appellant. Rest of the amount along with proportionate interest shall be payable to the second Appellant. The amount awarded shall be held in Fixed Deposit in UCO Bank, Delhi High Court Branch, New Delhi for a period of three years.
14. There is a clerical error in the name of the third Respondent. The word “India” has not been mentioned in between the words “New Assurance”. Learned counsel for the Appellants shall file the amended memo of parties during the course of the day.
15. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

JANUARY 31, 2012

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