

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

Date of decision: 5th March, 2012

+ **MAC. APP. No.875/2011**

IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms.Suman Bagga, Advocate.

versus

SHAMBHU PATHAK & ORS

..... Respondents

Through: Mr.Arun K.Beriwal,
Mr.Satendra Kumar Mishra and
Mr.Pramod Kumar, Advocates.

+ **MAC.APP. 233/2012**

SHAMBHU PATHAK & ORS

..... Appellants

Through: Mr.Arun K.Beriwal,
Mr.Satendra Kumar Mishra and
Mr.Pramod Kumar, Advocates.

versus

IFFCO TOKIO GENERAL INSURANCE CO LTD & ANR

..... Respondents

Through: Ms.Suman Bagga, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These are two cross appeals. In MAC APP.875/2011 Appellant

/IFFCO TOKIO General Insurance Company Limited seeks reduction of compensation of ₹ 22,37,000/- awarded for the death of Radha Devi who was aged 52 years at the time of accident. In the cross appeal No.233/2012 the Appellants, who were legal representatives of deceased Radha Devi seek enhancement of compensation. An additional ground has been taken in MAC APP.233/2012 as it is claimed that the deceased had obtained a Medi-claim policy and reimbursement of ₹ 1,02,350/-, disallowed by the Tribunal should not have been done. This amount was paid on account of medi-claim policy for which the deceased paid the premium.

2. For the sake of convenience the Appellant in MAC APP. No. 875/2011 will be referred as the insurer and in MAC APP. No.233/2011 as the Claimants.
3. The value of the gratuitous services rendered by a house wife was examined in detail by this Court in Royal Sundaram Alliance Insurance Co. Ltd. v. Master Manmeet Singh & Ors., MAC.APP. 590/2011, decided on 30th January, 2012. This Court noticed as follows:-

“8. First of all, I would deal with Clause 6 (b) of the second Schedule to the M.V. Act (under Section 163A) which provides that the income of a non-earning spouse, who has died, may be taken as one-third of the income of the surviving spouse. It goes without saying that similar kind of services is rendered by a home maker whether in the middle or in the low income group. Is there any

justification to relate the income of the housewife to that of her husband?

9. To give an example there is a senior Clerk 'A', a Junior level Officer 'B' and a middle level Officer 'C' working with the Govt.; A,B and C draw a salary of ₹ 15,000/-, ₹30,000/- and ₹ 60,000/- respectively. The wives of all the three are looking after their respective homes and caring for the children. All of them are Graduates. If we apply the criterion as laid down in the second Schedule, the value of services rendered in case of 'A', 'B' and 'C' would be ₹5,000/-, ₹10,000/- and ₹20,000/- per month respectively. The husband and the children would be entitled to compensation on the assumed loss of dependency as mentioned above. There would be wide disparity in the award of compensation.

10. In the three examples quoted above, although the deceased's spouse might be rendering the same services for the husband and the children, i.e. to cook food, to buy clothes, wash and iron them, to work as a tutor for the children, to give necessary instructions to the children as to their upbringing, and so on. The compensation awarded in the case of 'A' would be X amount; in case of 'B' would be 2X amount and in case of 'C' would be 4X amount.

11. Similarly, take an example of X,Y and Z who are in their respective enterprises and earning ₹ 5 lacs, ₹ 10 lacs and ₹ 15 lacs per annum respectively. Not only there would be wide disparity in the grant of compensation in respect of the death of their spouse, the compensation awarded for loss of services rendered by a housewife of a husband in a very high bracket based on this principle may be unjust enrichment. Again there may be cases where if the husband is having a very high income his wife really might not be contributing so much towards the home making. Thus, I am of the view that a readymade formula given in Clause 6 (b) of the second

Schedule cannot be adopted to award just and fair compensation which is the very basis of an award passed under Section 168 of the M.V. Act.

12. In the case of *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, it was held as under:-

“5.....The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the law values life and limb in a free society in generous scales'. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

13. In *Arun Kumar Agrawal* the Supreme Court referred to *Kemp and Kemp on Quantum of Damages*, (Special Edn., 1986), *Berry v. Humm & Co.*, (1915) 1 KB 627 and *Mehmet v. Perry*, (1977) 2 All ER 529 (DC). Paras 22, 23, 25 and 26 of the report are extracted hereunder:-

“22. We may now deal with the question formulated in the opening paragraph of this judgment. In Kemp and Kemp on Quantum of Damages, (Special Edition - 1986), the authors have identified various heads under which the husband can claim compensation on the death of his wife. These include loss of the wife's contribution to the household from her earnings, the additional expenses incurred or likely to be incurred by having the household run by a house-keeper or servant, instead of the wife, the expenses incurred in buying clothes for the children instead of having them made by the wife, and similarly having his own clothes mended or stitched

elsewhere than by his wife, and the loss of that element of security provided to the husband where his employment was insecure or his health was bad and where the wife could go out and work for a living.

23. In England the courts used to award damages solely on the basis of pecuniary loss to family due to the demise of the wife. A departure from this rule came to be made in Berry v. Humm and Co. (1915) 1 K.B. 627 where the plaintiff claimed damages for the death of his wife caused due to the negligence of the defendant's servants. After taking cognizance of some precedents, the learned Judge observed:

I can see no reason in principle 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 the future but for the death.

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25. In Mehmet v. Perry, the pecuniary value of a wife's services were assessed and granted under the following heads:

(a) Loss to the family of the wife's housekeeping services.

(b) Loss suffered by the children of the personal attention of their mother,

apart from housekeeping services rendered by her.

(c) Loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.

26. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.”

14. The Supreme Court observed that in view of the multifarious services rendered by the housewife, it is difficult to value those services in terms of money. But then some estimate has to be made in terms of money to award compensation. In Para 27 of the report, the Supreme Court said as under:-

“27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.”

“34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

- (i) Minimum salary of a Graduate where she is a Graduate.*
- (ii) Minimum salary of a Matriculate where she is a Matriculate.*
- (iii) Minimum salary of a non-Matriculate in other cases.*
- (iv) There will be an addition of 25% in the assumed income in (i), (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is more than 50 years.*

- (v) *When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.*
- (vi) *If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above.*
- (vii) *There shall not be any deduction towards the personal and living expenses.*
- (viii) *As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto ₹ 25,000/- (on present scale of the money value) towards loss of love and affection and ₹ 10,000/- towards loss of consortium, if the husband is alive, may be awarded.*
- (ix) *Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate."*

4. It is well settled that the advantages which the Claimant gets on account of the accidental death only, is liable to be deducted
5. In *United India Insurance Co. Ltd. v. Patricia Jean Mahajan* (2002) 6 SCC 281, it was held that the deductions are admissible from the amount of compensation in case the

claimant receive some benefit as a consequence of injuries suffered which the Claimant otherwise would not have been entitled to. The Supreme Court held as under:-

“24. Mr. Soli J. Sorabjee submitted that while assessing the amount of compensation, the benefits which have accrued to the claimants by reason of death must also be taken into account. A kind of balancing of losses and the gains or benefit by reason of death would be necessary. In support of the above contention, he has referred to the decision in Gobald Motor Service Ltd. v. R.M.K. Veluswami AIR 1962 SC 1. It is a decision by a three-Judge Bench of this Court, and at SCR p. 938 the observations made by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 (AC p.601) has been quoted which read as follows:-

‘The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately.’

25. To further elaborate the above proposition, observations made by Lord Wright in Davies case

(supra) have also been quoted. They read as follows:

“The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately placed in diminution of the damages must be considered. The actual pecuniary, loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source comes to him by reason of the death.”

The learned Counsel laid stress on the last part of observation made to the effect that - for the purposes of balancing losses and gains any pecuniary advantage which from whatever source come to them, has to be considered.

26. It is submitted in Gobald's case (supra) the principle of Davies Case (supra) was referred and taken into consideration. Reliance has also been placed on a decision in Sheikhpura Transport Co. Ltd. v. Northern India Transport Insurance Company, (1971) 1 SCC 785, particularly to the observations made by the Court in paragraph 6 of the judgment where the principle in the case of Gobald Motors (supra) has been reiterated. In this

connection learned Counsel for the Insurance Company has also drawn our attention to the decision in the case of Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176, particularly on paragraph 8 of the report, where it is observed that the principle in the case of Davies v. Powell was adopted, in the case of Gobald Motors (supra). It is thus submitted that principle of balancing of loss and gains, so as to arrive at a just and fair amount of compensation has been accepted by this Court as well. On behalf of the Insurance Company Hodgson v. Trapp 1988 (3) All ER 870 (HL) has been relied on in which our attention has particularly been drawn to the following observations made at All ER p. 873j-874b:

.....the basic rule is that it is the net consequential loss and expense which the Court must measure. If, in consequence of the injuries sustained, the plaintiff has enjoyed receipts to which he would not otherwise have been entitled, prima facie, those receipts are to be set against the aggregate of the plaintiff's losses and expenses in arriving at the measure of his damages. All this is elementary and has been said over and over again. To this basic rule there are, of course, certain well established, though not always precisely defined and delineated, exceptions. But the Courts are, I think, sometimes in

danger, in seeking to explore the rationale of the exceptions, of forgetting that they are exceptions. It is the rule which is fundamental and axiomatic and exceptions to it which are only to be admitted on grounds which clearly justify their treatment as such.

From the above passage it is clear that the deductions are admissible from the amount of compensation in case the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. It does not cover cases where the payment received is not dependent upon an injury sustained on meeting with an accident. The other observation to which our attention has been drawn at page 876 placitum 'f' also does not help the contention raised on behalf of the Insurance Company for deduction of amounts in the present case. The Court was considering a situation where due to the injuries received the victim was claiming cost of care necessary in future in respect of which statutory provision, provided for attendant's allowance. It was found that the statutory benefit and the damages claimed were designed to meet the identical expenses. This is however not so, at least not shown, to be so in the case in hand."

6. Similarly, in *Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami and Ors.*, AIR 1962 SC 1, it was inter-alia observed as follows:-

“7.....The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependants being considered separately.”

7. In *Helen C. Rebello v. Maharashtra S.R.T.C.*, (1999) 1 SCC 90, the Supreme Court held as follows:-

“32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to

the claimant by accidental injury or death and not other forms of death.....”.

8. In *Jitendra v. Rahul* (2008) (5) MPHT 336, the Madhya Pradesh High Court held that the claimant, though not entitled to the amount received by him under the mediclaim policy, he was entitled to the amount of premium paid for the mediclaim policy.
9. This Court in *Udam Singh Sethi v. Tamal Das and Ors.* MAC. APP. No. 369/2006 decided by this Court on 26.10.2009, relying on *Jitendra (supra)* held that the Claimant would not be entitled to the medical expenditure which has been reimbursed to him under the mediclaim policy.
10. From the aforesaid discussion it is quite evident, that a Claimant, who has been reimbursed for the medical expenditure incurred by him (due to a motor accident) through his mediclaim policy, will not be again entitled to claim reimbursement, under the same head from the insurer of the offending vehicle, in a claim filed under the Motor Vehicles Act.
11. Thus, the payment received from mediclaim policy was liable to be deducted from the amount of compensation awarded.
12. It is stated that deceased Radha Devi had studied up to 12th standard. Although no documentary evidence has been placed on record, perhaps there was no occasion for the Claims

Tribunal to look into the same as the Claim Petition was decided on the basis of DAR. I would accept the contention raised on behalf of the Appellants in MAC APP.233/2012, that the deceased had studied up to 12th standard. In the circumstances, and on the principle laid down in *Royal Sundaram (supra)* the Appellants in cross appeal were entitled to compensation on the salary of a matriculate. The Appellants in the cross appeal were not entitled to any addition as the deceased was aged more than 50 years. The salary of a matriculate on the date of the accident was ₹ 7410/- per month. Adopting the multiplier of '11' according to the deceased's age the loss of dependency would come to ₹ 9,78,120/- (7410x12x11). In addition, the Claimants were rightly awarded a sum of ₹ 1,52,000/- on account of the treatment, which was not reimbursed by the Insurance Company on account of Medi-claim policy. On adding notional sum of ₹ 25,000/- for the loss of Love and Affection, ₹ 10,000/- each towards Loss of Consortium, Loss of Estate and Funeral Expenses, the overall compensation would come to ₹ 11,85,120/-.

13. The compensation shall carry interest @ 9% per annum as awarded by the Claims Tribunal with which I would not interfere with.
14. Out of this amount, 25% shall be immediately released in proportion as directed by the Tribunal. Rest of the amount shall be held in Fixed Deposit for a period of 1 year, 2 years and 3

years. The excess amount deposited by the Insurance Company along with interest accrued during the pendency of the appeal shall be refunded to the Appellant/ Iffco Tokio General Insurance Company Limited. The statutory amount shall also be refunded to the Insurance Company.

15. No costs.

16. Both the appeal stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 05, 2012

mr