

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

Date of decision: 24th August, 2012

+ **MAC. APP. 968/2011**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Manoj R. Sinha, Adv.

versus

SAMBUL BANO BEGUM & ORS. Respondents
Through: Mr. Vikas Sharma, Adv. for R-1 to R-4/
the Claimants.
Mr. Pankaj Batra, Adv. for R-5.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant National Insurance Company Limited impugns a judgment dated 03.09.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹13,03,600/- was awarded in favour of the Respondents No.1 to 4 for the death of one Mohd. Javed Alam @ Raja who died in a motor vehicle accident which occurred on 12.12.2010.
2. The following contentions are raised on behalf of the Appellant Insurance Company:-
 - (i) The driver of the offending vehicle was found driving the offending vehicle under the influence of liquor thus, there was

contributory negligence and the Appellant Insurance Company was not liable to pay the full compensation.

- (ii) Since it was a case of death of a bachelor, the multiplier should have been as per the age of the deceased's mother and there should have been deduction of 50% towards personal and living expenses.
- (iii) In the absence of any evidence with regard to the future prospects, the Claimants were not entitled to any addition in the deceased's income to award loss of dependency.

3. The Claims Tribunal dealt with the question of Appellant Insurance Company's liability when the insured/driver is found to be driving the vehicle under the influence of liquor. Para 15 of the impugned judgment is extracted hereunder:-

"15. It is submitted by counsel for insurance company that as per terms and conditions of policy, insurance company shall not be liable to make any payment in respect of accidental loss or damages suffered whilst the insured or any person driving the vehicle with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs. I perused the terms and conditions of the policy filed on record and it is found that this condition is related to Own-Damage claim and not in respect of Third Party claim. Therefore, I do not agree with the submissions of counsel for insurance company that insurance company is not liable to pay the compensation. Therefore, it is held that insurance company is liable to pay the compensation."

4. Once the vehicle is insured by an authorized insurer in accordance with the provision of Section 147 of the Act, the only ground under which an Insurer can avoid the liability is laid down under Section 149 (2) of the Act. It is not the Appellant's case that the Insured committed any breach of the terms of the policy as laid down under Section 149 (2) (a) (i), (ii)

or (iii) of the Act. Thus, even if, it is assumed that Respondent No.5 was found to be driving the offending vehicle under the influence of liquor, the Insurance Company cannot avoid its liability.

5. Otherwise also, if the driver of an offending vehicle is found to be driving the same under the influence of liquor, it cannot be said to be a case of contributory negligence. The Insurance Company can raise a plea of contributory negligence only where the deceased himself contributed to the accident. Thus, there is no escape from the conclusion that the Appellant Insurance Company cannot avoid its liability.
6. While making selection of multiplier and deduction towards personal and living expenses, the Claims Tribunal observed that although it was a case of death of a bachelor, yet since the bachelor died leaving behind a widowed mother, two sisters aged 22 years and 14 years and one brother aged 7 years, it would be appropriate to deduct one-third towards the personal and living expenses and apply the multiplier as per the age of the deceased. Paras 7,8 and 9 of the impugned order are extracted hereunder:-

“7. It is submitted by counsel for Lrs of deceased that in the present case, there are four financially dependents upon the income of deceased who are widowed mother, one sister aged 22 years, another sister aged 14 years and one brother aged 7 years. Considering the submission of counsel for Lrs of deceased, I agree with the submissions that personal and living expenses should be restricted to 1/3rd and contribution to family will be taken as 2/3rd as per case law namely Smt. Sarla Verma & Ors Vs. Delhi Transport Corporation & Anr. 2009 (V) AD (136), wherein it has been held that “Where family of the bachelor is large and dependent on the income of deceased, as in a case where he has a widowed mother and large number of younger nonearning sisters or brothers, his personal and living expenses may be restricted to one third and contribution to the family will be taken as two third”. Therefore, in ratio of case law as aforesaid, if we deduct

*1/3rd from his monthly income i.e. 8,775-2,925 (1/3rd of Rs. 8,775/), we arrive at a figure of Rs. 5,850/-. This can be said to be loss of monthly dependency to the claimants and the annual dependency comes to Rs.70,200/(5,850 * 12).*

8. In case law namely P.S Somnathan and Ors Vs District Insurance Officer and Anr. 2011 II AD (SC) 601, it has been held that "Multiplier should be applied as per age of deceased and not as per the age of mother of deceased where there are other family members dependent upon the income of deceased". Therefore, I agree with the submissions of counsel for LR of deceased in this regard and I do not agree with the submissions of counsel for insurance company that multiplier should be applied as per age of mother of deceased.

9. The age of deceased as per PMR has been mentioned as 22 years. The age of deceased in the affidavit of his mother has been stated as 23 years on the date of his death. The date of birth in the school leaving certificate has been mentioned as 24.02.1990 and he would have been attained the age of 20 years and 10 months on the date of his death. As per copy of ration card, deceased would have been about 24 years on the date of his death. Therefore, considering all these facts, I am of the view that a multiplier of '18' applicable for the age group of 15-20 and 21-25 is applicable in the present case for calculating loss of dependency of the claimants in view of ratio of case law namely Smt. Sarla Verma Vs DTC(Supra). Hence, after applying multiplier of '18' to the multiplicand of Rs.70,200/- we arrive at a figure of Rs. 12,63,600/- towards compensation on account of dependency of the claimants."

7. There is no dispute about the proposition of law that where a bachelor leaves behind a widowed mother and younger siblings, the Court should make deduction of one-third towards the personal and living expenses against the normal rule of 50% (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*). Yet, it is well settled by authoritative pronouncements of the Supreme Court in a large number

of cases including in *U.P.S.R.T.C. v. Trilok Chandara*, (1996) 4 SCC 362 that the multiplier has to be according to the age of the deceased or the Claimant whichever is higher.

8. This Court in *Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors.*, MAC APP.1148/2011, decided on 03.01.2012 discussed at length the law laid down by the Supreme Court in its various judgments and opined that the multiplier will be according to the age of the deceased or the Claimant whichever is higher. Paras 4 to 8 of the report in *Vijay Laxmi* are extracted hereunder:-

“4. 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.”

5. 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.”

6. *Learned counsel for the Appellant referred to Sarla Verma (supra 1) in support of the proposition that age of the deceased is to be taken into consideration for selection of the multiplier. As an example the multiplier taken in various cases such as in Susamma Thomas (supra), U.P. SRTC v. Trilok Chandara, (1996) 4 SCC 362 as clarified in New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 and the multiplier as mentioned in Second Schedule to the Motor Vehicles Act were compared and it was held that the multiplier as per Column No.4 in the said table was appropriate for application. Sarla Verma (supra) related to the death of one Rajinder Prakash who had left behind his widow, three minor children apart from his parents and the grandfather. Obviously, the age of the deceased was taken into consideration for the purpose of selection of the multiplier as the deceased left behind a widow younger to him, apart from three minor children. It was not laid down as a proposition of law that irrespective of the age of the claimants, the age of the deceased is to be taken into consideration for selection of the multiplier for calculation of the loss of dependency. It is true that in Mohd. Ameeruddin (supra 2) and P.S. Somanathan (supra 3) and National Insurance Company Ltd. v. Azad Singh (supra 5), the Hon'ble Supreme Court applied the multiplier according to the age of the deceased, yet in view of Trilok Chandra (supra) and Shanti Pathak (supra) decided by the three Judges of the Supreme Court, the judgment in Mohd. Ameeruddin (supra 2), P.S. Somanathan (supra 3) and Azad Singh (supra 5) cannot be taken as a precedent for selection of the multiplier.*

7. *In the latest judgment of the Supreme Court in National Insurance Company Ltd. v. Shyam Singh & Ors., (2011) 7 SCC 65, decided on 04.07.2011, the Supreme Court referred to Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667 and held that the multiplier as per the age of the deceased or the claimant whichever is higher would be applicable. Para 9 and 10 of the report are apposite:-*

“9. This Court in the case of Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:-

“6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. v. Charlie, AIR 2005 SC 2157, it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother’s age never cropped up because that was not the contention raised even before the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.”

10. In our view, the dictum laid down in Ramesh Singh (supra) is applicable to the present case on all fours.

Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years.”

8. *Similarly in Manam Saraswathi Sampooran Kalavathi & Ors., v. The Manager, APSRTC, Tadepalligudem A.P. & Anr., (2010) 5 SCC 785, decided on 26.03.2010, the multiplier of 13 was applied in case of death of a young bachelor where the mother was 47 years of age.*

9. Thus, the Claims Tribunal erred in applying multiplier as per the age of the deceased.
10. Admittedly, there was no evidence with regard to the future prospects. The Claims Tribunal granted future prospects while relying on the judgment of this Court in *Santosha Devi v. Abdul Kareem & Ors.* MAC APP.440/2009, decided on 08.10.2009; *Reshm & Ors. v. Harish Kaushik & Ors.*, MAC APP.560/2007, decided on 11.12.2009; and *Kiran Devi & Ors. v. Surjeet Yadav & Ors.*, MAC APP.511/2009, decided on 18.01.2010.
11. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.* (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that as per *Santosh Devi* even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. Relevant portion of *Santosh Devi* is extracted hereunder:-

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of

rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time

and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.”

12. Since there was no evidence with regard to the deceased's future prospects, addition of only 30% in the deceased's income could have been made to compute the loss of dependency.
13. In view of the above discussion, the loss of dependency comes to ₹8,51,760/- (5850/- + 30% x 2/3 x 12 x 14).
14. The award of compensation of ₹5,000/- each towards loss to estate and funeral expenses is on the lower side. The same is enhanced to ₹10,000/- each. The award of compensation of ₹30,000/- towards loss of love and affection is maintained.
15. The overall compensation thus comes to ₹9,01,760/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
16. The Compensation payable shall be released to the Claimants in terms of the order passed by the Claims Tribunal.
17. The excess amount of ₹4,01,840/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.
18. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
19. The Appeal is allowed in above terms.

20. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 24, 2012
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