

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No. 4709 of 2010

Date of Decision: 14.01.2015

New India Assurance Company Limited

... Appellant

vs.

Hukam Chand and others

... Respondents

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Paul S. Saini, Advocate
for the appellant.**

**Mr. Munish Mittal, Advocate
for respondents No.1 and 2.**

**Mr. Onkar Singh Batalvi, Advocate
for respondents No.3 and 4.**

**Mr. Rohit Goswami, Advocate for
Mr. Vinod Chaudhari, Advocate
for respondent No.6.**

ANITA CHAUDHRY, J.

This appeal is by the insurance company disputing the income and the multiplier applied by the Motor Accident Claims Tribunal, Jagadhri (for brevity, the 'MACT'), who allowed the claim filed by the legal heirs of deceased Amit Goel.

Deceased Amit Goel was travelling with some other passengers in a car on 14.04.2008 with Jai Kishan behind the wheel.

The car reached little ahead to Bidpur Tiraha, ahead to village Pilkhani

when a tractor trolley driven by Jasbir-respondent No.3 came and struck against the maruti car. The accident proved fatal for Jai Kishan and Amit. The driver fled from the spot leaving his vehicle behind.

The claimants have pleaded that Amit was unmarried and was a salesman at a petrol pump in Jagadhri and also used to distribute newspapers and his income was Rs.10,000/- per month.

The Tribunal accepted the salary certificate (Ex.P-2) and calculated the compensation taking the annual income to be Rs. 93,600/-. A multiplier of 18 was applied. A deduction of 50% was made towards personal expenses and loss was calculated at Rs.8,42,400/-. A sum of Rs. 10,000/- was added as funeral and transportation charges.

The submissions made on behalf of the appellant is that only a certificate was tendered in evidence in the statement of PW3 to show that Amit was getting annual salary of Rs.93600/-. It was submitted that the petrol pump was being run by a partnership firm which would have maintained record, but no appointment letter, salary record was produced and the certificate should not have been considered. It was urged that though the witness had stated that the salary was shown in the income tax returns, but no effort was made to bring any corroborative material to support the statement and the income of labourer should have been taken to calculate the loss. It was urged that the Tribunal had applied the multiplier of 18 which should have been 14 considering the age group of the parents. It was urged that the issue regarding selection of multiplier when the deceased was

a bachelor had been examined a number of times and a three Judges Bench in **New India Assurance Company Ltd. Vs. Shanti Pathak (Smt.) & Ors. (2007) 10 SCC 1**, the Apex Court had applied the multiplier of 5 when the deceased was 25 years old and the mother of the deceased was about 65 years. It was contended that the Apex Court in **National Insurance Company Ltd. Vs. Shyam Singh & Ors. (2011) 7 SCC 65**, decided on 04.07.2011 referred to several cases and held that multiplier of 8, taking the average age of the parents of the deceased to be appropriate.

Per contra, the submission of counsel appearing for the claimants was that the Tribunal had rightly relied upon the certificate which was signed by the partner of the concern. It was urged that the multiplier, as per the age of the deceased, was rightly taken. Reliance was placed on **Amrit Bhanu Shali & Ors. Vs. National Insurance Co. Ltd. & Ors. 2012(4) RCR(Civil) 343**.

The claimants were the parents of deceased Amit who were seeking compensation for the death of their son who was 21 years old. His educational qualifications were not placed on record. The claimants had relied upon a certificate signed by Raj Kamal Goel said to be a partner of a firm dealing with Bharat Petroleum products. No record was produced to show that Amit was getting any salary. No appointment letter was produced either. The firm would be maintaining records. They were income tax assessee. In the absence of any record the certificate should not have been relied upon. With no evidence forthcoming from the side of claimants, the minimum wages

should have been taken for assessing the compensation. In July 2008, the minimum wages in Haryana for unskilled workers were Rs.3664/- per month. The minimum wages for skilled (upper) were Rs.3924/-. Considering the deceased to be a skilled worker and taking the monthly income to be Rs.3924/-, the annual income could not be more than Rs.47088/-. As per ***Sarla Verma and others vs. Delhi Transport Corp. and another, (2009) 6 SCC 121***, there would be a deduction of 50% as personal and living expenses of the bachelor and 50% as contribution to the family. Deducting 50%, the amount available for the family would be Rs.23544/-.

So far as selection of multiplier is concerned, three Judges Bench of the Supreme Court in ***U.P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors. (1996) 4 SCC 362*** relied upon ***G.M. Kerala SRTC Vs. Susamma Thomas, (1994) 2 SCC 176*** and reiterated the choice of the multiplier taking the age of the claimants. Para 12 of the judgment 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, Trivandrum v. Susamma Thomas AIR1994SC1631 . 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.

In Shanti Pathak's case (supra), three Judges Bench held as under:-

“6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3500/-. 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.3500/- 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.”

In **Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma**, Civil Appeal Nos. 8131-8132 of 2014 (arising out of SLP(C) Nos. 743-744 of 2014, decided on 25.09.2014, which is latest judgment, the Apex Court applied the multiplier keeping the age of the parents of the deceased where the deceased was 19 years old.

Calculating the compensation and applying the multiplier of 14, the compensation would come to Rs. 329616/-. A sum of Rs.10,000/- should be added on the head of funeral and transportation charges, which has been allowed by the Tribunal. We would add Rs.50,000/- for loss of love and affection raising the total to Rs.3,89,616/-.

The Tribunal had awarded a sum of Rs.8,52,400/-. If any payment has been made in excess, the appellant would be entitled for refund of the same by filing a execution petition. If no amount has been paid by the appellant, the claimants would be entitled to get the same with interest @ 7.5% from the date of filing of the petition till realization.

The appeal is partly allowed making the aforesaid modification in the award.

14.01.2015

Jiten

(ANITA CHAUDHRY)
JUDGE