THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5977 of 2013 (O&M)

Gian Chand

......Appellant

Versus

Radha and others

...Respondents

FAO No. 4683 of 2013 (O&M) with
Cross Objection No. 101-CII of 2014

Shri Ram General Insurance Company Ltd.

......Appellant

Versus

Radha and others

...Respondents

Date of decision : 15.01.2015

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: None for the appellant (in FAO No. 5977 of 2013)

Mr. Arun Sharma, Advocate
for the appellant (in FAO No. 4683 of 2013)
for respondent No. 3 (in FAO No. 5977 of 2013)

Mr. Ashwani Arora, Advocate
for respondents No. 1 and 2/cross objectors

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ANITA CHAUDHRY, J.

The owner/driver and Insurance company have preferred two separate appeals against the award dated 02.05.2013 passed by the Motor Accident Claims Tribunal, Chandigarh. The claimants have filed cross objections in the appeal filed by Shri Ram General Insurance Company.

The brief facts are being mentioned for the purpose of appreciating the case and to examine the issues raised by the parties. An accident occurred on 24.04.2011. Milan aged 20 years was driving the motor cycle. His two friends were on the pillion. They were on Kaimbala-Chandigarh road near the Rock Garden, when the jeep came from Chandigarh side and on the wrong side of the road and struck against the motor cycle. The jeep was driven by Gian Chand. The accident resulted in injuries to Milan and proved fatal. He died on 26.04.2011. Milan's parents filed a claim petition in the Tribunal at Chandigarh pleading that their son was employed with Nerolac Company in Sector 7, Chandigarh and was drawing salary of ₹ 4,000/-. The Tribunal took the income to be ₹ 4,000/- per month considering him to be a labourer as no evidence was produced that he was employed with any concern and deducted 50% as personal expenses and calculated the yearly loss to be ₹ 24,000/-. The Tribunal while selecting the multiplier considered the age of the deceased and applied the multiplier of 18 and allowed 30% addition in the income by way of future prospects. ₹ 15,000/- was added for loss of estate and funeral expenses raising the total to be ₹ 5,76,600/-. The liability of payment of compensation was placed upon all the respondents jointly and severally.

Two appeals were filed, one by the Insurance Company and one by the driver. Cross objections had been filed by the claimants and seeking addition of 50% in income as per ***Rajesh and others vs. Rajbir Singh and others, 2013 (3) RCR(Civil) 170*** and for enhancement of compensation awarded for loss of estate and funeral expenses. The cross objectors were also seeking interest @ 12% p.a.

No one appeared for the appellant in the appeal filed by the owner/driver of the jeep. The issue raised by him in the appeal was regarding negligence. I have gone through the judgment and I find no reason to differ with the view taken by the Tribunal indicting respondent No. 1 and holding him responsible for the accident. No evidence had been led by the respondents except the bare statement made by Gian Chand. The police had also investigated the matter and a case was registered against Gian Chand. There is no reason to differ or take a different view.

FAO No. 5977 of 2013 is dismissed.

FAO No. 4683 of 2013 (O&M) with
Cross Objection No. 101-CII of 2014

The submission made on behalf of the appellant was that the deceased was unmarried and no evidence had been produced that he was working in any concern and 30% increase had been given towards future prospects and multiplier of 18 had been applied which should be 14 considering the age of the parents and they were seeking modification in the award. It was urged that three Judges Bench of the Supreme Court had taken a view that in the case of selection of multiplier the age of the claimants should be adopted for calculating the loss.

The submission on the other hand is that though they had pleaded that the deceased was privately employed and was getting ₹ 4000/- per month but the minimum wages at that point of time were ₹ 4000/- per month and a higher income could be assessed for calculating the compensation. It was urged that the Apex Court had taken salary of a driver to be ₹ 6000/- per month though the claimants had claimed that the deceased was earning Rs. 5000/- per month. It was urged that as per ***Reshma Kumari and others vs. Madan Mohan and another, 2013 ACJ 1253*** the multiplier should be as indicated in column (4) of Table prepared in ***Sarla Verma's case, 2009 ACJ 1298 (SC).*** It was contended that the Single Benches of this Court had taken age of the deceased while selecting the multiplier in FAO No. 6342 of 2014 titled as ***Reliance General Insurance Company Limited vs. Om Parkash and other (decided on 22.8.2014)*** and FAO No. 4668 of 2010 ***Smt. Suman and others vs. Tota Ram and others (decided on 31.10.2013).*** Reliance was placed upon ***Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma and another, 2014 STPL (Web) 643 SC,*** FAO No. 1207 of 2014 ***Reliance General Insurance Co. Ltd. vs. Sayera Khatoon and others (decided on 03.03.2014)*** and Special Leave to Appeal (C) No. 8058 of 2014 ***National Insurance Co. Ltd. vs. Pushpa and others (decided on 02.07.2014).***

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 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 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:
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> > *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's case (supra)*** the Apex Court applied the multiplier keeping the age of the parents of the deceased where the deceased was 19 years old.

In ***Reshma Kumari's case (supra),*** this specific issue was not under consideration. Thus, from the above, the multiplier applicable would be as per the age of the parents and it would be 14.

So far as income is concerned the claimants had pleaded that the deceased was working in a concern but no evidence was led and the Tribunal had taken the income of the deceased to be ₹ 4000/- per month. Since the minimum wages were taken to be the income of the deceased, therefore, an addition of 50% should have been made as per ***Rajesh's case (supra).*** Accordingly, an addition of 50% is made. The income would come to ₹ 6000/- deducting 50% towards personal expenses as per ***Sarla Verma's case (supra).,*** the amount available for the family would be ₹ 3000/- per month and the annual contribution would come to ₹ 36,000/-. Applying the multiplier of 14 the compensation would work out to ₹ 5,04,000/-. To this a sum of ₹ 1,00,000/- should be added on account of loss of love and affection for the children raising the total to be ₹ 6,04,000/-. The Tribunal had awarded ₹ 5,76,600/- to claimant No. 1. That amount would be deducted and the remaining amount shall be paid by Shri Ram General Insurance Company to claimant no. 1 within two months failing which they shall be entitled to interest at the rate awarded by the Tribunal.

FAO No. 4683 of 2013 and cross objections are partly allowed.

15.01.2015 **(ANITA CHAUDHRY)**
reena **JUDGE**