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

Decided on: 27th January, 2015

\+ **MAC.APP. 87/2015**

SHRIRAM GENERAL INSURANCE COMPANY LTD.
..... Appellant
Through: Ms. Meenakshi Midha, Adv.

versus

SHREE KRISHAN @ PAPPU & ORS. ..... Respondents
Through:

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

J U D G M E N T

G. P. MITTAL, J. ***(ORAL)***

CM.APPL.1403/2015(Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

MAC.APP. 87/2015 and CM APPL.1402/2015 (stay)

1. There is twin challenge to the judgment dated 30.10.2014 passed by the Motor Accident Claims Tribunal (the Claims Tribunal). First, the driving licence of the driver of the offending vehicle had not been produced but in spite of this,

Insurance Company was made liable to pay the compensation and second, the future prospects of 25% were granted erroneously.

2. The law is well settled that even if there is conscious and willful breach of the terms and conditions of the policy, the Insurance Company will discharge its liability first and will later have a right to recover the compensation from the owner of the vehicle.

3. In the case of *New India Assurance Company Ltd. v. Rashi Lal & Ors.,* MAC.APP.399/2005 decided on 27.11.2012, this Court held as under:

> *"11. There is no dispute about the proposition of law which is well settled that it is for the Insurer to prove that there was breach on the part of the insured. (Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21; National Insurance Company Limited v. Swaran Singh & Ors., (2004) 3 SCC 297 and United India Insurance Company Ltd. v. Lehru & Ors., (2003) 3 SCC 338)*
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> *12. It is well settled that onus keeps on shifting depending upon the facts and circumstances of the case. Since it was established that Gopal was driving the vehicle at the time of the accident and that he did not possess a valid and effective driving licence; it was for the third Respondent to prove that there was no negligence on his part and he took all steps not to*

commit breach of the terms and conditions of the policy. I am supported in this view by a judgment of the learned Single Judge of this Court in New India Assurance Co. Ltd. v. Sanjay Kumar and Ors., ILR 2007(II) Delhi 733. In Para 22 of the report it was held as under:-

> *22. Thus, where the insurance company alleges that the term of the policy of not entrusting the vehicle to a person other than one possessing a valid driving licence has been violated, initial onus is on the insurance company to prove that the licence concerned was a fake licence or was not a valid driving licence. This onus is capable of being easily discharged by summoning the record of the Licencing Authority and in relation thereto proving whether at all the licence was issued by the authority concerned with reference to the licence produced by the driver. Once this is established, the onus shifts on to the assured i.e. the owner of the vehicle who must then step into the witness box and prove the circumstances under which he acted; circumstances being of proof that he acted bona fide and exercised due diligence and care…………."*

13. Thus, in my view, the Appellant successfully proved the breach of the terms and conditions of the policy and was, therefore, entitled to avoid the insurance policy but for the statutory liability."

4. Thus, the Claims Tribunal has granted recovery rights to the Appellant Insurance Company. The judgment cannot be faulted on this ground.

5. The second ground of challenge also does not hold good. In

fact, in para 14 of the impugned judgment, the Claims Tribunal has relied upon *Royal Sundaram Alliance Insurance Company Ltd. v. Master Manmeet Singh, 2012 ACJ 721,* to compute the loss of gratuitous services rendered by a housewife. No addition in fact has been made towards future prospects. As per para 32 (iv) of the judgment in *Master Manmeet(supra)* an addition of 25% in the assumed income has to be made when the age of the home maker is upto 40 years.

6. In *Master Manmeet Singh (supra)* this court had gone into detail in evaluating the value of the gratuitous service rendered by a home maker. In paras 4 to 34 this Court held as under:-

> *"4. To assess the value of services rendered by a homemaker so as to calculate the loss of dependency in case of her death in a road accident is an uphill task. Sometimes the Claims Tribunals have taken the salary of a skilled worker and sometimes have taken 50% wages of a skilled worker. Clause 6 (b) of the Second Schedule to Section 163-A of the Motor Vehicles Act, 1988 (M. V. Act) lays down that the income of a non-earning spouse shall be considered to be one-third of the income of the surviving spouse. There seems to be no logic behind this. If I may say so, it is totally arbitrary and, therefore, can only be restricted to the grant of compensation as per the*

structured formula in petitions filed under Section 163-A of the M.V. Act.

5. The Claims Tribunal (in MAC APP. 590/ 2011) referred to the judgment of Lata Wadhwa & Ors. v. State of Bihar & Ors., (2001) 8 SCC 197; M.S. Grewal v. Deep Chand Sood, (2001) 8 SCC 151; some English decisions and it heavily relied upon the judgment in Arun Kumar Agrawal & Anr. v. National Insurance Company Limited., (2010) 9 SCC 218 to hold that it is difficult to value the services rendered by a wife and a mother. It did not follow Clause 6 (b) of the second Schedule to the M. V. Act to take one-third of the surviving spouse's income as taken in Arun Kumar Agrawal (supra) as the Hon'ble Supreme Court in the aforesaid decision had lamented that taking one-third of the surviving spouse's income was not based on any sound principle.

6. The Tribunal relied on Lata Wadhwa whereby value of the services rendered by a housewife aged upto 59 years was taken as Rs.3,000/-. The Tribunal doubled it to Rs.6,000/- on account of inflation as Lata Wadhwa (supra) was decided in the year 2001 selected a multiplier of '15' and after deduction of one-third towards the personal living expenses, computed the loss of dependency as Rs.7,20,000/-. The Tribunal further awarded a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral charges and Rs.5,000/- towards loss to estate to compute the overall compensation as Rs.8,50,000/-. There is no Appeal by the Claimants.

7. Section 168 of the Act enjoins the Claims Tribunal to hold an inquiry into the claim to make an award determining the amount of compensation which appears *to it to be just and reasonable. It has to be borne in mind that the compensation is not expected to be a windfall or a bonanza nor it should be niggardly. In Helen C. Rebello v. Maharashtra SRTC, 1999 (1) SCC 90, the Supreme Court held that "the Court and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any."*

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 Rs.15,000/-, Rs.30,000/- and Rs.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 Rs.5,000/-, Rs.10,000/- and Rs.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 Rs.5 lacs, Rs.10 lacs and Rs.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."*

15. The Supreme Court referred to the judgment passed by the Madras High Court in National Insurance Company Limited v. Deepika & Ors., 2010 (4) ACJ 2221. Para 54 to 57 of the judgment in Arun Kumar Agrawal are extracted hereunder:-

> *"54. India is a signatory to the said Convention and ratified the CEDAW Convention on 9.7.1993. But even then no law has been made for proper evaluation of the household work by women as homemakers.*

55. The Madras High Court in Deepika (supra) has observed very pertinently:

> *"9. The UNICEF in 2000, noted that 'unpaid care work is the foundation of human experience'. The care work is that which is done by a woman as a mother and definitely in India, the woman herself will be the last person to give this role an economic value, given the social concept of the role of a mother. But when we are evaluating the loss suffered by the child because her mother died in an accident, we think we must give a monetary value to the work of a caregiver, for afterall, the home is the basic unit on which our civilised society rests."*

56. The Madras High Court in its very illuminating judgment in Deepika (supra) has further referred to various methods by which the assessment of work of a homemaker can be made and the relevant portion from para 10 of the said judgment is extracted below:

> *"10......that there have been efforts to understand the value of a homemaker's unpaid labour by different methods. One is, the opportunity cost which evaluates her wages by assessing what she would have earned had she not remained at home, viz., the opportunity lost. The second is, the partnership method which assumes that a marriage is an equal economic partnership and in this method, the homemaker's salary*

> *is valued at half her husband's salary. Yet another method is to evaluate homemaking by determining how much it would cost to replace the homemaker with paid workers. This is called the Replacement Method."*

57. Various aspects of the nature of homemaker's job have been described in para 11 which are very relevant and are extracted below:-

> *"11. The role of a housewife includes managing budgets, co-ordinating activities, balancing accounts, helping children with education, managing help at home, nursing care etc. One formula that has been arrived at determines the value of the housewife as, Value of housewife = husband's income - wife's income + value of husband's household services, which means the wife's value will increase inversely proportionate to the extent of participation by the husband in the household duties. The Australian Family Property Law provides that while distributing properties in matrimonial matters, for instance, one has to factor in 'the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of a homemaker or parent'."*

In para 13, the Division Bench of the High Court has observed and, in my view very rightly, that time has come to scientifically assess the value of

> *the unpaid homemaker both in accident claims and in matters of division of matrimonial properties."*

16. In Deepika the value of the services rendered by the housewife was again related to that of the husband. In that case the husband's income was found to be Rs.5,500/- per month, its 50% i.e. Rs.2750/- was taken towards domestic services in addition to Rs.750/- as income from the work carried out by the wife.

17. Earlier in some cases the High Courts took 50% wages of the unskilled/ skilled workers and in some cases the entire wages of a skilled worker was taken to make an attempt to arrive at a figure to compute the dependency. The Delhi High Court in Amar Singh Thukral v. Sandeed Chhatwal, ILR (2004) 2 Del 1, very reluctantly took the salary of a skilled worker as per the minimum wages applied in Delhi, while observing as under:-

> *"....Since there is no scientific method of assessing the contribution of a housewife to her household, in cases such as the present, resort should be had to the wages of a skilled worker as per the Minimum Rates of Wages in Delhi. Although, this may sound uncharitable, if not demeaning to a housewife, there is hardly any other option available in the absence of any statutory guidelines."*

18. The Supreme Court in Arun Kumar Agrawal did not approve the adoption of the salary of a skilled worker to compute the loss of dependency. In this case, Hon'ble Mr. Justice A.K. Ganguly while penning a separate concurrent judgment expressed hope that the legislature would come with some better method to arrive at the value of the *services of the housewife. In para 65 of the report it was observed:-*

> *"65. For the reasons aforesaid, while agreeing with the views of Brother Singhvi, J., I would humbly add, that time has come for the Parliament to have a rethinking for properly assessing the value of homemakers and householders' work and suitably amending the provisions of Motor Vehicles Act and other related laws for giving compensation when the victim is a woman and a homemaker. Amendments in matrimonial laws may also be made in order to give effect to the mandate of Article 15(1) in the Constitution."*

19. In Lata Wadhwa (supra) a number of persons including women and children died; the Supreme Court assessed the compensation while taking the value of the services rendered by a housewife between the age group of 22-59 as Rs.3,000/- per month and in the case of women aged 62 years and above at Rs.21,00/- per annum.

20. The minimum wages of a Graduate at the time of the fire accident in Lata Wadhwa (supra) as notified in the State of Delhi were just Rs.898/-. The compensation was awarded in the year 2001 when the minimum wages of a Graduate were Rs.3339/-, of a matriculate were Rs.3027/- and that of a skilled worker were Rs.3003/-. It is important to note that no interest on the compensation was awarded from the date of the accident till the date of the payment in Lata Wadhwa (supra). Many Tribunals and High Courts have adopted the compensation granted in case of Lata Wadhwa (supra) to be just and fair in motor accident cases, where the deceased was a house wife. But, the compensation in Lata Wadhwa was *awarded because there was loss of life of so many women and children when a fire broke out while they were participating in a function organized by Tata Iron & Steel Company. It was not a statutory compensation under the Motor Vehicles Act. Moreover, difficulty also arises as on account of inflation, the wages and salaries have increased manifold. In this case, the Tribunal held that the compensation in Lata Wadhwa was awarded in the year 2001 and doubled it to Rs.6,000/- to compute the loss of dependency. The Tribunal further deducted one-third of the assumed income towards the personal living expenses and computed the loss of dependency on the income of Rs.4,000/- per month which according to the Appellant is exorbitant and excessive. No deduction was made by the Supreme Court in the assumed value of services rendered at Rs.3,000/- per month while computing the loss of dependency.*

21. The services rendered by a housewife cannot be counted; cooking, washing, ironing clothes and stitching clothes (in some cases) for the husband and children, teaching and guiding children, working as a nurse whenever the husband or the child/children are sick, are some of the major activities of a housewife. She has no fixed hours of work; she is always in attendance to take care of each and every need of the whole family at the cost of her personal comfort and health. The services rendered by a housewife may differ from case to case considering her qualification, financial strata and the social status of the family to which she belongs.

22. The Claimants, therefore, must lead evidence to prove the services rendered by a non working female. In the absence of any evidence to the contrary, the value of the *services, if I may say so, has to have some relation to the educational qualification of the deceased.*

23. Thus, the value of services rendered by a home maker should be taken as the minimum salary of a non-matriculate, matriculate or a Graduate, (in the absence of any evidence to the contrary). In case of a young mother and a wife there should be an addition of 25% of the minimum salary/ wages as per the educational qualification i.e. Graduate, matriculate or non-matriculate. There should be addition of 15% in the case of a middle aged mother and a wife and 'NIL' in case of a wife and a mother beyond the age of 50 years as the children become independent by that time. The value of gratuitous services rendered should be gradually reduced after the age of 55 years, even though mothers take care of their children (irrespective of their ages) and even when they (the children) are married.

24. The next question that falls for consideration is whether there should be any deduction towards the personal living expenses of the deceased (Home maker). While awarding damages there is balancing of the loss to the Claimants of the pecuniary benefits with the gain of the pecuniary advantages which comes to them by reason of death. In Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors., AIR 1962 SC 1, it was observed as under:-

> *".... 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. In A. Rajam v. M. Manikya Reddy & Anr., MANU/AP/0303/1988, the Hon'ble Mr. Justice M.J. Rao (as he then was) referred to a number of English decisions.

26. In Morris v. Rigby (1966) 110 Sol Jo 834, the husband who was a medical officer, earning £ 2,820 a year, claimed damages for the death of his wife. He had five children aged two to fifteen years. He got his wife's sister to come and take care of them and do the domestic duties, paying her a gross wage of £ 20 a week. The judge awarded £ 8,000 and the award was confirmed.

27. The Learned Judge further referred to Regan v. Williamson 1977 ACJ 331 (QBD England) where the housekeeper employed was a relative. There, the wife was 37 years when she died and she left behind her husband and four sons aged 13, 10, 7 and 2 years respectively. A relative came daily (except weekends) to provide meals and to look after the boys. She was paid £ 16 per week and it cost the Plaintiff further £ 6.50 per week for her food, journeys to and from her home and for national insurance stamp. The Plaintiff estimated that his wife's loss had cost him £ 10 per week to cloth and feed his children and himself. Watkins, J. held that though, according to precedents, £22.50 (£ 16+6.50) per week minus £ 10 per week, would be sufficient as justice required that the term 'services' should be widely construed. Watkins, J. observed:-

"I am, with due respect to the other Judges to whom I have been referred, of the view that the word 'services' has been too narrowly construed. It should, at least, include an acknowledgement that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance, save for those hours when she is, if that is a fact, at work. During some of those hours she may well give the children instructions on essential matters to do with their upbringing and, possibly, with such things as their home work. This sort of attention seems to be as much a service, and probably more valuable to them, than the other kinds of service conventionally so regarded."

.. and hastened to add:- "am aware that there are good mothers and bad mothers. It so happens that I am concerned in the present case with a woman who was a good wife and mother". On the basis, the figure for dependency was raised from £ 12.50 (£ 22.50 -10.0) per week to £ 20 per week and a further sum of £ 1.50 was added for the deceased's financial contribution to the home, had she eventually gone out to work again. A multiplier of 11 was applied as the Plaintiff was 43 years. The award under the Fatal Accidents Act, was £ 1238.

28. Learned Judge further referred to Mehmet v. Perry 1978 ACJ 112 (QBD, England), wherein the husband had to look after five children aged 14, 11, 7, 6 and 3 years respectively. The two youngest children suffered from a serious hereditary blood disease requiring medication and frequent visits to the hospital. Consequently, the husband had to give up his employment after his wife's death and devoted his full time to care for the family.

Between September, 1973 when his wife was killed and the trial that was conducted in October, 1976, his net average loss of earnings were £ 1,500 a year. His future net loss would be at the rate of £ 2,000 a year. It was held by Brain Neill, QC (sitting as a deputy Judge) that, in view of the medical evidence concerning the health of the children his giving up of his job was proper and that damages should be assessed not at the cost of employing a housekeeper but by reference to the Plaintiff's loss of wages, since the loss of wages represented the cost of providing the services of a full time housekeeper in substitution for his wife. In addition, the children were entitled, on the basis of Regan v. Williamson 1977 ACJ 331 (QBD, England), to get £ 1,500 as part of their damages, a sum of £ 1,000 for the loss of 'personal attention' to them by a 'mother' which is distinct from her services as a housekeeper but, that sum must be kept within modest limits as the Plaintiff was at home all the time. The Plaintiff as a husband was also held to be entitled to some damages for his loss of the 'personal care and attention of the wife' but that sum should be quite small to avoid any overlap with the damages awarded for housekeeping services. The last two children require to support for 12 years, as per medical advice. A multiplier of 8 was adopted for the family as a unit and 12 for the Plaintiff and a sum of £ 19,000 was arrived at.

29. While awarding compensation for loss of gratuitous services rendered by a homemaker the Claims Tribunals or the Court simply value the services. It goes without saying that the husband looks after the wife and some amount is definitely spent on her maintenance. But, whether that amount is liable to be deducted from the value of the gratuitous services rendered by her?

30. As held in Gobald Motor Service Ltd. and Helen C. Rebello that while estimating damages, the pecuniary loss has to be arrived at by balancing on the one hand the loss to the Claimants of the future pecuniary benefits that would have accrued to him with the gain of the pecuniary advantages which comes to him from whatever sources by reason of the death.

31. In, Regan v. Williamson, the learned Judge found that the expenditure on the deceased housewife was £10 per week. While the value of gratuitous services rendered by her was £ 22.50 per week. The figure on dependency of £ 12.50 (£ 22.50 - £ 10.0) was taken as £21.50 per week. Thus, the amount spent on personal living expenditure was not really deducted in Regan v. Williamson.

32. Even on the basis of Gobald Motor Service Ltd. and Helen C. Rebello, the pecuniary advantages which the Claimant gets on account of accidental death is only liable to be deducted. The amount of money paid on account of death by the Life Insurance Corporation was held to be not deductable in Helen C. Rebello.

33. Thus, if a deceased housewife who lost her life in a motor accident would have died a natural death, the pecuniary advantage on account of savings made of the expenditure required for her maintenance would have otherwise also accrued to the benefit of the Claimants. Since this pecuniary advantage does not become receivable only on account of accidental death, in my view, the portion of the husband's income (spent on the deceased's maintenance) cannot be deducted.

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 Rs.25,000/- (on present scale of the money value) towards loss of love and affection and Rs. 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."

7. Hence, there will be no addition towards future prospects. The impugned judgment cannot be faulted on this score as well.

8. The appeal is devoid of any merit; the same is dismissed *in limini*.

9. Pending applications also stand disposed of.

10. Statutory amount of Rs.25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 27, 2015
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