

\$-20

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 27th February, 2015

+ **MAC.APP.972/2013**

MUHAMMAD KHAN & ANR. Appellants

Through: Mr. N.K.Jha, Advocate

versus

BISHAN CHAND & ORS. Respondents

Through: Mr. Pankaj Gupta, Advocate for
Ms. Suman Bagga, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for enhancement of compensation of ₹1,85,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Javed Khan, a bachelor, who suffered fatal injuries in a motor vehicular accident which occurred on 14.07.2008.
2. On appreciation of evidence, the Claims Tribunal found that the accident was caused because of rash and negligent driving of Tata Truck bearing registration no.DL-1M-2448 by its driver.

The Claims Tribunal further found that the Appellants were not financially dependent upon the deceased and therefore, it declined to grant any compensation towards loss of dependency and granted compensation only towards pecuniary and non-pecuniary damages as under:-

Pecuniary Damages:

- | | |
|--------------------|-----------|
| 1) Funeral charges | ₹25,000/- |
| 2) Loss of Estate | ₹10,000/- |

Non Pecuniary Damages:

- | | |
|--|-------------|
| 3) Loss of love, company and affection <i>etc.</i> | ₹1,00,000/- |
| 4) Loss of gratuitous services | ₹ 50,000/- |

Total =	₹ 1,85,000/-
---------	--------------

3. It is urged by the learned counsel for the Appellants that although on the date of recording his cross-examination, Appellant no.1 has testified that he was in private service but at the same time, it could not be presumed that the Appellant was gainfully employed at the time of accident. It is urged that the deceased had an un-married sister and therefore, had responsibility of the siblings and was also to look after his father in old age and consequently, the Appellants had been able

to make out a case for loss of dependency. The Claims Tribunal erred in not making any provision towards the loss of dependency.

4. It is further stated that in case of a bachelor, the multiplier has to be as per the age of the deceased and not as per the age of the Claimant.
5. I have the Trial Court record before me.
6. Muhamad Khan, Appellant no.1 testified that the deceased used to give his entire income to him (Appellant no.1). Even if it is assumed that Appellant no.1 was in private service, I will accept that the deceased was helping his father in the maintenance of un-married sister.
7. As far as selection of multiplier is concerned, the issue was discussed at great detail in *Vijay Laxmi & Ors. v. Binod Kumar Yadav & Ors.*, MAC APP.1148/2011 decided on 03.01.2012 and it was held that the multiplier has to be as per the age of the deceased or the age of the Claimant, whichever is higher. Paras 4 to 15 of the report 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, there is no escape from the conclusion that the multiplier has to be selected as per the age of the deceased or that of the claimants whichever is higher.

10. Turning to the facts of the case, the multiplier of 11 was applied according to the age of the deceased's mother who was 52 years. The Tribunal's finding in this regard cannot be faulted.

11. Turning to the contention that one-third of the deceased's income ought to have been deducted towards his personal and living expenses, the Supreme Court in Mohd. Ameeruddin (supra 2) held that the deduction of one-third should have been made towards the personal living expenses as the deceased was bachelor.

12. In Sarla Verma (supra 1), relied upon by the learned counsel for the Appellant, the Hon'ble Supreme Court considered Susamma Thomas

(supra), Trilok Chandra (supra), Fakeerappa v. Karanataka Cement Pipe Factory, (2004) 2 SCC 473 and examined the questions of deduction of the personal living expenses of the deceased in detail in various circumstances. Para 27 to 32 of the report are extracted hereunder:-

“27. In Susamma Thomas, it was observed that in the absence of evidence, it is not unusual to deduct one-third of the gross income towards the personal living expenses of the deceased and treat the balance as the amount likely to have been spent on the members of the family/dependants.

28. In UPSRTC v. Trilok Chandra (1996) 4 SCC 362, this Court held that if the number of dependents in the family of the deceased was large, in the absence of specific evidence in regard to contribution to the family, the Court may adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units is allotted to each adult and one unit is allotted to each minor, and total number of units are determined. Then the income is divided by the total number of units. The quotient is multiplied by two to arrive at the personal living expenses of the deceased. This Court gave the following illustration:-

“15....X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs. 3500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make

2+2=4 units and each minor one unit i.e. 3 units in all, totaling 7 units. Thus the share per unit works out to Rs. 3500/7=Rs. 500 per month. It can thus be assumed that ₹1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs. 250. Thus the amount spent on the deceased X works out to Rs.1250 per month per month leaving a balance of Rs.3500-1250=Rs.2250 per month. This amount can be taken as the monthly loss of X's dependents.”

29. In Fakeerappa v. Karnataka Cement Pipe Factory (2004) 2 SCC473, while considering the appropriateness of 50% deduction towards personal and living expenses of the deceased made by the High Court, this Court observed:-

“7. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction.”

In view of the special features of the case, this Court however restricted the deduction towards

personal and living expenses to one-third of the income.

30. *Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{rd}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{th}$) where the number of dependant family members is 4 to 6, and one-fifth ($1/5^{th}$) where the number of dependant family members exceed six.*

31. *Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.*

32. *Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be*

treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning 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.”

13. *It may be seen that though it was laid down as a general principle that normally in the case of death of a bachelor 50% would be treated as his personal and living expenses, however, where the family of the bachelor is large and dependant on the income of the deceased as in a case where he has a widowed mother and a large number of younger non-earning brothers and sisters, his personal living expenses should be restricted to one-third. Thus, as per Sarla Verma (supra 1) the deduction of personal living expenses in case of death of a bachelor dying in an accident would vary from case to case.*

14. *The line of approach in Sarla Verma (supra 1) was followed in Arun Kumar Agrawal & Anr. v. National Insurance Company Ltd. & Ors., (2010) 9 SCC 218 and Shakti Devi v. New India Insurance Company Ltd. & Anr., (2010) 11 SCALE 571.*

15. *In Shakti Devi (supra), the Supreme Court referred to Sarla Verma (supra 1), Susamma Thomas (supra), Trilok Chandra (supra) and Fakeerappa (supra) and it was held that “if the deceased was survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However,*

where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he had a widowed mother and large number of younger non-earning sisters or brother, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

8. Thus, it is well settled that the multiplier has to be adopted as per the age of the deceased or of the Claimant, whichever is higher.
9. In my view, 50% of the income of the deceased ought to have been considered towards loss of dependency of the two Appellants as per the minimum wages of a Matriculate. The loss of dependency thus, comes to ₹2,20,374/- (4081/- x 12 x 1/2 x 9).
10. As per *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, provision has to be made for a sum of ₹1,00,000/- towards loss of love and affection, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate.
11. The compensation of ₹50,000/- towards loss of gratuitous services was not permissible.

12. The overall compensation therefore, comes to ₹3,55,374/-.
13. The enhanced compensation of ₹1,70,374/- shall carry interest @7.5% per annum from the date of filing of the petition till its payment.
14. Respondent no.2 is directed to deposit the enhanced compensation along with interest within six weeks with the Claims Tribunal.
15. The enhanced compensation shall be equally payable to the two Appellants.
16. 50% of the awarded compensation shall be held in fixed deposit for a period of three years. Rest shall be released on deposit.
17. The appeal is allowed in above terms.
18. Pending applications, if any, stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 27, 2015

vk