SUPREME COURT OF INDIA

MG. Dir., Bangalore Metropolitan Tpt. Corp.

Vs.

Sarojamma

C.A.No.2897 of 2008

(S.B. Sinha and V.S. Sirpurkar JJ.)

22.04.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. One Ravi Kumar (deceased) son of Respondent no. 1 was travelling in a bus belonging to the appellant on 25.11.1998. It met with an accident. The deceased sustained injuries. He subsequently succumbed thereto. He was unmarried. He was aged about 18 years. He left behind the respondent No. 1 as his only heir and legal representative. A claim petition was filed in terms of Section 163-A of the *Motor Vehicles Act, 1988* (for short "the Act"). The Tribunal calculated the loss of dependency at Rs.3,84,000/-, wherefor the multiplier of 16 was applied. The Tribunal estimated the income of the deceased at Rs.3,000/- p.m. One-third was deducted from the said amount towards his personal expenses. An appeal was preferred thereagainst by the appellant. By reason of the impugned judgment, the High Court while allowing the multiplier of 15 instead of 16 increased the rate of interest from 7% to 10%. Respondent No. 1 was held to be entitled to a total sum of Rs. 3, 64,500/- (Rs. 3, 60,000 + 2,000 + 2,500).

3. Mr. R.S. Hegde, learned counsel appearing on behalf of the appellant would submit:

> "(i) There was no evidence to show that the deceased was earning a sum of Rs. 3,000/- p.m.
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> (ii) The age of the respondent No. 1 being 45 as on the date of accident, the High Court committed a serious error in applying the multiplier of 15; as the deceased was a bachelor
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> (iii) The claimant being his mother, the Tribunal as also the High Court should have deducted 50% of the amount from his income.

> (iv) The High Court committed a serious error in enhancing the rate of interest from 7% to 10% where for no justification has been shown."

4. Ms. Kiran Suri, learned counsel appearing on behalf of the respondents, on the other hand, would urge:

> "(i) It is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India.
>
> (ii) Keeping in view the fact that the mother has lost her only son, the Tribunal should have awarded compensation towards loss of estate and loss of love and affection.
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> (iii) As deduction of one-third towards personal expenses is applied in all cases, the impugned judgment should not be interfered with.
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> (iv) Keeping in view the fact that the accident had taken place in the year 1998, grant of 10% interest was wholly justified."

5. Section 163-A of the Act was inserted by Act No. 54 of 1994 with effect from 14.11.1994. For invoking the said provision, it is not necessary for a claimant to establish any act of negligence on the part of the driver. It is not necessary even to plead that the death had occurred owing to any wrongful act or neglect or default of owner of the vehicle.

6. Quantum of compensation is to be determined in terms of the Schedule II appended thereto. In terms thereof, apart from the amount of compensation as provided for therein only funeral expenses, loss of consortium (if beneficiary is the spouse), loss of estate, medical expenses, would be payable.

7. As the Schedule II provides for a structured formula, ordinarily, the same has to be adhered to. The structured formula itself stipulates reduction of income of the deceased by one-third in consideration of the expenses which he would have incurred towards maintaining himself, had he been alive.

8. Whereas in determining an application for grant of compensation under Section 166 of the Act, the Tribunal may be entitled to find out actual loss of damages suffered by the claimants, the formula having not envisaged such a contingency, we are of the opinion that ordinarily one-third should be deducted from the income of the deceased and not the half thereof.

> "For determining the amount of compensation, the most relevant factor, therefore, is the income of the deceased. He was a tutor. He was admitted in the Army Teachers Training institute. He had the requisite potential of becoming a teacher. His income, thus, having been estimated at Rs. 3,000/- p.m. cannot be said to be on a very high side."

9. This Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Others*[1] held as under:

> "9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether."

10. This aspect of the matter has also been considered in *U.P. State Road Transport Corporation and Others v. Trilok Chandra and Others*[2] by a Three-Judge Bench of this Court in the following terms:

> "9. The compensation to be awarded has two elements. One is the pecuniary loss to the estate of the deceased resulting from the accident, the other is the pecuniary loss sustained by the members of his family for his death. The Court referred to these two elements in the Gobald Motor Seivice's case. These two elements were to be awarded under Section 1 and Section 2 of the *Fatal Accidents Act, 1855* under which the claim in that case arose. The Court in that case cautioned that while making the calculations no part of the claim under the first or the second element should be included twice. The Court gave a very lucid illustration, which can be quoted with profit:An illustration may clarify the position. X is the income of the estate of the deceased, Y is the yearly expenditure incurred by him on his dependents (we will ignore the other expenditure incurred by him). X-Y i.e. Z, is the amount he saves every year. The capitalised value of the income spent on the dependents, subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalised value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the entire loss caused to the estate, they cannot claim again under the head of personal loss the capitalised income that might have been spent on them if the deceased were alive. Conversely, if they got compensation under Section 1, representing the amount that the deceased would have spent on them, if alive, to that extent there should be deduction in their claim under Section 2 of the Act in respect of compensation for the loss caused to the estate. To put it differently if under Section 1 they got capitalised value of Y, under Section 2 they could get only the capitalised value of Z, for the capitalised value Y + Z = X would be the capitalised value of his entire income."

11. What should be the legal principle on which the principle of just compensation should be worked out had been the subject matter of various decisions of this Court. This court in cases after cases noticed that the principles on which the multiplier method was developed

has been given a go-by. In many cases, a hybrid method based on the subjectivity of the Tribunal has been noticed. Guidelines provided for by the statutes as also the Superior Court have not been applied. The courts have also noticed several defects in the schedule. It was opined that ordinarily the multiplier should not exceed 16.

12. Our attention has also been drawn to a decision of this Court in *Fakeerappa and Another v. Karnataka Cement Pipe Factory and Others*[3] wherein it was held:

> "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.
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> 8. It has to be noted that the ages of the parents as disclosed in the Claim Petition were totally unbelievable. If the deceased was aged about 27 years as found at the time of post mortem and about which there is no dispute, the father and mother could not have been aged 38 years and 35 years respectively as claimed by them in the Claim Petition. Be that as it may, taking into account special features of the case of feel it would be appropriate to restrict the deduction for personal expenses to one-third of the monthly income. Though the multiplier adopted appears to be slightly on the higher side, the plea taken by the insurer cannot be accepted as there was no challenge by the insurer to the fixation of the multiplier before the High Court and even in the appeal filed by the appellants before the High Court the plea was not taken."

13. No finding has been arrived at by the Tribunal that the age of the claimant was 45 or below. Why the multiplier of 16 had been applied by the Tribunal was not stated. The High Court has also not laid down the legal premise upon which it had applied the multiplier of 15. It, however, appears that the learned counsel for the appellant himself stated that the correct multiplier would be 15 and not 16 which has been accepted by the High Court. We do not, therefore, intend to interfere with the said finding in the instant case.

14. The High Court, however, took into consideration an irrelevant factor, viz., that the claimant must have been suffering from a mental agony in determining the rate of interest as also the age of the deceased. We do not see any justification for increase in the rate of interest. We, therefore, are of the opinion that the interest of justice would be subserved if the rate of interest payable on the awarded amount is brought down to 7%, as was directed by the Tribunal.

15. The appeal is allowed only to the aforementioned extent. No costs.

[1]*[(1994) 2 SCC 176]* [2]*[(1996) 4 SCC 362]* [3]*[(2004) 2 SCC 473]*