

# SUPREME COURT OF INDIA

Syed Basheer Ahamed

Vs.

Mohd. Jameel

C.A.No.10 of 2009

(R.V.Raveendran and D.K. Jain JJ.)

06.01.2009

## JUDGMENT

### **D.K. Jain, J.:**

1. Leave granted.
2. Challenge in this appeal, by special leave, is to the judgment and order dated 26th June, 2006 passed by the High Court of Karnataka at Bangalore, holding that the appellants herein are entitled to a compensation of Rs.3,56,000/- along with interest at the rate of 6% per annum from the date of filing of the claim petition till the date of actual deposit of the compensation under the *Motor Vehicles Act, 1988* (for short 'the Act'), as against the compensation of Rs.6,08,000/- with interest at the rate of 6% per annum, awarded by the Motor Accident Claims Tribunal, Mysore (for short 'the Tribunal') vide order dated 19th April, 2002.
3. The appellants are the unfortunate parents and the three sisters of the deceased. The first respondent is the owner of the lorry, which was involved in the accident and the second respondent is the insurance company with which the lorry was insured. According to the appellants, on 3rd June, 1999 at about 10.00 a.m., the deceased aged about 20 years, was riding on a luna moped when the lorry dashed against it and ran over the deceased, killing him on the spot. It was claimed that the deceased was engaged in his own business under the name and style of Bharath Packing Cases Industry, and was also dealing in cut size timber.
4. The appellants filed a petition under Section 166 of the Act for award of compensation on account of the death of the deceased. In the petition, it was pleaded that the deceased had lucrative business and was earning a sum of Rs.20,000/- per month. A claim for compensation of Rs.68,30,000/- was made. Upon consideration of the evidence adduced by the parties, in particular the Income Tax Return filed by the deceased for the assessment year 1998-1999, wherein the total income from business was declared at Rs.43,000/, the Tribunal rejected the stand of the appellants/claimants that the earnings of deceased were Rs.20,000/- per month. The Tribunal took the monthly income of the deceased at Rs.7,000/- per month.

Deducting therefrom half of the said income towards personal and living expenses of the deceased and taking the age of the younger of the parents as the basis for determining the multiplier as 14, the Tribunal quantified the compensation at loss of dependency as Rs.5,88,000/-. By adding Rs.10,000/- towards loss of expectation of life and Rs.10,000/- towards funeral expenses etc., it determined the total compensation as Rs.6,08,000/-. As noted above, interest at the rate of 6% per annum was also awarded.

5. Being aggrieved, the owner of the vehicle, respondent No.1 in this appeal, preferred appeal to the High Court. Rejecting the plea of the owner of the vehicle that his lorry was not involved in the accident, the High Court came to the conclusion that on the basis of the Income Tax Return the income of the deceased could not be more than Rs.40,000/- per annum. The High Court, however, calculated the monthly income of the deceased as Rs.4,000/-. The High Court, however, did not interfere with the deduction towards the personal expenses and the multiplier applied by the Tribunal as also the other amounts awarded to the claimants. The High Court, thus, chose to reduce the compensation amount awarded to the appellants by the Tribunal from Rs.6,08,000/- to Rs.3,56,000/- on the ground that the monthly earnings of the deceased had been taken on the higher side at Rs.7,000/-. Feeling aggrieved, the claimants are before us.

6. We have heard learned counsel for the parties.

7. Learned counsel appearing on behalf of the appellants submitted that the High Court, while taking the monthly income of the deceased at Rs.4,000/- per month, has ignored other evidence brought on record by the claimants, namely, the sale figures of his business from M/s Bharath Packing Cases Industry for the period from 1st April, 1998 to 31st March, 1999 as reflected in the ledger accounts of one M/s Vasu Agarbathi (Ex.P-23), one of the customers of the deceased. It was also contended that the High Court has also failed to take into account the future prospects of the deceased, whose business was bound to grow with the passage of time. In support of the proposition that rise in income of the deceased by way of promotion or otherwise should be taken into consideration for determining his income earning capacity, reliance was placed on the decision of this Court in *National Insurance Co. Ltd. Vs. Indira Srivastava & Ors.*<sup>1</sup> It was also pleaded that deduction towards personal and living expenses of the deceased should have been restricted to only one-third of his monthly income.

8. Per contra, learned counsel appearing for the contesting respondents submitted that in view of the fact that no oral evidence was adduced by the claimants/appellants to prove the income earning capacity of the deceased, reliance on the Return of Income, filed by the deceased himself, for determining his monthly income, could not be faulted and the compensation determined by the High Court cannot be said to be arbitrary and, therefore, no intervention in exercise of power under Article 136 of the Constitution is called for.

9. Section 168 of the Act enjoins the Tribunal to make an award determining "the amount of compensation which appears to be just." However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act.

Thus, the expression "which appears to the just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

10. In *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas (Mrs.) & Ors.*<sup>2</sup>, M.N. Venkatachaliah, J. (as His Lordship then was) had observed that 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". At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

11. As noted earlier, in the matter of computation of compensation, there is no uniform rule or formula for measuring the value of a human life. Though a special provision for assessment of compensation on structured formula basis for the purpose of a claim petition under Section 163A of the Act has been inserted in the Act with effect from 14th November, 1994, but no such formula has been laid down for determination of compensation in a claim petition under Section 166 of the Act, though there is no bar in taking the said schedule as a guiding factor while determining the just compensation by applying multiplier method. In fact, in *Managing Director, TNSTC Ltd. Vs. K.I. Bindu & Ors.*<sup>3</sup>, it has been observed that the second schedule to the Act may serve as a guide but cannot be used as an invariable ready reckoner. In a catena of decisions of this Court, certain broad principles which could be applied for assessing just compensation have been highlighted. It has been observed that in a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered and likely to be suffered by them as a result of abrupt termination of life. The question as to what factors should be kept in view for calculating pecuniary loss to a dependent came up for consideration before a three-Judge Bench of this Court in *Gobald Motor Service Ltd. & Anr. Vs. R.M.K. Veluswami & Ors.*<sup>4</sup>, with reference to a case under the *Fatal Accidents Act, 1855*, wherein, K. Subba Rao, J. (as His Lordship then was) speaking for the Bench observed thus:

“In calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants

may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly, stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained.”

12. Taking note of the afore-extracted observations in Gobald Motor Service Ltd. (supra) in Susamma Thomas (supra), it was observed that the assessment of damages to compensate the dependents 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 upto the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or may have lost his employment or income altogether.

13. Thus, for arriving at just compensation, it is necessary to ascertain the net income of the deceased available for the support of himself and his dependents at the time of his death and the amount, which he was accustomed to spend upon himself. This exercise has to be on the basis of the data, brought on record by the claimant, which again cannot be accurately ascertained and necessarily involves an element of estimate or it may partly be even a conjecture. The figure arrived at by deducting from the net income of the deceased such part of income as he was spending upon himself, provides a datum, to convert it into a lump sum, by capitalising it by an appropriate multiplier (when multiplier method is adopted). An appropriate multiplier is again determined by taking into consideration several imponderable factors. Since in the present case there is no dispute in regard to the multiplier, we deem it unnecessary to dilate on the issue.

14. In the instant case, the main grievance of the appellant is that the High Court erred in reducing the monthly income of the deceased from Rs.7,000/- to Rs.4,000/-. More so, when the claim of the appellants was that the deceased was earning about Rs.20,000/- per month. It needs little emphasis that insofar as the question of earnings of the deceased is concerned, the onus lies on the claimants to prove this fact by leading reliable and cogent evidence before the Tribunal. A bare assertion in the claim petition in that behalf is not sufficient to discharge that onus. In the present case, as noticed earlier, the deceased was carrying on a business. The Return of Income filed by him for the assessment year 1998-1999 (Ex.P-34) was brought on record along with his monthly turnover and tax paid statements submitted to the Commercial Tax Officer (Ex.P- 27). Copies of the current account (Ex.P-38) showing the money deposited in the bank maintained by the deceased have also been brought on record. The Return of Income filed on 15th April, 1998 and the accompanying document, namely, trading and profit and loss account for the period ending 31st March, 1998 show a net profit of Rs.42,996/-. Taking into consideration the said documents, the Tribunal took the monthly income of the deceased at Rs.7,000/- per month. However, the High Court felt that in the light of the Income Tax Return, declaring income from the business carried on by the

deceased, the yearly income of the deceased was not more than Rs.40,000/- and, therefore, the Tribunal was not justified in adopting the monthly income of the deceased at Rs.7,000/- per month to work out the loss of dependency. According to the High Court, the monthly income of the deceased should have been taken at Rs.4,000/- per month.

15. In our view, though the entries in the current account (Ex.P-38) of the deceased and his transactions with his client, namely, Vasu Agarbathi (Ex.P-23) may not per se be cogent evidence to determine the yearly or monthly income of the deceased from the business(s) he was carrying on, yet we feel that these are some indicators in support of the appellants' plea that the business income of the deceased in the succeeding years could be more than what was declared for the year ended 31st March, 1998. But it is again in the realm of speculation, particularly when, unlike income from salaries, earnings in a business may increase with the buoyancy in business and at the same time may diminish with a recession in trade.

16. As regards the future prospects of the deceased, as noted above, except for copies of account of the deceased in the books of account of his client, after the death, no other reliable evidence has been brought on record to show the future plans of the deceased regarding expansion or diversification of his business. In our view, a bare argument by learned counsel for the appellants that the deceased had a potential of expanding his business, cannot be accepted as sufficient material to determine the future prospects of the deceased. The decisions of this Court relied upon by learned counsel for the appellants do not lay down any abstract proposition of law in this regard, which are otherwise distinguishable on facts.

17. In the circumstances, having regard to the material on record, in our opinion, ends of justice would be met if the income of the deceased is taken at Rs.5,500/- per month or Rs.66,000/- per annum.

18. On the question of deduction on account of personal expenses by the deceased, there is no set formula which could be applied in every case to determine as to what should be the deduction on this account. The contention that deduction on that count cannot exceed one-third on the ground that there is some statutory recognition in the Second Schedule to the Act for such deduction, is untenable. The said deduction would depend upon the facts and circumstances of each case. In the present case, no evidence was led on this point as well. In the absence of any evidence to the contrary, the practice is to deduct towards personal and living expenses of the deceased, one-third of the income in case he was married and one-half (50%) if he was a bachelor. Thus, there is no material on record warranting interference with the consistent view of both the courts below on the point.

19. In view of the above discussion, the loss of dependency is determined as Rs.33,000/- per annum and by applying a multiplier of 14, the total loss of dependency is arrived at Rs.4,62,000/-. Adding Rs.20,000/- awarded under other heads, the quantum of compensation is determined at Rs.4,82,000/-. The amount shall also carry an interest at the rate of 6% per annum, as awarded by the Tribunal, from the date of the filing of the claim petition till the date of actual payment. If any amount has already been paid or deposited in terms of order

passed by the Tribunal, the same shall be adjusted from the amount now being awarded. The interest element shall also be worked out after the said adjustment.

20. In the result, the appeal succeeds in part and the judgment of the High Court stands modified to the extent indicated above. No order as to costs.

<sup>1</sup>(2008) 2 SCC 763

<sup>2</sup>(1994) 2 SCC 176

<sup>3</sup>(2005) 8 SCC 473

<sup>4</sup>AIR 1962 SC 1