

SUPREME COURT OF INDIA

Uttaranchal Transport Corporation Ltd.

Vs.

Smt. Vimla Devi

C.A.No.....of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

16.02.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Uttaranchal High Court partially allowing the appeal filed by the respondents. The appeal was filed before the High Court in terms of Section 173 of the *Motor Vehicles Act, 1988* (in short the `Act') seeking enhancement of the compensation as fixed by learned Ist Additional District Judge-cum-Motor Accident Claims Tribunal, Haridwar. (In short the `MACT'). The MACT had awarded compensation of Rs.1,84,500/- alongwith interest @ 9&percent; p.a. from the date of claim.

3. The claim petition was filed inter-alia stating that on 2.9.2003 one Bijendra Singh (hereinafter referred to as the `deceased') was riding a scooter. Suddenly, the bus owned by the present appelland-Corporation dashed against it. The vehicle was being driven in a rash and negligent manner. It is stated that the deceased was aged 43 years at the time of the accident and was a contractor and earning Rs.12,000/- p.m. The Corporation took the stand that there was actually no rash and negligent act of the driver.

“When the scooter was trying to overtake the truck it lost control and the accident occurred due to negligence of the deceased. The MACT held that there was no material to establish the income as claimed and accordingly a sum was fixed at Rs.15,000/-p.a. which is the notional income.”

4. The High Court held that the notional income has to be taken at Rs.30,000/- p.a. and since the deceased was a contractor he could have easily earned Rs.3,000/- p.m. and accordingly after making 1/3rd deduction for personal expenses the loss of dependency was assessed at Rs.24,000/- p.a. and multiplier of 15 was adopted. Accordingly, the compensation was fixed at Rs.3,60,000/- with 9&percent; interest from the date of claim.

5, In support of the appeal, learned counsel for the appellant submitted that there was no basis indicated for taking the income at Rs.36,000/- p.a..

“On surmises the High Court came to the conclusion that the deceased could have earned Rs.36,000/- p.a. There was no basis for coming to such a conclusion. It was also submitted that the multiplier adopted is high.”

6. There is no appearance on behalf of the respondents in spite of service of notice.

7. There were two methods adopted to determine and for calculation of compensation in fatal accident actions. The first multiplier method mentioned in *Davies v. Powell Duffreyn Associated Collieries Ltd.*¹ and the second in *Nance v. British Columbia Electric Railway Co.Ltd.*².

8. 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.

9. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in *Mallett v. Mc Mongle*³ where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

“The starting point in any estimate of the amount of the `dependency` is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But....there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants.

They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind.

The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4- 1/2&percent; the

present value of an annuity for 20 years of which the first ten years are at \$ 100 per annum and the second ten years at \$ 200 per annum, is about 12 years' purchase of the arithmetical average annuity of \$ 150 per annum, whereas if the first ten years are at \$200 per annum and the second ten years at \$ 100 per annum the present value is about 14 years' purchase of the arithmetical mean of \$ 150 per annum. If therefore the chances of variations in the `dependency' are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the `dependency' used for the purpose of assessing the damages.”

10. In regard to the choice of the multiplicand, Halsbury's Laws of England in vol. 34, para 98 states the principle thus:

“98. Assessment of damages under the Fatal Accident Act, 1976 - The courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage- earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates.

Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death.”

11. As to the multiplier, Halsbury states:

“However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies.

The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In

practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer.

The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure.”

12. In both *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*⁴ and *U.P. State Road Transport Corporation And Others v. Trilok Chandra and Ors.*⁵ the multiplier appears to have been adopted by this Court taking note of the prevalent banking rate of interest.

13. In fact in Trilok Chand's case (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects.

“It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian Citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age.”

14. Considering the age of the deceased the multiplier as adopted appears to be on higher side.

15. Keeping in view the parameters indicated above it would be appropriate to fix the multiplier at 10 and the rate of interest @ 6&percent; p.a. The MACT shall work out the entitlement on the aforesaid basis.

16. No basis has been indicated by the High Court for its presumptuous conclusion that the deceased could have earned Rs.36,000/- p.a. Taking an overall view of the matter and the multiplier to be adopted, as noted above, we fix the quantum of Rs.2,40,000/- with 6&percent; interest from the date of claim.

17. It is stated by learned counsel for the appellant that a sum of Rs.2,50,000/- has been deposited in terms of the order of this Court dated 20.7.2007. The balance amount shall be deposited in the concerned MACT within a period of 8 weeks. The withdrawal of the amount in the fixed deposit shall be fixed by the MACT taking into account the relevant aspects.

18. The appeal is allowed to the aforesaid extent with no order as to costs.

¹(1942 AC 601)

²(1951 (2) All ER 448)

³(1969 (2) All ER 178)

⁴(1994 (2) SCC 176)

⁵(1996 (4) SCC 362)