

**SUPREME COURT OF INDIA**

National Insurance Co.Ltd.

Vs.

Saroj

C.A.No.3483 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

12.05.2009

**JUDGEMENT**

**S.B. Sinha, J.**

1. Leave granted.

2. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 29.05.2007 passed by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh in FAO No.2041 of 2006 whereby and whereunder a First Appeal preferred by the appellant herein against a judgment and award dated 03.2.2006 passed by the Motor Accident Claims Tribunal, Rohtak directing the appellant herein to pay compensation with interest to the respondent, was dismissed.

3. One Joginder Singh, husband of respondent No.1 and father of respondent Nos. 2 to 4, while riding a two wheeler met with an accident on 29.11.2003 as it collided with a truck. The said truck was insured with the appellant by its owner who is respondent No.5 herein.

4. A claim petition was filed before the Motor Vehicles Accident Claims Tribunal claiming a sum of Rs.20,00,000/-. The deceased was an employee of Maruti Udyog Limited and had been drawing a sum of Rs.16,110/- per month. The Tribunal determined his income at Rs.17,244/- per month by its award dated 3.2.2006. His age was determined as 41 years 10 months and 9 days. A multiplier of 16 was applied to arrive at the amount of compensation at a sum of Rs.22,12,200/-.

5. A First Appeal preferred by the appellant has been dismissed by the High Court by reason of the impugned judgment dated 29.05.2007.

6. Dr. Meera Agarwal, learned counsel appearing on behalf of the appellant, would urge:

“1) The Tribunal and consequently the High Court should have restricted the award of compensation only to the sum claimed by the claimant in the claim petition.

2) Provisions of Schedule II attached to Section 163-A being applicable strictly in cases where the income of the deceased does not exceed Rs.40,000/- per annum, the multiplier specified therein should not have been applied.

3) The claimants having not disclosed as to what amount they had received from the insurance company and who was the insurer of the scooter driven by the deceased, the impugned judgment should not be sustained.”

7. Mr. A.V. Rao, learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgment.

8. The deceased was occupying the post of Technical in a Weld Shop Work in Maruti Udyog Limited. His net salary was Rs.16,110/- per month.

“Both the courts below, however, in terms of the evidences brought on record found salary payable to the deceased at Rs.17,244.95 per month.

This finding of the Tribunal had not been questioned before the High Court.

Indisputably, again the age of the deceased at the time of death was found to be 41 years 10 months and 9 days. “

9. It has not been denied or disputed that the multiplier method can be applied for the purpose of determination of the amount of compensation in a motor accident in terms of the provisions of the *Motor Vehicles Act, 1988*.

“We have, however, do not mean to suggest that the multiplier specified in the Second Schedule should be applied automatically.

In *Rani Gupta v. United India Insurance Company & Ors.*<sup>1</sup> this Court observed that in an appropriate case, the matter may require consideration by larger Bench keeping in view paragraphs 5 and 6 of the Note appended to the Second Schedule of the Act in terms whereof the multiplier was to be adopted only in a case of permanent total or partial disability.”

10. The Second Schedule provides for a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income in a more liberal or rational way.

“If that be so, a question arises as to why the injured claimant and/or heirs and legal representatives of the victim in a case of death on proof of negligence on the part of the driver of a motor vehicle would get a lesser amount than the one specified in the Second Schedule although both are similarly situated. Such a dichotomy, in our opinion, could be resolved by finding the applicability of multiplier in the cases where

the victims have suffered injuries resulting in permanent total disablement or permanent partial disablement.

Probably, it is in that view of the matter, there is some sort of a cleavage of opinion in the matter of application of multiplier. Whereas in one set of decisions multiplier specified in the Second Schedule has been applied, in another set of decisions, a lesser multiplier was applied. In either set of the decisions sometimes, no principle of law has been laid down. It is, however, accepted at the Bar that the multiplier specified in the Second Schedule should be taken to be the guidelines.”

11. We may notice a few precedents in this behalf.

In *Rani Gupta* (supra), it is stated :

"18. By and large, therefore, the Court had proceeded on the basis that the multiplier mentioned in the Second Schedule should be taken to be the guide but it may not be.

19. The multiplier specified in the Second Schedule may not be decisive for calculating compensation in cases of death. In fact, the word multiplier has been used only for the purpose of calculating damages in the case of permanent disability and not in the case of death as would appear from note 5 and 6 appended thereto.

20. The Second Schedule provides for payment of the amount of compensation to the persons whose income is from Rs.3,000/- to Rs.40,000/- per annum, depending upon the age of the deceased; as for example if the age of the deceased is 15 years, the amount of compensation payable would be 60,000/-, but where the annual income is Rs.3,000/-, a sum of Rs.50,000/- has been specified therefor even if the age of the deceased is between 35 to 65 years.

21. The Parliament had, therefore, thought that Rs.50,000/- should be the minimum amount of compensation payable to legal representatives of those persons whose annual income is Rs.3,000/- per month. For the said purpose, the multiplier specified in the Second Schedule has no role to play. Even in absence of the multiplier in the Second Schedule, the amount of compensation payable would be the same irrespective of the multiplier specified therein."

12. Recently, in *United India Insurance Co. Ltd. v. Bindu & Ors.*<sup>2</sup>, this Court applied the multiplier of 13 where the age of the deceased was 32 years. The Court referring to *Mallett v. Mc Mongle*<sup>3</sup> and other decisions preceding the same, opined:

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

12. 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.

13. Keeping in view the parameters indicated above it would be appropriate to fix the multiplier at 13 and the rate of interest at 6% p.a. The MACT shall work out the entitlements on the aforesaid basis."

13. Reliance has been placed by Dr. Agarwal on a decision of this Court in *United India Insurance Co. Ltd. Etc. v. Patricia Jean Mahajan & Ors.*<sup>6</sup>, wherein multiplier of 10 has been used where the deceased used to get salary in US \$.

Yet again in *The Managing Director, TNSTC Ltd. v. K.I. Bindu & Ors.*<sup>7</sup>, this Court held :

"14. 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."

Reliance has also been placed on *Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya and two Ors.*<sup>8</sup>, wherein it was held:

"12. 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."

14. The amount of compensation which is required to be determined by the Tribunal must be just. In certain situations as for example in the case of the death of only son to a mother, no monetary compensation would be sufficient. Whereas the court, while determining the

amount of compensation, should consider the amount of monetary loss which had been and would be suffered by the heirs and legal representatives of the deceased, the same should not be a windfall. It is for the aforementioned purpose, not only the take home salary is to be taken into consideration but also other allowance and perks which would have benefited the entire family. [See *National Insurance Co. Ltd. v. Indira Srivastava & Ors.*<sup>9</sup>.]

15. The prospective loss of future earnings should also be borne in mind.

“The quantum of compensation must be determined on certain legal principles. The deceased might have a bright future prospect. He would have been, in normal situation, considered for promotion immediately.

Although rigid tests are difficult to be laid down, any kind of hypothesis, as far as possible should be avoided.

In *Abati Bezbaruah v. Dy. Director General Geological Survey of India & Anr.*<sup>10</sup>, this Court observed:

"11. It is now a well settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation of the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case."

In this case, the deceased was a technician employed in a Multinational company. The Tribunal as also the High Court while determining the amount of compensation did not bestow its consideration to future prospects. It is trite that the Court should look into the circumstances of each and every case for arriving at a just compensation. His future prospect has not been taken into consideration. In case of this nature, therefore, we do not think that application of multiplier of 16 was on a higher side.”

16. Submission of Mr. Agarwal that the Court should have awarded only the sum claimed by the claimant, in our opinion, is not correct.

17. Contention raised on behalf of the appellant that the claimant had not disclosed as to what amount they had received from the insurance company with whom the scooter driven by the deceased was insured cannot be considered by us for the first time as no such contention has been raised before the courts below. The legal representatives of the deceased examined themselves as witnesses. They should have cross-examined on the said question. The insurance company could have found out from other insurance company also as to whether, in fact, a claim had been advanced and whether insurance company paid any amount to them.

18. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly with costs. Counsel's fee assessed at Rs.10,000/-.

<sup>1</sup>[2009 (5) SCALE 439]

<sup>2</sup>[JT 2009(4) SC 315]

<sup>3</sup>[1969 (2) All ER 178]

<sup>4</sup>[1994 (2) SCC 176]

<sup>5</sup>[JT 1996 (5) SC 356; 1996 (4) SCC 362]

<sup>6</sup>[(2002) 6 SCC 281]

<sup>7</sup>[(2005) 8 SCC 473]

<sup>8</sup>[(2005) 6 SCC 236]

<sup>9</sup>[(2008) 2 SCC 763]

<sup>10</sup>[(2003) 3 SCC 148]