

RAJASTHAN HIGH COURT

Nanji Bhai

Vs.

Bhagwandas D. Darbar

Civil Misc. Appeal Nos. 485 to 488 of 1996, and 484 of 1996

(H.R. Panwar, J.)

08.04.2003

JUDGEMENT

H. R. Panwar, J.

1. These five appeals are directed against a common judgment and award dated 1-6-1996 passed by Motor Accident Claims Tribunal, Dungarpur (for short 'the Tribunal') whereby the Tribunal has awarded compensation of Rs. 3,04,500/- in M.A.C. Case No. 99/94 filed by appellant-claimant Nanji Bhai and others; Rs. 2,04,500/- in M.A.C. Case No. 100/94 filed by Vishal and others; Rs. 1,09,500/- in M.A.C. Case No. 97/94 filed by Harakhchand and others; Rs. 2,000/- in M.A.C. Case No. 98/94 filed by Master Rakesh and Rs. 10,000/- in M.A.C.T. Case No. 101/94 filed by Miss Foram. Aggrieved and dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant-claimants hereinabove (for short 'the claimants') have filed the aforesaid appeals seeking enhancement of compensation.

2. Briefly stated facts to the extent they are relevant and necessary for decision of these appeals are that on 24-11-1993 at about 8.30 p.m., Moolchand Bhai, Smt. Ranjan Ben, Smt. Manjula Ben, Master Rakesh, Kumari Foram and Nanji Bhai were travelling in a taxi car bearing number GRU-4929, which was driven by respondent No. 1 Bhagwandass D. Darbar, owned by respondent No. 2 Bhoopendra and was insured with respondent No. 3, the New India Assurance Company Ltd. (for short 'the Insurance Company'). When the said car was plying on the State Highway near Bichhiwara, a truck bearing number RJ-27/G. 0748, which was driven by respondent No. 4 Shanker Lal and was owned by respondent No. 5 Om Prakash and was insured with respondent No. 6 the National Insurance Company Ltd. came from behind and suddenly overtook the car and thereafter, the driver of the truck brought the truck in

front of the car as a result of which there was a collision between the said car and truck. The occupants of the car namely, Moolchand Bhai, Ranjan Ben and Smt. Manjula Ben sustained severe injuries and succumbed to the injuries. Master Rakesh and Kumari Foram sustained personal injuries. The legal representatives of the deceased persons as also the injured, filed claim applications before the Tribunal for compensation.

3. On appreciation of the evidence produced by the parties, the learned Tribunal held the car driver as well as the truck driver negligent and responsible for the said accident, and awarded compensation to the respective claimants as noticed above.

4. I have heard learned counsel for the parties and perused the judgment and award impugned. I have also carefully gone through the records of the Tribunal.

5. Learned counsel for the appellants contended that the Tribunal fell in error in awarding low compensation in favour of the claimants (hereinafter referred to as 'the appellants'). He further contended that there is oral as well as documentary evidence on record by which the income of the deceased persons as also dependency of the claimants have been established. It was further contended that the Tribunal fell in error in awarding compensation on the basis of lump sum method as against the well established multiplier method.

6. Learned counsel for the respondents supported the judgment and award impugned.

7. Since all the aforesaid claim petitions arose out of one and same accident and between same parties, the Tribunal consolidated all the claim petitions with *Harakhchand v. Bhagwandass D. Darbar*¹ and recorded the evidence in the said case.

8. In S. B. Civil Misc. Appeal No. 485/1996 arising out of M.A.C. Case No. 99/94, deceased Moolchand Bhai, aged 44 years died in the said accident. He was running his business in the name and style 'Gala Stationery and General Stores' at *Ahmedabad*. He was income tax payer. The claimants produced on record the income tax returns for the assessment years 1992-93 Ex. 1; 1993-94 Ex. 2 and 1994-95 Ex. 3.

9. PW. 1 Nanji Bhai stated on oath before the Tribunal that his son Moolchand Bhai, aged 44 years, used to run a business in the name and style 'Gala Stationery and General Stores' at *Ahmedabad*. The annual income of the deceased Mool Chand Bhai has been proved producing the income tax returns noticed above. He further stated that after the death of his son Moolchand, the business which deceased used to run has

completely been closed. He further stated that the claimants were fully dependent on the income of the deceased Moolchand and after his death, there is no source of income for the dependents of the deceased Moolchand. He has also proved the income of his daughter-in-law Smt. Manjula Ben by producing income tax returns for the assessment years 1991-92 Ex. 10, 1992-93 Ex. 11 and 1993-94 Ex. 12.

10. In S. B. Civil Misc. Appeal No. 487/1986, P.W. 2 Harakhchand, husband of deceased Ranjan Ben, aged about 36 years has proved the income of deceased Ranjan Ben by producing income tax returns showing that for the assessment year 1992-93.

11. In S.B. Civil Misc. Appeal No. 484/1996, P.W. 3 Kumari Forum stated before the Tribunal that she sustained injuries vide Ex. 13. The injury certificate issued by Seth Vadilal Sarabhai General Hospital shows that there was closed shaft femur right without DNVD.

12. In S.B. Civil Misc. Appeal No. 488/1996, the claimant Master Rakesh sustained 15 cm. long sutured CLW on right frontotemporal region.

13. In *U. P. State Road Transport Corporation v. Trilok Chandra*,² the Apex Court observed that the most commonly practised method of assessing the loss suffered is to calculate the loss for a year and then to capitalise the amount by a suitable multiplier. To that is added the loss suffered on account of loss of expectation of life and the like. After having considered the method adopted by Viscount Simon in *Nance v. British Columbia Electric Railway Company Ltd.*³ and in the House of Lords decision in *Davies v. Powell Duffryn Associated Collieries Ltd.*,⁴ the Apex Court observed that the Courts in India as well in England preferred Devies' formula as being simple and more realistic. In *Davies v. Powell Duffryn Associated Collieries Ltd.*,⁵ it was observed as under :-

"The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered. The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death."

14. In *Municipal Corporation of Delhi v. Subhagwanti*,⁶ the Apex Court extracted from the judgment in the case of *Davies v. Powell Duffryn Associated Collieries Ltd.*

(1942 AC 601) (supra) as under :-

"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent and other like matters of speculation and doubt."

15. After having examined the multiplier method, the Apex Court in *U.P. State Road Transport Corporation v. Trilok Chandra* (1996 Acc CJ 831) (supra) observed as under :-

"We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the award made by Tribunals and Courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in *Davies*, (1942) AC 601, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier."

16. In *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.)* ⁷ the Hon'ble Supreme Court held that 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). It was further observed by the Apex Court that it is necessary to reiterate that the multiplier method is logically sound and legally well established. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Their Lordships held that it must be borne in mind that the multiplier method is the accepted method of ensuring a just compensation which will make for uniformity and certainty of the awards. Their Lordships disapproved the decisions of the High Courts who had taken a contrary view and indicated that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases. Thus, the law is settled that the Devies' formula of multiplier is preferred as being simple and most realistic by the Courts in India as being logically sound and legally well established, departure from which can only be justified in rare and extraordinary circumstances and in very exceptional cases.

17. The cases in hand do not fall within the ambit of extraordinary circumstances or very exceptional cases and, therefore, I am of the considered view that the Tribunal fell in error in awarding lump sum compensation to the respective claimants in the death cases noticed above as against the well established multiplier method. Keeping in view the settled principle of law for computation of compensation, the appropriate computation in each death cases noticed above, needs to be made in these appeals.

18. In S. B. Civil Misc. Appeal No. 485/1996, it is established that deceased Moolchand Bhai, aged 44 years, was having a stable business in the name and style 'Gala Stationery and General Stores' at *Ahmedabad*, which is evident from the statement of P.W. 1 Nanji Bhai as also the income tax returns filed by the deceased for the assessment years 1992-93 (Ex. 1), 1993-94 (Ex. 2) and 1994-95 (Ex. 3). The income tax return for the assessment year 1991-92 shows net profit of Rs. 50,495/-, for 1992-93 Rs. 58,075/-, for 1993-94 Rs. 70,411/- and for the year 1994-95 Rs. 71,081/-. The last return filed by the deceased for the assessment year 1994-95 shows net profit of Rs. 71,081/-. Considering the fact that the deceased was to spend expenses on business establishment as also personal living expenses, the annul dependency can safely be taken to be at Rs. 35,000/-. This amount needs to be multiplied by a multiplier of 15 years' purchase factor, which comes to Rs. 5,25,000/-. The Tribunal awarded Rs. 2000/- for funeral expenses and Rs. 2500/- for loss of estate. This appears to be reasonable. Thus, the total compensation works out to Rs.

5,29,500, rounded to Rs. 5,30,000/-.

19. In S. B. Civil Misc. Appeal No. 486/1996, deceased Manjula Ben wife of deceased Moolchand Bhai, aged 39 years also used to run a business in the name and style 'M/s. Gala Trading Company' at *Ahmedabad* as is evident from the income tax returns filed by the claimants for the assessment years 1991-92 (Ex. 10), 1992-93 (Ex. 11) and 1993-94 (Ex. 12). Her net profit from the business for the year 1991-92 was Rs. 61,457/-, for 1992-93 was Rs. 63505/- and for 1993-94 was Rs. 68,479/-. Thus, her annual income can safely be taken to be at Rs. 65,000/-. She left behind her a minor son aged 8 years and three minor daughters aged about 16,14 and 12 years respectively. Her husband Moolchand Bhai also died in the same accident and compensation has been assessed as noticed above. Keeping in view the fact that the deceased was to maintain business establishment and was required to spend expenses on the business establishment and also had personal living expenses as also for maintaining vehicle etc., a sum of Rs. 20,000/- can be said to be annually contributed to the claimants. This amount needs to be multiplied by a multiplier of 15 years purchase factor. Thus, the amount comes to Rs. 3,00,000/- The Tribunal awarded a sum of Rs. 2000/- for funeral expenses and Rs. 2500/- for loss of estate, which are quite reasonable. Thus, the total compensation comes to Rs. 3,04,500/-.

20. In S. B. Civil Misc. Appeal No. 487/1996, deceased Smt. Ranjan Ben aged 36 years, had an income of Rs. 20,590/- on account of commission received from JBA Ptg. Inks Ltd. for the assessment year 1992-93. For the assessment year 1993-94, her income was from interest and dividend etc. and as such, for the whole year, the income derived by her was only by interest on the deposits. For the assessment year 1994-95, the source of income has not been disclosed as along with the acknowledgment Ex. 9, the computation sheet on the basis of which Ex. 9 was filed, has not been filed by the claimants. Therefore, in overall it appears that the deceased used to save an income of Rs. 20,000/- to Rs. 21,000/- from commission, Deducting 1/3rd there from as her personal 'living expenses, the annual dependency to the claimants comes to Rs. 14,000/-. This amount needs to be multiplied by a multiplier of 15 years' purchase factor. Thus the amount comes to Rs. 2,10,000/-. The Tribunal awarded sums of Rs. 5000/- for love and affection, Rs. 2000/- for funeral expenses and Rs. 2500/- for loss of estate which appears to be proper. However, the claimant Harak Chand is entitled for Rs. 20,000/- for loss of company, and consortium. Thus, the total compensation works out to Rs. 2,39,500/- rounded to Rs. 2,40,000/-.

21. In S. B. Civil Misc. Appeal No. 488/1996, Master Rakesh has suffered one simple

injury. The Tribunal awarded Rs. 2000/-. There is nothing on record to suggest that any expense was incurred for the treatment. Therefore, the compensation awarded by the Tribunal appears to be just and proper and calls for no interference.

22. In S. B. Civil Misc. Appeal No. 484/1996, Miss Foram has suffered injury on femur bone. The Tribunal awarded Rs. 10,000/- in all. Considering all the facts and circumstances of the case and keeping in view the nature of injury and that the claimant underwent treatment for bony injury, in my view, the compensation awarded is on lower side. Thus, for the fracture injury, a sum of Rs. 25,000/- is just and proper compensation, which would include physical pain and mental agony suffered by the claimant as also the expenses incurred on treatment and conveyance etc.

23. No other point was urged.

24. In the result, S. B. Civil Misc. Appeal Nos. 485/1996, 486/1996, 487/1996 and 484/1996 are allowed. The compensation awarded by the Tribunal in S.B. Civil Misc. Appeal No. 485/1996 is enhanced from Rs. 3,04,500/- to Rs. 5,30,000/-' in S. B. Civil Misc. Appeal No. 486/1996 is enhanced from Rs. 2,08,500/- to Rs. 3,04,500/- in S. B. Civil Misc. Appeal No. 487/1996 is enhanced from Rs. 1,09,500/- to Rs. 2,40,000/- and in S. B. Civil Misc. Appeal No. 484/1996 is enhanced from Rs. 10,000/- to Rs. 25,000/-. The enhanced amount shall carry interest at the rate of 9% per annum from the date of judgment till realization. However. S. B. Civil Misc. Appeal No. 488/1996 has no merit. Accordingly, it is dismissed. There shall be no order as to costs.

Appeals dismissed.

Cases Referred.

1. M.A.C. Case No. 97/94
2. 1996 Acc CJ 831
3. (1951) AC 601
4. (1942) SC 601
5. (1942) AC 601
6. 1966 Acc CJ 57: (AIR 1966 SC 1750)
7. (1994) 2 SCC 176: (AIR 1994 SC 1631)