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In the Karnataka High Court

Case No : M.F.A. No. 146 of 1997 (MV) & Misc First Appeal No. 146 of 1997

B. Parimala and Others APPELLANT

Vs

Riyaz Ahmed and Others RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Citation : (2002) ACJ 154

Hon'ble Judges : V.G. Sabhahit, J;R.V. Raveendran, J

Bench : Division Bench

Advocate : Mahesh R. Uppin, for the Appellant; M.U. Poonacha, for the Respondent

Judgement

R.V. Raveendran, J.—This is a claimants'' appeal against the judgment and award dated 26.9.1996 passed by District Judge and M.A.C.T., Chitradurga, in M.V.C. No. 19 of 1994.

2. The appellants are respectively the widow, three children and mother of one Govinda Setty. The said Govinda Setty was a partner of firm M/s. Bellary Venkataswamy Setty carrying on business at Davangere. On 10.10.1993, when the said Govinda Setty, along with his family members, was travelling in a car bearing No. KA 17-M 2911 from Bangalore to Davangere, the said car dashed against a parked lorry resulting in the death of the said Govinda Setty. Feeling aggrieved, the widow, children and mother of the said Govinda Setty filed M.V.C. No. 19 of 1994 against the driver, owner and insurer of the car, claiming a compensation of Rs. 35,00,000 alleging that the accident occurred due to rash and negligent driving by the driver of the car.

3. The petition was resisted by the respondents contending that there was no negligence on the part of the driver of the car; that the accident occurred when the driver of the car tried to avoid collision with a vehicle coming from the opposite side, by swerving to the left and that in that process, it dashed against the parked lorry. The respondents also contended that the compensation claimed

is excessive. On the basis of the pleadings, the Tribunal framed appropriate issues regarding negligence, entitlement and quantum of compensation.

4. Common evidence was recorded in M.V.C. No. 19 of 1994 and connected claim petitions arising from the said accident. The widow of the deceased was examined as PW 1 and an official from the Income Tax Department was examined as PW 4. Two other occupants of the car who were eyewitnesses to the accident were examined as PW 2 and PW 3. Exhs. P-1 to P-118 were marked on behalf of the petitioners in all the cases.

5. After appreciating the evidence, the Tribunal, by a common judgment dated 26.9.96, allowed M.V.C. No. 19 of 1994 in part. It held that the accident occurred due to rash and negligent driving of the said car by its driver; and that Govinda Setty died in the said motor accident and the respondents were liable to pay the compensation to the claimants who are legal heirs of the deceased Govinda Setty. The Tribunal awarded a sum of Rs. 2,16,000 as compensation (with interest at 6 per cent per annum from the date of petition till the date of payment) arrived at as follows:

(a) Loss of dependency Rs. 3,96,000 (b) Loss of consortium Rs. 10,000 (c) Funeral expenses Rs. 5,000 (d) Loss to estate Rs. 5,000 ____________ Rs. 4,16,000 Less: one-third of the life insurance amount of Rs. 6,00,000 received by the family of the deceased Rs. 2,00,000 ____________ Total Rs. 2,16,000

6. Feeling aggrieved, claimants have filed this appeal contending that the compensation awarded is inadequate. They contend that the deduction of Rs. 2,00,000 from the compensation, on account of receipt of life insurance amount, is contrary to law. They also contend that the loss of dependency calculated by taking the contribution by the deceased as Rs. 3,000 per month is erroneous. According to appellants, the annual income of the deceased should have been taken as Rs. 1,55,995 (made up of Rs. 48,000 being the salary and Rs. 71,639.12 being the share in the profits from M/s. Bellary Venkataswamy Setty and Rs. 27,045 being the salary and Rs. 9,310.86 being the share in profits from M/s. Padmavathi Commercials). The claimants contend that even if one-third of the said amount is deducted towards personal and living expenses of the deceased, the contribution to the family would have been Rs. 1,03,996 per annum and by applying a multiplier of 13, the total loss of dependency will be Rs. 13,51,948; and by adding amounts awarded under conventional heads aggregating to Rs. 20,000 the total compensation to which the claimants appellants will be entitled is Rs. 13,71,948.

7. As this is a claimants'' appeal, the finding regarding negligence does not require reconsideration. The only question that, therefore, arises for consideration is whether the compensation awarded is inadequate and whether it requires to be increased?

8. In the claim statement, the claimants averred that the deceased was aged 46 years; that he was a partner in the family firm of M/s. Bellary Venkataswamy

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Setty (for short ''BVS firm''); that he was also the Managing Partner of the firm Padmavathi Commercials; and that his net income was Rs. 3,00,000 per annum from the aforesaid businesses.

9. In her evidence, PW 1 (the widow) stated that her husband (Govinda Setty) and his brother B. Varadaraj Setty were carrying on grocery business under the name and style of M/s. Bellary Venkataswamy Setty; that he was also a partner of Padmavathi Commercials along with his brother Varadaraj and his mother Padmavathi; and that the deceased was earning an annual income of about Rs. 1,50,000 to Rs. 2,00,000 from the said businesses. She further stated that BVS firm is one of the biggest grocery/kirana shops in Davangere city and after the death of her husband, her son B.G. Raghavendra (claimant No. 2) has been admitted as a partner in place of her husband in the said firm; that on the death of her husband, she had been taken as a partner in the firm of Padmavathi Commercials; and that she has received Rs. 6,00,000 from L.I.C. in regard to life insurance policies taken by the deceased.

10. The claimants relied upon the following documents to prove the income of the deceased:

(i) Exh. P-9: The copy of the partnership deed dated 1.4.1992 of BVS firm.

(ii) Exhs. P-ll, P-12 and P-117: Profit and loss accounts of BVS firm, for assessment years 1990-91, 1993-94 and 1994-95.

(iii) Exh. P-16: Trading account of the BVS firm for the assessment year 1993-94.

(iv) Exhs. P 13, P-14 and P-15: Income tax assessment orders of the deceased for assessment years 1991-92, 1990-91, 1989-90.

(v) Exhs. P-10 and P-114: Profit and loss account in respect of Padmavathi Commercials, for the assessment years 1993-94 and 1990-91.

(vi) Exh. P-115: The balance sheet in respect of Padmavathi Commercials, Davangere for the period 1.4.1989 to 31.3.1990.

(vii) Exh. P-116: Trading account of Padmavathi Commercials, for the period 1.4.1990 to 31.3.1991.

11. An Income Tax Inspector from the Income Tax Department has been examined as PW 4 and he has stated that as per the returns filed by BVS firm, the said firm is continuing even after the death of Govinda Setty with reconstitution of partners and that B.G. Raghavendra, the son of the deceased has become the partner in place of deceased; and that claimant No. 1 (widow of Govinda Setty) became a partner of Padmavathi Commercials in place of Govinda Setty and that firm is also continued.

12. The Tribunal referred to the said documents and found that the deceased was getting a remuneration of Rs. 48,000 per annum from the BVS firm, in addition to a share in the profits. Having regard to the personal and living expenses, the

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Tribunal arrived at the contribution to the family by the deceased as Rs. 3,000 p.m. and determined the annual loss of dependency at Rs. 36,000. It applied the multiplier of 11 (as the deceased was aged 46 years) and determined the total loss of dependency as Rs. 3,96,000. To this it added Rs. 20,000 as compensation under conventional heads. As the claimants had received a sum of Rs. 6,00,000 as life insurance amount from L.I.C., the Tribunal deducted one-third of the said amount (i.e., Rs. 2,00,000) from the determined compensation of Rs. 4,16,000 and awarded Rs. 2,16,000 to the claimants. The Tribunal also apportioned the compensation among the claimants, that is, Rs. 1,00,000 to the widow, Rs. 30,000 each to the three children and Rs. 26,000 to the mother.

13. The learned Counsel for the insurer submitted that determination of monthly contribution to the family at Rs. 3,000 and the total loss of dependency assessed at Rs. 3,96,000 by the Tribunal is correct and does not call for interference. He also submitted that award of amounts under conventional heads aggregating to Rs. 20,000 is correct. He fairly conceded that having regard to the decision in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , the deduction of Rs. 2,00,000 on account of receipt of amount of L.I.C. policies from the compensation is erroneous.

14. In Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , the Supreme Court held that only the pecuniary advantages which accrue to the legal representatives, by reason of the accidental death in the motor accident and not the pecuniary advantages which would arise on account of any other form of death can be taken into account; and that consequently no deduction can be made on account of receipt of life insurance amount received by the heirs of the deceased on account of contract of insurance between the deceased and insurer. In view of it, the deduction of Rs. 2,00,000 on account of receipt of life insurance amount from the amount arrived at as compensation, is unsustainable.

15. The next question that arise for our consideration is whether determination of the income of the deceased and determination of loss of dependency is correct.

16. Learned counsel for the appellants contended that where the deceased was a partner in a partnership firm, the entire income derived from such partnership business, i.e., the entire share of income from the partnership business plus the entire salary/remuneration drawn by the deceased should be taken as the income for the purpose of determining the loss of dependency. On the other hand, the learned Counsel appearing for the respondents contended that where the deceased was a partner in a firm, only that part of the income attributable to the exertion and efforts put in by the partner can be treated as income and any return on the capital invested should not be taken into account; and that in this case, after the death of Govinda Setty, as his son was taken as partner of BVS firm and there is no reduction in the income from the partnership firm, the entire income of the deceased from the partnership business cannot be treated as loss of income on his death.

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17. We may now refer to the two decisions relied on by the claimants:

17.1. In Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , the Supreme Court held thus:

So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the ''pecuniary advantage'' which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But, this has to change its colour to the extent a statute intends to do... If the ''pecuniary advantage'' resulting from death means pecuniary advantage coming under all forms of death, then it will include all the assets, movable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased, etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. . .Thus, under the present Act what ever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other form of death... Thus, it would not include that which claimant receives on account of other forms of death, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the ''pecuniary advantage'' liable for deduction.

...Similarly, any cash, bank balance, shares, fixed deposits, etc., though are all a pecuniary advantage receivable by the heirs on account of one''s death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as ''pecuniary advantage'' liable for deduction.

17.2 In Rukmani Devi v. Om Prakash 1991 ACJ 3 (SC), the Tribunal awarded Rs. 1,25,000 as compensation. The High Court reduced the compensation amount to Rs. 48,600 on the ground that after the death of the deceased his son was taken as partner in his place and the partnership was continued and thus the family derived a pecuniary benefit. The Supreme Court held that there was no justification for the High Court to reduce the compensation and restored the award of the Tribunal.

17.3. These two decisions are not of any assistance to the appellants. The ratio of these decisions when applied to a partnership will be that if the deceased was a partner having a share in a firm and after his death his legal heirs step into his

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shoes and become partner/s, the value of such share in the partnership firm cannot be considered as ''pecuniary advantage'' received on the death. In other words, the value of the share in the firm or the amount of capital invested by the deceased in the firm, which is inherited by all or any of the legal heirs cannot be set off as a pecuniary gain or advantage against the pecuniary losses suffered by the legal heirs, to arrive at the loss of dependency.

18. But, in this case, the Tribunal has not deducted the value of the share of the deceased in the firm from out of the compensation amount determined by it. Nor has the Tribunal treated the share held by the deceased, in the partnership firm, which was transferred to the son, as a pecuniary advantage arising on the death of Govinda Setty. Nor is it the contention of the respondents that any deduction should be made on account of the inheritance of the share in the firm, or the accelerated receipt of the share in the partnership firm. On the other hand, the question for consideration is what should be taken as the ''income'' of the deceased for the purpose of calculating the loss of dependency. Whether the entire receipts of the deceased from the partnership business should be taken as the income of the deceased? Or whether only a part of it should be taken as ''income'' for ascertaining the ''loss of income'' and, if so, how much?

19. In National Insurance Co. Ltd. v. Sarla R. Gupta 1982 ACJ 40 (P&H), the question related to the income from a Hindu Undivided Family concern in which the deceased, his wife and minor children were interested. After the death, the said HUF business was closed and the claimants (dependants of the deceased) contended they were deprived of the income from the concern on account of the death. The respondents contended that at best the loss to the family will be the share of the deceased and not the entire income. The Punjab and Haryana High Court held as follows:

The Hindu Undivided Family which owned this concern consisted of the deceased, his wife and the minor children of very tender age. It is, therefore, apparent that it was the deceased who was solely responsible for the running of this concern and on his death it had to be closed down. In these circumstances, the whole of the income of this concern would be a loss of the family and has to be taken into consideration while assessing the annual loss to the dependants.

(Emphasis supplied)

19.1 In Nazeema and Others Vs. George Kuriakose and Others, , a Division Bench of the Kerala High Court observed as follows:

...In the present case, the appellants always enjoyed the benefit of the income from the business of Kallumkal Rubber Syndicate as the dependants of Mohammed Basheer. After his death they enjoy the benefit as partners of the firm. The reality of the situation is that for all practical purposes the appellants were enjoying the benefit of the estate of the deceased, almost as much before his death as they do now. The fact that the appellants now enjoy absolutely the benefit of the share of the deceased is a change of mere form and not of

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substance. Therefore, the appellants did not receive the benefit of the partnership business ''by reason of the death'' of Mohammed Basheer, they always possessed it.

The court, after referring to relevant case law, proceeded to formulate the following two principles:

(i) The income from a business establishment for which the deceased was solely responsible, is lost to the estate after his death. Therefore, the whole of such income which ceases to flow after his death has to be taken into account in assessing loss to the dependants; and (ii) The immovable property and other income yielding assets inherited by the dependants under the appropriate law of succession are not benefits accruing ''by reason of the death of the deceased.

(Emphasis supplied)

20. There is a difference between an income earned by a person by investing his money in fixed deposits and an income earned by a person by investing money as capital in a partnership firm and on account of his initiative, zeal, exertion and business acumen, earning a profit. The profits earned are not only the result of the investment of capital, but are the result of investment plus the time, skill and effort put in by the partner. There is also a difference between the income of a person who is a dormant partner, who does not contribute to the management and income earned as an active member.

21. There is also a difference between the nature of income from a partnership. The first is a share in the profits. The second is interest, on the capital invested in the firm or advances made to the firm either by way of loan or deposit. The third is the salary or remuneration received by a partner from the firm.

22. The income from a partnership firm will have to be categorised with reference to the status of the. partner, for the purpose of calculating the loss of dependency. A person can be a ''working partner'' without contributing any capital, receiving a share in the profits/losses with or without remuneration. A person may be a sleeping or dormant partner in a firm contributing to the capital of the firm without participating in the management or without contributing any effort or exertion towards the management of the firm, but receiving a share in the profits/losses. A person may be an active partner who contributes to the capital and who also participates in the business of the firm and receives a share in the profits/losses with or without a monthly remuneration. Lastly, the person may be a minor admitted to the benefits of the partnership without participation in the management of the firm, who is given only a share in the profits. The position in regard to these four categories is as follows:

(i) Where the deceased was a working partner, who had not contributed any capital to the firm, whatever income he derived either by way of remuneration or by way of share in profits is on account of effort and business acumen; and, therefore, the income from partnership in entirety will have to be treated as the

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''income'' of the deceased for the purpose of determining the loss of dependency.

(ii) Where the deceased was a sleeping/dormant partner who did not participate in the management of the business, but received the profits from the business only on account of capital contribution, no part of such income is derived by the exertion of the deceased. Such income is a dividend or a return on the investment. On the death of such sleeping partner his legal heir will either receive back the capital or would step into the shoes of the deceased and continue to receive the income from such capital investment. The same will be the position in regard to a minor admitted to the benefits of partnership. Therefore, in the case of a sleeping partner (dormant partner) or a minor admitted to the benefits of partnership, the income from the partnership firm cannot be treated as the ''income'' of the deceased, for purposes of calculating the loss of dependency. Such income may have to be excluded and in the absence of any other income, the income of the deceased will have to be determined at a nominal amount [say the notional income of Rs. 15,000 per annum provided in the Second Schedule to the Motor Vehicles Act].

(iii) Where a person is an active partner, who has not only contributed to the capital of the firm, but also participates in the management of the business, the calculation of income for purposes of loss of dependency is a somewhat difficult process. This is because what can be taken as income for determining the pecuniary loss, is the income attributable to the efforts, exertion, management skills of the deceased and not the ''income'' attributable to the investment made, that is return or interest on the capital. In such cases, where the partner is entitled to only a share in the profits/losses and is not entitled to any remuneration, there should be judicious division of the amount received as share in profits, into income referable or attributable to the capital contribution and the income referable to the effort or exertion put in by him as a partner to manage the affairs of the firm. The actual percentage of division will depend on the facts of each case. If the partnership deed provides for a share in the profits and also a remuneration, normally, but not always, the remuneration is attributable to the efforts and exertion put in by the partner and the share in profits is for the investment made by way of capital. Here again the matter depends on the facts of each case, that is the terms of partnership, the evidence relating to investment, quantum of profits and the quantum of remuneration and the time spent by the deceased (full-time or part-time) in managing the affairs of the firm. A judicious division will have to be made, of the income to determine the ''income'' attributable to the exertion/effort of the deceased and the ''income'' attributable to the investment made.

23. Where the deceased was carrying on any business (either as proprietor or as managing partner) which was run solely on account of his efforts and skill and such business is closed or is drastically reduced in scale, on account of his death, there can be little doubt that the earning of the deceased from such business will have to be taken as ''income'' for calculating the loss of dependency. But, what is

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the position, if the deceased was not carrying on the business by his individual skill and effort, but the deceased was a partner with several others or is a member of a family firm and on his death his widow or son/daughter steps into his place in the partnership and family continues to have the income from the partnership, which the deceased was getting earlier? In that event, can it be said that there is loss of entire income, which the deceased was getting from the partnership firm, for calculating loss of dependency? Obviously not. In that event, the loss of income will be the monetary equivalent of the supervision, skill and effort of the deceased. But, how is it to be calculated? A few illustrations will be useful to highlight and differentiate between several categories of income and determination of income for purposes of arriving at the loss of dependency.

Illustration A: The deceased had invested a sum of Rs. 5,00,000 in fixed deposits with banks and was getting an income of Rs. 5,000 per month, by way of interest. On his death, the said sum of Rs. 5,00,000 is inherited by the dependants (wife and children) and they also continue to get Rs. 5,000 per month as interest. In such a case, the sum of Rs. 5,000 received by the deceased as ''income'' is not really a ''loss'' of income on his death and cannot, therefore, be taken into account for determining the loss of dependency. The said income will have to be ignored and in the absence of any other income, only a notional income (say Rs. 15,000 per annum as provided in Schedule II to Motor Vehicles Act) should be considered as income for calculating the loss of dependency.

Illustration B: The deceased was owning 10 acres of land and by cultivating the same, through labourers under his supervision, he was earning Rs. 1,00,000 per annum. On his death, the dependent family (wife and children) inherit the land. But, for lack of experience, they engage a manager to supervise the cultivation by paying a salary of Rs. 3,000 per month and continue to get an annual income of Rs. 1,00,000 from the land. In such a case, the annual income of Rs. 1,00,000 earned by the deceased from the land cannot be the loss of income of the family. Only the value of the supervision and personal effort put in by the deceased, which had to be made good by engaging a manager, can be treated as loss of income. Thus, the loss of income will have to be taken as Rs. 36,000 per annum. Even where a manager is not engaged and the family members of the deceased supervise the land, the loss will be the value of supervision by the deceased. The notional value of such effort and supervision, determined with reference to the facts and circumstances, will be the loss on account of the death.

Illustration C: The deceased, during his lifetime, was a partner in a family business of which he and his brother are the partners, each having invested Rs. 1,00,000 to the capital and both participating in the management of the partnership. Each partner was taking a monthly remuneration of Rs. 5,000 and interest at 12 per cent on the capital of Rs. 1,00,000 invested by each of them and 50 per cent share in the profits/losses, the share in profits being Rs. 10,000 per annum during the relevant year. One of the partners died in a motor accident

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and his son is taken as partner in the place of the deceased on the same terms; and thus the family continues to get the same income (consisting of remuneration, interest on capital investment and share in profits/losses). In such a situation, the entire income which the deceased used to get from the firm (remuneration plus interest on capital plus share in profits) will not be the loss to the family for purposes of calculating the loss of dependency. Only the value of the effort put in by the deceased as partner will be the loss to the family. Thus, the remuneration of Rs. 5,000 per month or Rs. 60,000 per annum will be the loss of income.

Illustration D: On the same facts (as in illustration C), the partnership merely provided for sharing of profits/losses at 50 per cent each, without any remuneration or interest on capital contributed by the two partners. In the absence of evidence to the contrary, the ''income'' for purposes of dependency can be arrived at by deducting the interest (say 10 per cent per annum) on the capital contributed from the profit from the firm. If the capital is Rs. 1,00,000 and the share in profits is Rs. 30,000 per annum, then the loss of ''income'' will be Rs. 30,000 minus Rs. 10,000 (that is 10 per cent interest on capital of Rs. 1,00,000) that is, Rs. 20,000. If the income arrived at by such method is less than the now recognised notional income of Rs. 15,000 per annum, the income can be taken as Rs. 15,000 per annum.

23.1. It is, however, to be reiterated that the income should be determined with reference to facts of each case. For example, there may be cases where a family firm is well established and reputed and having a large income, with a small capital and death of one of the family members (a partner) may not make any difference in the income. In such case the entire income (minus interest on capital) may not be the income and appropriate further deductions will have to be made to ascertain the real contribution of the deceased and value thereof. Be that as it may.

24. In this case, late Govinda Setty was receiving by way of income, from the BVS firm, not only a share in the profits, but also a remuneration. After his death, his son Raghavendra (claimant No. 2) was taken as a partner in the said firm with the same capital and the same share and thus the family of Govinda Setty is having the benefit of the income from the said firm, as it was getting when Govinda Setty was a partner. Thus, it is just and appropriate to take as the income of the deceased Govinda Setty, for the purpose of determination of loss of dependency, only the remuneration he was getting from the firm and not the share in the profits.

25. We will now determine the total loss of dependency. The claimants alleged that the deceased was a partner in two firms, namely, BVS firm and Padmavathi Commercials. They claimed that the income from BVS firm was Rs. 48,000 per annum as remuneration and Rs. 71,639 per annum as the share in profits, for the period 1.4.93 to 31.3.1994. In regard to Padmavathi Commercials it is contended that the income by way of remuneration was Rs. 27,045 per annum

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and Rs. 9,310.86 was the share in profits.

26. Exh. P-114 is the profit and loss account of Padmavathi Commercials for the period 1.4.1989 to 31.3.1990 and Exh. P-116 is the balance-sheet of Padmavathi Commercials for the period 1.4.1990 to 31.3.1991. They show that Govinda Setty and his wife (claimant No. 1) were partners in the said firm, along with Govinda Setty''s brother and mother. Exh. P-10 is the profit and loss account of Padmavathi Commercials for the period 1.4.1992 to 31.3.1993. This shows that from 1.4.1992, the deceased Govinda Setty ceased to be a partner of the said partnership and his son B.G. Raghavendra (claimant No. 2) had been taken as a partner in place of Govinda Setty. There is nothing to show that Govinda Setty subsequently again became a partner of Padmavathi Commercials. Thus, the deceased was not a partner at all in the firm of Padmavathi Commercials at the time of his death, his son Raghavendra having been taken as a partner in his place during the accounting year 1992-93 (assessment year 1993-94) itself. Hence, the claimants contention that the deceased was deriving any income from the firm of Padmavathi Commercials and that such income should be taken as the income of the deceased for the determination of total loss of dependency, is rejected.

27. Therefore, what remains to be considered is income of the deceased Govinda Setty from BVS firm. In regard to BVS firm, the orders of Income Tax Assessment for assessment years 1989-90, Exh. 15, 1990-91, Exh. P-14 and 1991-92, Exh. P-13, show that the deceased had returned a total income of Rs. 37,330, Rs. 55,030 and Rs. 78,710 respectively. In regard to the assessment year 1990-91 (i.e., for the accounting year 1.4.1989 to 31.3.1990) the profit and loss account, Exh. P-ll, shows that a sum of Rs. 71,639.12 was received as net profit by Govinda Setty. The profit and loss account for 1.4.1992 to 31.3.1993, Exh. P-12, shows the net profit of Govinda Setty was Rs. 47,046.49 apart from salary of Rs. 48,000. In regard to the assessment year 1994-95 (1.4.1993 to 31.3.1994), the profit and loss account has been produced at Exh. P-117 which discloses that after the death of Govinda Setty, his son B.G. Raghavendra was inducted into the firm as a partner and that B. Govinda Setty was paid Rs. 27,045 as remuneration for the part of the year when he was a partner of the said firm (1.4.1993 to 10.10.1993) and B.G. Raghavendra was paid Rs. 27,045 as remuneration for the remaining period (11.10.1993 to 31.3.1994) when he became a partner after the death of his father Govinda Setty. It also shows that a sum of Rs. 9,310.86 was credited to the account of deceased Govinda Setty and a sum of Rs. 8,000 was credited to the account of B.G. Raghavendra towards profit. The above documents would show that during the year immediately before the death of Govinda Setty (that is for the period 1.4.92 to 31.3.1993) he was a partner of BVS firm getting a remuneration of Rs. 48,000 (apart from Rs. 47,046.49 as share in the profits). Having regard to the facts and circumstances, a part of share in profits (75 per cent) can be attributed to the capital investment made by the deceased (which need not be taken as income for ascertaining the loss of dependency). The balance 25 per cent of share of profits and the entire

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remuneration received, can be attributed towards the efforts and exertion put in by Govinda Setty in the management of the firm as a partner. Thus the total income of Govinda Setty from the firm should be taken as Rs. 12,000 (25 per cent of Rs. 47,046 rounded off) plus Rs. 48,000 in all Rs. 60,000 per annum for the purpose of ascertaining the pecuniary loss.

28. The family of the deceased Govinda Setty consisted of himself, his wife, three children and mother. Govinda Setty''s mother and son were not however dependants, as they were partners in two firms. For the purpose of ascertaining the contribution to the family, the following two amounts will have to be deducted as held by the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, : (i) personal expenses of the deceased and (ii) living expenses of the deceased. Having regard to his status and position in society a sum of Rs. 500 per month or Rs. 6,000 per annum will have to be deducted towards personal expenses. Out of the balance of Rs. 54,000 one-third will have to be deducted towards the living expenses of the deceased (by allotting two units to deceased and his wife and one unit to each of his two minor children). Thus, the contribution to the family from the deceased would have been Rs. 36,000 per annum. As the death of Govinda Setty was on 10.10.1993, i.e., before the amendment to the Motor Vehicles Act introducing Schedule II, the applicable multiplier will have to be selected by taking the operative multiplier as 16-vide the principles laid down by the Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and the decision of this Court in Gulam Khader and Another Vs. United India Insurance Company Limited and Another, . As the deceased was aged 46 years, the appropriate multiplier is 11 and, therefore, the total loss of dependency is Rs. 36,000 x 11 = Rs. 3,96,000.

29. The award of Rs. 5,000 towards loss to estate, Rs. 5,000 towards the funeral expenses and Rs. 10,000 towards loss of consortium is upheld. Hence, the claimants will be entitled to Rs. 4,16,000 without any further deductions.

30. The respondents have without any justifiable cause resisted the challenge to the deduction of Rs. 2,00,000 towards life insurance receipt. Therefore, the increased compensation amount (Rs. 2,00,000) shall carry interest at 9 per cent per annum.

31. In view of the above, we allow this appeal in part as follows:

(i) The compensation is increased from Rs. 2,16,000''to Rs. 4,16,000.

(ii) The interest awarded at 6 per cent per annum on Rs. 2,16,000 from the date of petition till the date of realisation is not disturbed. But, the increased amount shall carry interest at the rate of 9 per cent per annum from the date of petition till date of realisation.

(iii) The amount is apportioned as follows: 40 per cent to the widow (appellant No. 1), 25 per cent each to two daughters (appellant Nos. 3 and 4) and 5 per

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cent each to the son and mother (appellant Nos. 2 and 5).

(iv) The amount awarded to appellant Nos. 1, 3 and 4 shall be kept in fixed deposit for a term of five years with liberty to appellant No. 1 to draw interest, thereon.

(v) Parties to bear respective costs in this appeal.

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