
(2011) 12 GUJ CK 0033
In the Gujarat High Court
Case No : First Appeal No. 4827 of 2001

Divisional Controller GSRTC	Vs	APPELLANT
Sandhya Sahegal and Others		RESPONDENT

Date of Decision : 29-12-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 12 GUJ CK 0033

Hon'ble Judges : J.B. Pardiwala, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Haresh J Trivedi 1, for the Appellant; Rajesh K Desai for Defendant 1, Mr. Haresh J Trivedi for Defendant 3 and Deleted for Defendants : 4 - 5 and 7, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice J.B. Pardiwala

1. The present appeal is at the instance of the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") in a proceeding u/s 166 of the Motor Vehicles Act and is directed against an award dated 14th March 2001 passed by the learned Judge, Motor Accident Claims Tribunal, Nadiad in Motor Accident Claim Petition No. 659 of 1990, thereby disposing of the said proceeding by awarding a sum of Rs. 22,31,452=00 along with interest at the rate of 9% per annum in favor of the three claimants i.e. wife of the deceased, minor daughter of the deceased and mother of the deceased. The Corporation was directed to pay the said amount in a manner described in the award. Being dissatisfied, the appellant -Corporation has come up with the present appeal.

2. According to the claimants, on 4th April 1990 at about 11:00 a.m., the victim met with an accident involving the offending vehicle resulting in his death. The deceased Major Satish Sehgal along with his wife was traveling from Vadodara to Ahmedabad in a military jeep bearing registration No. 86-B-37990-M, which was

being driven by one Chandubhai Mohanbhai. At about 11.00 a.m. near village Hariyala, the State Transport Corporation bus bearing registration No. GQE-9237 came from the opposite direction in a rash and negligent manner and dashed with the jeep, as a result of which deceased Major Satish Sehgal was thrown out from the jeep and fell on the road, getting crushed under the wheel of a truck bearing registration No. DIL-2180 which was following the jeep in which the deceased was traveling with his wife. The widow of the deceased and the driver of the jeep also sustained injuries in the form of fractures etc.

3. It appears from the record of the case that initially MACP No. 659 of 1990 was filed claiming compensation of Rs. 20,50,000=00 but, later on, by an amendment, the claim amount was enhanced to Rs. 50 lac. In the claim petition, the income of the deceased was shown at Rs. 10,000=00 per month including the allowances and amenities provided to the deceased. At the time of the accident, deceased was 38 years of age.

4. There is no dispute about the involvement of the vehicle in the accident resulting in the death of the victim and the fact that due to rash and negligent driving of the driver of the vehicle concerned, the death occurred. The only dispute raised in this appeal is as regards the quantum of compensation.

5. It would be expedient for better adjudication of the appeal to look into the reasoning assigned by the Tribunal in passing an award for the sum of Rs. 22,31,452=00. The record reveals that deceased Satish Sehgal was of the rank of Major in the military. The last pay drawn certificate of the deceased is at Exh.43 and as per the said certificate, total salary including all allowances at the time of death of the victim was Rs. 5,900=00 per month. The Tribunal took the view considering promising future of the deceased and his qualifications that if victim would not have died in the accident, he could have reached to the rank of Lieutenant Colonel and if he would have retired as a Lieutenant Colonel, his basic pay would have been Rs. 4,800=00 and the total salary would have been Rs. 12,733=00 per month. For determining this amount, the Tribunal relied upon the letter of a Major indicating that if Mr. Satish Sehgal would not have died in the accident, he would have been Lieutenant Colonel by now and his basic pay would have been Rs. 13,500=00 plus other allowances. On this basis, the Tribunal came to the conclusion that the income be assessed at Rs. 21,788=00. The Tribunal thought fit to deduct Rs. 200=00 towards kit allowances. Therefore, after deducting Rs. 200=00, monthly salary was assessed at Rs. 21,588=00. The Tribunal thereafter taking into consideration that at the relevant point of time the victim was drawing market rental value towards accommodation at Rs. 3,335=00 and the victim was charged Rs. 165=00 only per month, added amount of Rs. 3,335=00 to the monthly income of the deceased. The Tribunal also considered the child education allowance and added Rs. 50=00 per month towards child education up to 12th Standard. The Tribunal, taking into consideration the fact that the gratuity which was paid was to the tune of Rs. 89,300=00 whereas if the victim would not have died he would have received the gratuity of Rs.

3,50,000=00, thought fit to award Rs. 2,60,700=00 towards loss of gratuity. Lastly, the Tribunal, taking into consideration the fact that the widow has seen her husband dying, awarded an amount of Rs. 40,000=00 under the head of pain, shock and suffering and Rs. 10,000=00 was awarded for funeral expenses. This is how the Tribunal arrived at a final figure of Rs. 22,31,452=00 by giving multiplier of 16.

6. It would be expedient to quote the relevant portion of the award of the Tribunal, which reads as follows:

20..... Had Mr. Satish Sehgal not died in the accident, as per Exh.68, the letter dated 10.1.1997 written by Lt. Colonel to this Tribunal, he had fair chances for promotion to higher ranks at least up to the rank of Lt. Colonel, in the basic pay of Rs. 4,800/- p.m and the total salary would have been Rs. 12,733/- per month. The letter dated 29.4.2000 written by the learned Advocate for the applicant to the Lt. Colonel at mark 103/6, wherein the learned Advocate for the applicant had written that the latest information be furnished to the Advocate for the applicant in respect with the salary and the perks etc. as letter Ex.68 dated 10.1.97 was written in the year 1997. In response to that, Major had written a letter mark 103/7. Both these letters being in the official correspondence and not challenged, are exhibited, in view of judgment reported in Subhadara Kumari and others Vs. Lallu Ram and others, respectively. As per Ex. G in the official correspondence it is made clear that had Mr. Sehgal not died in the accident, he would have been Lt. Colonel by now and his "Basic Pay Rs. 13,500/- and other allowances.", total comes to Rs. 21,788/-.....

22. As per letter Ex.68, the deceased was getting the accommodation of the premises having market rental value of Rs. 3,335/- and the deceased was charged Rs. 165/- p.m only. The applicants will be deprived of this facility. Therefore, an amount of Rs. 3,335/- deserves to be added to the monthly income of the deceased.

25. The deceased was entitled to Rs. 50/- p.m for child education up to 12th standard. This amount also deserves to be awarded as claimed by the applicants. Therefore, by adding Rs. 3,405/- p.m to the monthly salary of Rs. 21,588/-, total salary comes to Rs. 24,993/-. The salary of the deceased at the time of his death is Rs. 5,900/- p.m, by adding the perks, it comes to Rs. 5,970/- p.m. The deceased was not getting any amount in lieu of quarter on the contrary he was paying Rs. 165/- p.m as rent. So monthly dependants have to hire the premises for maintaining same dignity hence after his death Rs. 3,335/- is included to his salary as loss to dependants. Facility of free medical treatment is not lost. So that cannot be added to salary. So loss of Rs. 20 for special ration and Rs. 50 for child education is to be added to the salary (Rs. 24,993 + 5970 = 30,963 % 2 = 15,482). Therefore, the average income for the purpose of calculation of compensation comes to Rs. 15,482 p.m (Round figure Rs. 15,500/-). It is stated by the learned Advocate for the applicant that the family of the deceased consists of 9-Units i.e. 4-majors and 1-minor, expenses per unit per month will

be Rs. 1,722/-. So the deceased was the earning member his other expenses will be more. So by taking Rs. 2,000/- p.m as his other expenses, the deceased would have spent Rs. 5,444/- for his maintenance. Hence, the total round figure for dependency loss would come to Rs. 10,056/- p.m and per year it would be Rs. 120,672/-. The deceased was 38-years of age (Ex.77) at the time of his death. Hence, by taking the multiplier of 16, the dependency loss would come to Rs. 19,30,752/-.

26. If the deceased would not have died, he would have received the gratuity of Rs. 3,50,000/- as per Ex. G (Mark 103/7) and as per Ex. F (Mark 103/4), the gratuity paid is Rs. 89,300/-. So the loss of gratuity would be Rs. 2,60,700/-. Hence, this amount deserves to be granted to the applicants.

27. Applicant-the widow had seen her husband dying. She has spent Rs. 10,000/- for funeral expenses. Therefore, an amount of Rs. 40,000/- on account of pain, shock, suffering, funeral expenses and loss of consortium is awarded. Hence, in all the applicants are entitled to Rs. 22,31,452/-.

CONTENTIONS ON BEHALF OF THE APPELLANT:

Learned Advocate Mr. Trivedi, appearing for the appellant -Corporation strenuously urged before us that the Tribunal has committed a serious error in taking the view that if victim would not have died in the accident then by virtue of promotion he could have reached to the rank of Lieutenant Colonel in the Army. He submitted that future prospect is not out of bound for such consideration, but the same should be founded on some legal principle. He further submitted that what would have been the income of the deceased on the date of retirement was not a relevant factor in light of peculiar facts of this case and, thus, the approach of the Tribunal must be held to be incorrect. He submitted that the loss of dependency ought to have been calculated on the basis as if the basic pay of the deceased was Rs. 5,900=00 as per Exh.43. He contended that the Tribunal ought to have followed the dictum of law as laid down by the Supreme Court in the case of Oriental Insurance Company Ltd. Vs. Jashuben and Others, Learned counsel also relied on the ruling of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Relying on the ruling of the Supreme Court in Sarla Verma's case (supra) where the deceased was drawing a fix salary at the time of death, held that the Court should usually take only the actual income at the time of death and it is only in the rare and exceptional cases that a departure there from should be made.

CONTENTIONS ON BEHALF OF THE CLAIMANTS:

Learned counsel Mr. Nitin Amin appearing for the claimants strenuously urged that the Tribunal has not committed any error much less an error of law warranting any interference in the present appeal. Learned counsel submitted that in a recent pronouncement of the Supreme Court in the case of Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, the Apex

Court has discussed and distinguished the case of Sarla Verma (supra). Counsel submitted that Sarla Verma speaks about rule of thumb. He submitted that the rule of thumb evolved in Sarla Verma's case is to be applied only in those cases where there is no concrete evidence on record of definite rise in income due to future prospects, but in the present case there is material on record to suggest that having regard to the promising future and qualifications of the deceased, he would have definitely reached to the rank of Lieutenant Colonel in the Army. He therefore submitted that Sarla Verma's case (supra) would have no application and he also submitted that we should follow the dictum as laid down by the Supreme Court in the case of K.R. Madhusudhan and ors. (supra).

Determination of claim compensation in fatal accidents is not an easy task. It is well-nigh impossible to weigh the loss of a human life in the balance of money. No amount of compensation, however high it may be, can compensate and make up the loss of a human life, howsoever poor he or she may be. The determination of compensation and its award is only a step to mitigate the financial hardship of the dependants who have been put in lurch due to the accidental death of the person who was maintaining the family and looking after them. No amount of compensation can repair the loss caused to the family of the deceased. The determination of amount of compensation can never be precise and has to be based on estimates. However, the compensation is always determined keeping in view well-settled guiding factors which can help in arriving a just and reasonable figure.

In Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, , the Apex court held as under (at p.1667 of AIR) :-

The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales.

In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, the Supreme Court referred to various imponderables which become relevant in fixation of multiplier and determination of award of compensation. Human life is always not a continuous enjoyable thing, the ups and downs of the life, its suffering and sorrows as well as its joys and pleasures have to be kept in mind. So in determining the multiplier, it may not be correct to take the number of years from the date of death till the normal span of working life as the multiplier. Apart from the ups and downs in the working career like promotions or demotions, there may be ups and down in one's physical health. One cannot rule out the possibility, though one may wish it not to be there, of ill health or premature death due to some unforeseen terminal disease or accident. Keeping all this in view, it would not be wise to co-relate the multiplier with the number of remaining years of the working life. A reduction of multiplier is called for to take into consideration such diverse factors.

The question which we need to address is as to whether the Tribunal is justified in law in assuming that the deceased would have reached to the level of

Lieutenant Colonel by the time he would have retired from service and taking this into consideration, whether the Tribunal is justified in assessing the income of the deceased on the date of the accident taking the basic pay-scale of the post of Lieutenant Colonel in the Army. In the present case, it is evident from the record that the deceased, at the time of his death, was drawing salary to the tune of Rs. 5,900=00 including all allowances. The total income during the financial year 1989-90 was Rs. 66,688=00, whereas as per the last pay certificate at Exh.43, the last salary drawn by the deceased was Rs. 5,900=00 per month. In the present case, the Tribunal took the view that had the deceased not died in the accident he had fair chances of promotion to higher ranks at least up to the rank of Lieutenant Colonel in the basic pay of Rs. 4,400=00 per month and the total salary would have been Rs. 12,733=00 per month. The Tribunal arrived at this finding relying on letter dated 10th January 1997 written by the then Lieutenant Colonel in this regard, which is at Exh.68. The Tribunal also took the view that the salary of the deceased at the time of death was Rs. 5,900=00 per month, whereas the Lieutenant Colonel would get Rs. 21,788=00 per month as per the letters written by the department of the deceased. The salary attached to the post which the deceased would have reached if he had not died is to be considered and not the salary after ten years of the death.

Promotion is an incidence of service. Nobody has a right of promotion and it would not be in the interest of justice to infer promotion or assume promotion and fixed the future income of the deceased based on the salary of the promotional post.

The Supreme Court in Sarla Verma's case (supra) has explained the law regarding addition to income for future prospects and the relevant portion reads as follows :

In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, this Court increased the income by nearly 100%, in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, the income was increased only by 50% and in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favor of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time

of death. A departure there from should be made only in rare and exceptional cases involving special circumstances.

In Sarla Verma's case (supra), the Supreme Court held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The Supreme Court said so as a rule of thumb. However, the Supreme Court held that a departure can be made in rare and exceptional cases involving special circumstances.

In a recent pronouncement of the Supreme Court in K.R. Madhusudhan's case (supra), the Supreme Court considered Sarla Verma's case (supra) and held that the rule of thumb evolved in Sarla Verma's case (supra) is to be applied in those cases where there was no positive evidence on record of definite rise in income due to future prospects. The Supreme Court in the facts of the case held in paragraphs 9 and 10 as under :

9. We are of the opinion that the rule of thumb evolved in Sarla Verma is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.

10. The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled and in fact bound to get a rise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the view that the present case comes within the "exceptional circumstances" and not within the purview of the rule of thumb laid down by Sarla Verma judgment. Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects.

We deem fit at this stage to quote and rely on a very important decision of the Supreme Court in the case of Oriental Insurance Company Limited v. Jasuben and others (supra). In Jasuben's case (supra), the Bench took the view that the salary would be revised or not was not known at the time when the deceased died. Only because such salary was revised at a later point of time, the same by itself would not have been the factor which could have been taken into consideration for determining the amount of compensation. The Supreme Court further held as under :

The amount of compensation indisputably should be determined having regard to the pecuniary loss caused to the dependents by reason of the death of the victim. It was necessary to consider the earnings of the deceased at the time of the accident. Of course, further prospect is not out of bound for such consideration. But the same should be founded on some legal principle.

The Bench, thereafter, considered the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

wherein the Supreme Court held as under :

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.

The Bench also considered the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, wherein it was opined as under :

The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely, Rs. 1,500/- per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs. 3,000/- per month and dividing that figure by two. Thus, the average gross monthly income spread over his entire future career, had it been available, would work out to Rs. 4,500/- divided by 2, i.e., Rs. 2,200/-. Rs. 2,200/- per month would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner.

The Bench, thereafter, considered the case of U.P. State Road Transport Corporation Vs. Krishna Bala and Others, wherein it was held as under:

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 over the period for which the dependency is expected to last.

The case of National Insurance Company Ltd. Vs. Indira Srivastava and Others, was also taken into consideration, wherein it has been observed as under :

The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

Noticing the dictionary meaning of "income", it was held :

If the dictionary meaning of the word "income" is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

The Bench, after discussing the previous judgments of the Apex Court, concluded thus, as under :

We, therefore, are of the opinion that what would have been the income of the deceased on the date of retirement was not a relevant factor in the light of peculiar facts of this case and, thus, the approach of the Tribunal and the High Court must be held to be incorrect. It is impermissible in law to take into consideration the effect of revision in scale of pay w.e.f. 1.1.1997 or what would have been the scale of pay in 2002.

The loss of dependency, in our opinion, should be calculated on the basis as if the basic pay of the deceased was Rs. 3295/- x 2 = Rs. 6,590/-, thereto should be added 18.5% dearness allowance which comes to Rs. 1219/-, child education allowance for two children @ Rs. 240/- x 2 = Rs. 480 and child bus fair Rs. 160 x 2 = Rs. 320/- should have been added which comes to Rs. 8,609/-.

From the aforementioned figure 1/3rd should be deducted. After deduction, the amount of income comes to Rs. 5,738/- per month [Rs. 8609/- (-) Rs. 2871/-] and the amount of compensation should be determined by adopting the multiplier of 13, which comes to Rs. 8,95,128/-.

In the facts and circumstances of the case, we would like to be guided by the dictum of law as explained by the Supreme Court in Jasuben's case (supra) where the Supreme Court in clear terms has held that what would have been the income of the deceased on the date of retirement would not be a relevant factor and the loss of dependency should be calculated on the basis of the basic pay drawn by the deceased at the time of death.

LAST PAY CERTIFICATE

Particulars

Rate P.M.

Rs.

P.

Basic Pay

3700

-

Rank Pay

600

-

Maintenance Allowance

100

-

Special Disturbance Allowance

-

-

Dearness Allowance

1330

-

Comp. (City) Allowance

20

-

Non-Practising Allowance

Technical Pay

150

-

Total

5900

-

In the present case, the basic pay of the deceased at the time of his death was Rs. 3,700=00 per month. The loss of dependency, in our opinion, should be calculated on the basis as if the basic pay of the deceased was Rs. 3,700=00 x 2 = Rs. 7,400=00. Child education allowance at the rate of Rs. 50=00.

The next question which falls for our consideration is as to whether the Tribunal is justified in including "House Rent Allowance" payable to the deceased for determining the income of the deceased and consequently the amount of compensation. In this regard, there are two decisions of the Supreme Court, which we need to look into.

In Raghuvir Singh Matolya and Others Vs. Hari Singh Malviya and Others, the

Supreme Court took the view that "Dearness Allowance" and "House Rent Allowance" payable to the deceased should have been included for determining the income of the deceased and consequently, the amount of compensation. In this regard, we may quote paragraphs 6 and 7 of the judgment :-

6. Dearness allowance, in our opinion, should form part of income. House rent allowance is paid for the benefit of the family members and not for the employee alone. What would constitute an income, albeit in a different fact situation, came up for consideration before this Court in National Insurance Company Ltd. Vs. Indira Srivastava and Others, wherein it was held: SCC p. 772, paras 19-21

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

20. The term "income" in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.) has been defined as under:

(iii) the value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture.

It has also been stated:

"Income" signifies "what comes in" (per Selborne, C., Jones v. Ogle). "It is as large a word as can be used" to denote a person's receipts (per Jessel, M.R., Re Huggins). Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. Secy. to the Board of Revenue, Income Tax v. Al. Ar. Rm. Arunachalam Chettiar & Brothers. Ref. Vulcun Insurance Co. Ltd. v. Corpn. of Madras.

21. If the dictionary meaning of the word "income" is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

To the same effect is the decision of this Court in Oriental Insurance Co. Ltd. Vs. Ram Prasad Varma and Others,

7. We, therefore, are of the opinion that "Dearness Allowance" and "House Rent Allowance" payable to the deceased should have been included for determining

the income of the deceased and consequently the amount of compensation.

In *National Insurance Company Ltd. Vs. Indira Srivastava and Others*, the Supreme Court took the view that if some facilities are being provided whereby the entire family stands to benefit, the same, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. The Supreme Court quoted a judgment of Andhra Pradesh High Court in the case of *S. Narayanamma and others v/s. Secretary to Government of India, Ministry of Tele communications and others*, reported in 2002 ACC 582, where the view taken is that so far as the "House Rent Allowance" is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death, the claimants are deprived of such benefit, which they would have enjoyed if the deceased would have alive. On the other hand, allowances like Traveling Allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance, etc. by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. In paragraph 17, the Court held as under :-

The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

e shall now examine as to whether the principle as propounded by the Apex Court in the above referred two cases in so far as the House Rent Allowance is concerned would be applicable in the facts of the present case or not.

In the present case, the deceased was charged Rs. 165=00 per month only for accommodation and Rs. 83=00 per month for furniture. That means, that as such the rental value was Rs. 165=00 per month only which was being charged from the deceased for occupying the premises of the Army.

It appears that the Tribunal has relied upon a letter dated 10th January 1997 (Exh.68) addressed by Lieutenant Colonel, AA & QMG for Commandant to the Registrar, Motor Accident Claims Tribunal (Special), Nadiad, Dist. Kheda, stating that, "...An officer is entitled to Govt accommodation at family stations and separate family accommodation when posted to non-family station at subsidised rates. The accommodation is fully furnished for furniture and electrical fitment items and covered plinth area authorised to a Major is 1964.23 sq.ft. This kind of unfurnished accommodation, if hired at any city/urban area, the rental value will be approx Rs. 3500/- pm and above, whereas the officer is charged only Rs. 165/- pm for accommodation and Rs. 83/- pm for furniture." However, this by itself is not sufficient to add "House Rent Allowance" at the rate of Rs. 3,335=00 and that too, in the year 1990, while determining the loss of estate. The House

Rent Allowance in the present case as such is not a part of the wages and was not a cash benefit payable to the deceased.

In both the above referred Supreme Court cases, we have noticed that House Rent Allowance was being actually paid as one of the perks. This is the reason why the Supreme Court in Indira Srivastava's case (supra) has observed referring to paragraph 9 of the judgment that one of the basic features which requires consideration is that reimbursement of rent would be equivalent to House Rent Allowance. In the present case, it is undisputed that accommodation was being provided by the Army. It is not the case that accommodation was not being provided as a result of which the deceased and his family was residing in a rented premises of which the market rent was being paid by the deceased and the same was actually being reimbursed to the deceased. If this would have been the case probably we would have considered adding the actual rent being reimbursed towards the rent as a part of the income. Under such circumstances, we do not deem fit to include the market rental value of Rs. 3,335=00 as part of the income of the deceased.

We take note of the fact that to arrive at the figure of Rs. 3,335=00 as market rental value, the Tribunal has merely relied upon the opinion expressed by the Lieutenant Colonel in his letter, which is referred to above. On a mere opinion, the Tribunal could not have reached to the conclusion that the claimants have been deprived of the benefit of House Rent Allowance to the tune of Rs. 3,335=00.

We have also noticed one more aspect. The Fifth Pay Commission Recommendations are on the record of the case. Even as per the Fifth Pay Commission Recommendations in a city like Ahmedabad or Baroda, the House Rent Allowance would be at the rate of 15% of the basic pay. If the basic pay at the relevant point of time was Rs. 3,700=00, then even 15% of the same would be Rs. 555=00. In any event, House Rent Allowance could not have been calculated almost at par with the basic pay which the deceased was drawing at the rate of Rs. 3,700=00 per month.

We, therefore, now proceed to calculate the final figure.

In the present case, the basic pay of the deceased at the time of his death was Rs. 3,700=00 per month. The loss of dependency, in our opinion, should be calculated on the basis as if the basic pay of the deceased was Rs. 3,700=00 x 2 = Rs. 7,400=00 and child education allowance at the rate of Rs. 50=00. To this, we add Dearness Allowance at the rate of 40%, which comes to Rs. 2,960=00, because it appears that at the time of drawing basic pay of Rs. 3,700=00, the Dearness Allowance was paid to the tune of Rs. 1,330=00 per month, which is approximately 40% of the basic pay. Therefore, in all, the total amount comes to Rs. 10,410=00.

From the aforementioned figure, 1/3rd amount (i.e. Rs. 3,470=00) is to be deducted towards personal expenses. After deduction, the amount of income

comes to Rs. 6,940=00 per month (Rs. 10,410 - Rs. 3,470).

In Jasuben's case the multiplier of 13 was adopted and we also propose to adopt the multiplier of 13. The amount of compensation should be determined by adopting the multiplier of 13, which comes to Rs. 10,82,640=00 (Rs. 6,940 x 12 x 13). We add Rs. 40,000=00 towards pain, shock and suffering and Rs. 10,000=00 towards funeral expenses. Therefore, the total amount of compensation comes to Rs. 11,32,640=00.

We do not intend to interfere with the rate of interest in the facts and circumstances of the case.

The Appeal is allowed in part and the award is modified to the extent mentioned hereinbefore. In light of the order passed in Appeal modifying the award, the cross-objections preferred by the claimants for enhancement of the amount of compensation are also disposed of accordingly. In the facts and circumstances of the case, however, there shall be no order as to costs.

It is further clarified that if the claimants have been actually paid any amount which is in excess of the amount which we have awarded i.e. to the tune of Rs. 11,32,640=00, then in that case, the claimants shall refund the excess amount with interest at the rate of 9% per annum and deposit the same with the concerned Tribunal within a period of two months from today.