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**(2005) 07 RAJ CK 0029**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 225 of 1991

Kamlesh Khatri (Smt.) and Others

APPELLANT

Vs

Chattar Singh and Others

RESPONDENT

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**Date of Decision :** 27-07-2005

**Acts Referred:**

**Citation :** (2006) ACJ 2739 : (2005) 3 CivCC 13 : (2005) 4 RLW 2476

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Advocate :** S.K. Sankhla, for Rajesh Panwar, for the Appellant; Anil Bachhawat, for the Respondent

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## **Judgement**

Vineet Kothari, J.—Mr. Anil Bachhawat who generally appears for respondent No. 3, Oriental Insurance Company Limited, is directed to take notice, though the Insurance Co. was earlier served.

2. Heard learned Counsel on merits.

This appeal is directed against the award of the Motor Accident Claims Tribunal, Jodhpur dated 16.3.1991 deciding the Claim Case No. 57/1988 for enhancement of compensation.

3. The claimant-Smt. Kamlesh Khatri is widow of Shri Suresh Kumar who is paid to have died in accident which took place on 17.12.1987 at about 11.15 in broad day light and the truck No. RJC 1060 which was being driven by the respondent No. 1 -Chhatar Singh driver in a rash and negligent manner hit the deceased-Suresh Kumar from back who died on the spot. At the time of accident, Shri Suresh Kumar was working as Corporal in Indian Air Force and was 25 years of age having monthly salary of Rs. 2,264/-. He left behind his son Jayant and widow Smt. Kamlesh and old parents Shri Hari Ram and Badami Devi.

4. The learned Tribunal below has computed the compensation taking the net monthly salary of Rs. 1,500/- and annual salary of Rs. 18,000/- and applying a

multiplier of 15 has arrived at a total compensation of Rs. 2,70,000/- for the death in question. The amount of Rs. 23,000/- in other heads including the loss of affection and consortium was granted.

5. Learned counsel appearing for the appellant submits that the learned Tribunal below has committed error in not taking the higher pay into account which the deceased would have earned in his future career of service and has also erred in applying the lower multiplier of 15 only whereas according to judgment of the Hon'ble Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the multiplier of 18 should have been applied at the minimum and also the pay of the deceased should have been at least doubled and deduction for personal expenditure to the extent of 1/3 can be made. There is no rebuttal of these contentions which find the strength in the judgment of the Apex Court. No evidence was produced before the Tribunal below by the Insurance Company to establish that the liability was limited in any manner. Therefore, in absence of any evidence to the contrary of record for the proposed enhancement in the compensation to be computed in accordance with law laid down by the Hon'ble Supreme Court in Susamma Thomas's case (supra), the impugned award deserves to be modified as under.

6. The consideration generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in Mallett v. M.C. Monge where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

"The starting point in any estimate of the amount of the "dependency" is the annual value of the material benefits provided for the dependents out of the earning of the deceased at the date of his death. But...there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for this dependents. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependents would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two facts to be borne in mind. The first is that the more remote in the future is the anticipated charge the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later change takes place the less will be its effect upon the total award of damages. Thus, at interest rates of 4-1/2% the present value of an annuity for 20 years of which the first ten years are at \$ 100 per annum and the second ten years at \$200, is about 12 years" purchase of the arithmetical average annuity of \$ 150, per annum, whereas if the first ten years are at \$200 per annum and the second ten years at \$100 per annum the present value is about 14 years" purchase of the arithmetical mean of \$150 per annum.

If, therefore, the chances of variations in the "dependency" are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the "dependency" used for the purpose of assessing the damages.

7. In Susamma Thomas's case, it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16 of the multiplier of 18 as was adopted in U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. reported in JT 1996(5) SC 356 appears to be appropriate. In fact in U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. JT 1996 (5) SC 356 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.

8. The average gross salary of the deceased is taken to be Rs. 4,500/- and deducting therefrom 1/3 for personal expenses Rs. 1,500/-, the net average monthly income is taken at Rs. 3,000/- and annual income is taken to be Rs. 36,000/-. Applying thereto the multiplier of 18, the compensation would work out to Rs.  $3,000 \times 12 \times 18 = 6,48,000/-$ . The compensation awarded of Rs. 2,000/- per head in favour of son and parents each also appears to be on lower side and usually on this count a sum of Rs. 5,000/- is awarded. Thus, instead of Rs. 6,000/-, it is considered appropriate that a sum of Rs. 15,000/-, is granted to the dependents of the deceased.

9. Thus, the total compensation would work out to Rs. 6,63,000/- instead of Rs. 2,93,000/- as awarded by the Tribunal. With the modification as indicated above, the rest of the award is maintained.

10. The present appeal is partly allowed with no order as to costs.