

(2013) 07 KL CK 0172

In the High Court Of Kerala

Case No : R.P. No. 423 of 2013 in M.A.C.A. No. 799 of 2008

Manissery Mariyumma and Others

APPELLANT

Vs

Govinda, A. and Others

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2014) 1 ACC 789 : (2013) 3 ILR (Ker) 410 : (2013) 3 KHC 479 :
(2013) 3 KLJ 574 : (2013) 3 KLT 595

Hon'ble Judges : T.R. Ramachandran Nair, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : K.M. Sathyanatha Menon, for the Appellant;

Judgement

A.V. Ramakrishna Pillai, J.—What would be the loss caused to the family of a victim in a fatal accident on account of his/her death? The answer to this question lies in the oft quoted opinion of Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 A.C. 601. At page 617, Lord Wright has stated the legal position as follows:

It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. 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.

This principle has been reiterated by Viscount Simon in *Nance v. British Columbia Electric Railway Co. Ltd.* 1951 A.C. 601. The said principle of assessment of compensation was approved by the Apex Court for application in Courts in India

in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, and in Municipal Corporation of Delhi v. Subhagwanti and others AIR 1966 Supreme Court 1750.

2. The aforesaid principle requires to be re-stated in this review petition filed by the appellants.

3. The review petitioners, who are the aged mother and minor siblings of a 22 year old unmarried autorickshaw driver by name Shameem, who met with his death on 17-8-2002 in a motor occurrence approached the Tribunal claiming a sum of Rs. 10 lakhs as compensation against which, the learned Tribunal awarded a sum of Rs. 2,76,500 together with interest @ 7% per annum attributing negligence against the first respondent, the driver of the offending vehicle. The third respondent insurance company, who admitted the policy, was saddled with the liability to pay the compensation.

4. In the appeal filed by the review petitioners challenging the adequacy of compensation, this Court awarded a sum of Rs. 56,000 together with interest @ 7.5% per annum as compensation, over and above what has been awarded by the Tribunal.

5. Though the review petitioners claimed that the deceased was earning a monthly income of Rs. 5,000, the learned Tribunal came to the finding that the deceased was earning Rs. 2,000 per month and deducted one-third therefrom towards personal expenses of the deceased. Considering the age of the mother of the deceased, the learned Tribunal applied the multiplier 16 and awarded a compensation of Rs. 2,56,000 towards loss of dependency.

6. In the appeal, considering the age of the deceased and also taking into account his avocation, this Court fixed the monthly income of the deceased at Rs. 3,000. As the deceased was unmarried, following the principle laid down by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , one-half of the income was deducted in consideration of the expenses which the deceased would have incurred had he been alive. As the claimants are the aged mother and minor siblings, this Court adopted the multiplier applicable to the age of the mother fixed as per Sarla Verma's case (cited supra) which is 15. Thus, the loss of dependency was re-calculated and an additional sum of Rs. 14,000 was awarded under that head.

7. In this review petition, the petitioners would allege that this Court has gone wrong in deducting one-half of the monthly income towards the personal expenses of the deceased and also in adopting the multiplier applicable to the age of the mother of the deceased instead of adopting the multiplier applicable to the age of the deceased.

8. We heard the learned counsel for the review petitioners. We have also perused the impugned judgment and the relevant decisions cited by the learned counsel for the review petitioners.

9. According to the learned counsel for the review petitioners, the approach of the learned Tribunal in deducting one-third of the annual income of the deceased is correct and this Court went wrong in deducting one-half towards personal expenses of the deceased. A definite answer to this argument lies in paragraph (15) of the decision of the Apex Court in Sarla Verma's case (cited supra) which reads as follows:

Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family.

10. In Sarla Verma's case (cited supra) the Apex Court was considering the case of a deceased who was survived by his aged parents, widow and children. It was a claim u/s 166 of the Motor Vehicles Act. In paragraph (20) of the said judgment, it was observed by the Apex Court that--in cases falling u/s 166 of the Motor Vehicles Act, Davies method is applicable.

11. Of course, in cases where the deceased bachelor has aged parents and large number of young non-earning sisters and brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. In the instant case, the claimants are only four in number, including the first claimant who is the mother. We, therefore, hold that the submission made by the learned counsel for the review petitioner that proper deductions should have been one-third instead of one-half, has no legs to stand upon.

12. It was further argued by the learned counsel for the review petitioners that this Court should have followed the table in Sarla Verma's case (cited supra) in adopting the multiplier. The correct multiplier, according to the learned counsel, is the multiplier applicable to the age of the deceased.

13. Regarding the choice of multiplier, in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, which was referred to in Sarla Verma's case (cited supra) the Apex Court observed as under

Usually in English courts the operative multiplier rarely exceeds 16 as maximum.

This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up

(emphasis supplied)

14. The words in the aforesaid extract to which emphasis was supplied clearly indicate that while choosing the multiplier, the age of the dependants also assumes relevance. In *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, , which was also referred to in *Sarla Verma's* case (cited supra), the Apex Court observed as under:

Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier.

(emphasis supplied)

15. This observation highlights the principle that, in cases where a bachelor dies, the choice of the multiplier will depend upon the age of the dependants, because, what is relevant for consideration is how long the claimants would have been benefited by the income of the deceased, had he/she been alive.

16. In *Susamma Thomas's* case as well as in *Trilok Chandra's* case (cited supra), the claim petitions were filed u/s 166 of the Motor Vehicles Act as in the case of *Sarla Verma's* case (cited supra). Even if, the claim is u/s 163A of the Motor Vehicles Act, it makes no difference, as made out by the decision of the Apex Court in *Ramesh Singh and Another Vs. Satbir Singh and Another*, . In that case, which was filed u/s 163A of the Motor Vehicles Act, the deceased was about 22 years of age. Finding that the father of the deceased was 55 years of age at the time of the accident, the Claims Tribunal applied the multiplier of 8 years and arrived at a compensation for loss of dependency. Before the High Court, three contentions were raised. Firstly, it was contended that the future prospects of the deceased were ignored by the Tribunal secondly the Tribunal went wrong in adopting the multiplier 8 that is applicable to the age group of the father of the deceased and thirdly, no compensation was awarded for loss of love and affection of the son to the parents. The High Court considered the first and second contentions together, since they were inter-related and held that increase of Rs. 50,000 would be reasonable, taking into account the possibility of increase in minimum wages, the loss of love and affection of the child as well as the pain and suffering with which the parents would live all their life.

17. In the appeal carried to the Apex Court, the Apex Court found that admittedly the age of the father of the deceased was 55 years and taking the age to be 55 years, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life. Following the principle laid down by the Apex Court in *Trilok Chandra's* case (cited supra), it was observed that selection of the multiplier cannot in all cases

be solely dependent on the age of the deceased. It was observed that if a young man is killed in an accident leaving behind his aged parents, who may not survive long enough to match with a higher multiplier provided in the second schedule of the Act, applicable to the age of the deceased, then the court has to offset such a higher multiplier and balance the same with the short life expectancy of the claimants. Similar view was expressed by the Apex Court in *Vijay Shankar Shinde and Others Vs. State of Maharashtra*, .

18. As already pointed out, in *Sarla Verma's case* (cited supra), the Apex Court was considering the case of a deceased who left not only his parents but his widow and minor children also.

19. The learned counsel for the review petitioners invited our attention to a subsequent decision of the Apex Court in *P.S. Somanathan and Others Vs. District Insurance Officer and Another*, (judgment dated 15-4-2004) wherein the multiplier applicable to the deceased was adopted for arriving at the compensation, even though the deceased was a bachelor. There is a special reason for adopting a higher multiplier in that particular case, as evident from paragraph (23) of the judgment. In that case, the High Court had not taken into account the claim of a 49 year old lady, the sister of the deceased, who was brought to the array of parties already. We, therefore, are of the view that the decision in *Somanathan's case* (cited supra) rests on its own facts and cannot possibly be considered to lay the proposition that the multiplier applicable to the deceased has to be adopted mechanically in all cases irrespective of the marital status of the deceased.

20. The principle that the age of the dependants also has relevance in deciding the quantum of compensation in fatal accidents which was followed in *Susamma Thomas's case* as well as in *Trilok Chandra's case* (cited supra) was never intended to be watered down by the Apex Court in *Sarla Verma's case* (cited supra). Therefore, in the present case the multiplier applicable to the age of the first appellant, who is the mother, has to be adopted considering her short life expectancy.

21. The aforesaid conclusion is fortified by another decision of the Apex Court in *National Insurance Company Ltd. Vs. Shyam Singh and Others*, which is subsequent in point of time (the judgment in that case was delivered on 4-7-2011). There, the Apex Court was considering a case, where a 19 year old boy died in a motor occurrence leaving behind his parents as claimants. In that case the Tribunal adopted the multiplier 9 considering the age of the parents who were 56 and 55 years. The claimants preferred an appeal before the High Court which adopted the multiplier 16, applicable to the age of the deceased. In appeal by the Insurance Company, the Apex Court held that the Tribunal has rightly applied the multiplier of 8 by taking the average age of the parents who were 55 and 56 years of age and allowed the appeal.

22. Following the dictum laid down in *Vijay Shankara Shinde's case* (cited

supra), it was observed that complicated questions of fact and law arriving in accident cases cannot be answered all time relying on mathematical equation. We, therefore, reject the argument advanced by the learned counsel for the review petitioners that the multiplier applicable to the age of the deceased should have been taken in this case, for arriving at the compensation for loss of dependency.

In the result, we see no merit in the review petition. The review petition is accordingly dismissed. No costs.