

(2009) 09 SHI CK 0063
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 437 of 2004

Naina Thakur and Others

APPELLANT

Vs

Punjab Women's Welfare Colleges Board and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2010) ACJ 1917

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Jagdish Thakur, for the Appellant; Lalit Kumar Sharma, Sandeep K. Pandey, Baldev Singh and Anand Sharma, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—This appeal by the claimants is directed against the award dated 4.9.2004 passed by the learned Motor Accidents Claims Tribunal, Una in M.A.C. Petition No. 28 of 2001.

2. Briefly stated the facts of the case are that Bodh Raj was driving his motor cycle and met with an accident with bus No. PB 07-F 8161 owned by respondent No. 1. The bus was driven by respondent No. 2 and was insured with United India Insurance Co. Ltd. Bodh Raj died as a result of the injuries sustained in the accident.

3. The claimants who are the widow, three minor children and the mother of deceased Bodh Raj filed a claim petition u/s 166 of Motor Vehicles Act claiming compensation of Rs. 75,00,000 for the death of the deceased. The respondents filed reply. The learned Tribunal, after trial, has awarded compensation of Rs. 15,10,000 along with interest at the rate of 9 per cent per annum from the date of filing of petition till realization. The claimants being not satisfied by this award have filed the present appeal for enhancement of compensation.

4. As far as the income of the deceased is concerned, the same has been proved

on record by Rakesh Kumar, PW 6, Senior Tax Assistant, Income tax Office, Una. He has proved the certificate, Exh. PW6/A. As per this certificate for the previous three assessment years the deceased had returned the following income:

-----	Assessment	Income	Taxes	year	returned	paid	-----
-----	1998-1999	3,55,480	69,646	1999-2000	2,95,140	50,566	-----
-----	2000-2001	3,22,470	64,615	-----	-----	-----	-----

5. Deceased was working as Development Officer in Life Insurance Corporation of India and was getting salary and was also earning commission and had filed returns showing the income as detailed hereinabove. The deceased as per Higher Secondary certificate placed on record was born on 14.2.1962. The accident took place on 4.3.2001 and he was therefore, 39 years of age at the time when the accident took place. The learned Tribunal assessed the income of the deceased at Rs. 3,00,000 per year. He deducted Rs. 1,00,000 for the expenditure of the deceased on himself and has further deducted another sum of Rs. 50,000 per year for expenses of upkeep of office, vehicle, etc. and has assessed the dependency of the family at Rs. 1,50,000 per year. Multiplier of 10 was applied and compensation assessed at Rs. 15,10,000 after adding Rs. 10,000 for conventional damages.

6. The method followed by the learned Tribunal is totally incorrect. The Supreme Court in a number of decisions has held that the multiplier system is the best system and when the multiplier system is applied then deductions only are to be made for the personal expenses of the deceased and other expenses are taken care of while assessing the multiplicand.

7. Under the Motor Vehicles Act, the court has to award just compensation. What is "just compensation" has been the subject-matter of a number of decisions. In England two methods were being followed. One method was laid down in *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) AC 601. Under this method, first the balance life expectancy of the deceased was to be estimated then his income for the remaining years of his life was to be calculated. However, while calculating this income, deductions had to be made for other uncertainties of life such as premature termination of the life, etc. In *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) AC 601, a new method was adopted. According to this method after assessing the net income of the deceased the expenditure incurred by him on himself was to be deducted. The balance was termed to be the dependency of the family and included the accretion to the estate. This was to be multiplied by a suitable multiplier.

8. This Court in *H.P. Road Trans. Corporation v. Jai Ram* 1980 ACJ 1 (HP), after discussing the entire law came to the conclusion that the method laid down in *Davies's* case (1942) AC 601, is the best method. Division Bench laid down the following principles for determining annual dependency which is also termed as multiplicand. It would be relevant to refer to para 17 of the judgment which reads as follows:

(17) So far as the first factor of annual dependency is concerned, there is not much difficulty in fixing the same. The best evidence to fix the figure of this factor is supplied by the net income derived by the deceased at the time of his death. If the amount expended by the deceased for his personal expenditure is deducted from this amount of his net income, the remainder would represent the amount spent by him for his dependants plus the amount saved for future. If there is satisfactory evidence regarding the amount spent by him for his dependants, the figure of the amount so spent should be taken as the basic figure for calculating loss of dependency. But if no such satisfactory evidence is available it would be reasonable to fix the units of family expenditure and deduct the units consumed by the deceased for his personal expenditure. Normally, an adult member of the family would consume double the units consumed by minors, except those minors who are taking education in college for whom, in an appropriate case, two units of expenditure may legitimately be taken into account. Hence, if a minor is consuming one unit, an adult member of that family should be taken to consume two units. For instance, a family consisting of two adults and three minors would, on this basis, consume seven units for expenditure as under:

Two adults 4 units (two each)

Three minors 3 units (one each)

If, therefore, the total expenditure of such a family is Rs. 700 per month, the personal expenditure of the deceased who is found to be the earning adult, should be taken as at Rs. 200 per month (two units). The total value of dependency would therefore, be Rs. 500 per month. This would be the datum figure which should be further worked out by applying a suitable multiplier. This was the method adopted by the High Court of Gujarat in *Bai Nanda v. Shivabhai Shankerbhai Patel* 1966 ACJ 290 (Gujarat) (vide para 40). We find this to be a safe method to find out the basic value of dependency where clear and reliable evidence is lacking.

9. The Apex Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, also approved the method laid down in *Davies'* case (1942) AC 601. It held as follows:

In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that deceased might have got better employment or income or might have lost

his employment or income altogether.

The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of years' purchase.

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.

It is necessary to reiterate that the multiplier method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and awarded the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years-virtually adopting a multiplier of 45-and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible.

10. Thereafter in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, the Apex Court, while reiterating the preference to Davies' method followed in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, had stated thus:

In the method adopted by Viscount Simon in the case of *Nance* (1951) AC 601, also, first the annual dependency is worked out and then multiplied by the estimated useful life of the deceased. This is generally determined on the basis of longevity. But then, proper discounting on various factors having a bearing on the uncertainties of life, such as, premature death of the deceased or the dependant, remarriage, accelerated payment and increased earnings by wise and prudent investments, etc., would become necessary. It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the lifespan

taken. That is the reason why courts in India as well as England preferred the Davies'' formula as being simple and more realistic. However, as observed earlier and as pointed out in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, usually English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when courts/ Tribunals began to use a hybrid method of using Nance''s method without making deduction for imponderables...Under the formula advocated by Lord Wright in Davies (1942) AC 601, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier.

11. Despite the law laid down in the aforesaid two cases, there was lack of uniformity and consistency in awarding compensation under the Motor Vehicles Act. In an extremely exhaustive judgment dealing with the issue of assessment of just compensation, the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, has laid down the principles and guidelines for assessing and awarding just compensation under Motor Vehicles Act. It held that "just compensation" is adequate compensation which is fair and equitable. The same is not intended to be a bonanza or a source of profit but should be reasonable. The Apex Court held that the awards of the Tribunals should be consistent. Justice Reveendran speaking for the court laid down the following principles:

(9) Basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/ deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle the accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well settled steps:

Step 1 (Ascertaining the multiplicand):

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependent family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier):

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a Table of multipliers with reference to age has been identified by this Court. The multiplier should be chosen from the said Table with reference to the age of the deceased.

Step 3 (Actual calculation):

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs. 5,000 to Rs. 10,000 may be added as loss to estate. Where the deceased is survived by his widow, another conventional amount in the range of Rs. 5,000 to Rs. 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

Question (i)-Addition to income for future prospects:

(10) Generally, the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects? In *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death...

(11) ...In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50 per cent 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 per cent if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-

employed or was on a fixed salary (without any provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Question (ii)-Deduction for personal and living expenses:

(12) We have already noticed that the personal and the living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependants. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. Claimants will obviously tend to claim that deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardize the deductions to be made under the head of personal and living expenses of the deceased. This led to the practice of deducting for personal and living expenses of the deceased, one-third of the income if the deceased was a married and one-half (50 per cent) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction has got statutory recognition under Second Schedule to the Act, in respect of claims u/s 163-A of the Motor Vehicles Act, 1988 ("MV Act" for short).

(13) But, such percentage of deduction is not an inflexible rule and offers merely a guideline. In *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, it was observed that in the absence of evidence, it is not unusual to deduct one-third of the gross income as the personal living expenses of the deceased and treat the balance as the amount likely to have been spent on the members of the family/dependants. In *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, this Court held that if the number of dependants in the family of the deceased was large, in the absence of specific evidence in regard to contribution to the family, the court may adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units is allotted to each adult and one unit is allotted to each minor and total number of units are determined. Then the income is divided by the total number of units. The quotient is multiplied by two to arrive at the personal living expenses of the deceased...

(14) Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the

deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3; one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.

(15) Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50 per cent 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 dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent 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 per cent would be treated as the personal and living expenses of the bachelor and 50 per cent as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

12. With regard to appropriate multiplier after considering the entire law, the Apex Court summarized the various multiplier prescribed in different judgments and in the Second Schedule in the following Table:

Age of the deceased	Multiplier as scale	Multiplier actually used in Second Schedule	Multiplier envisaged in Trilok Chandra	Multiplier adopted in Thomas Chandra	Multiplier as scale in Second Schedule
quantum of to MV Act (as in Charlie in Second seen from the Schedule)	(1)	(2)	(3)	(4)	(5)
Upto 15 years	15	15	15	15	15
15 to 20 years	16	16	16	16	16
20 to 25 years	17	17	17	17	17
25 to 30 years	18	18	18	18	18
30 to 35 years	19	19	19	19	19
35 to 40 years	20	20	20	20	20
40 to 45 years	21	21	21	21	21
45 to 50 years	22	22	22	22	22
50 to 55 years	23	23	23	23	23
55 to 60 years	24	24	24	24	24
60 to 65 years	25	25	25	25	25
Above 65 years	26	26	26	26	26

13. Thereafter the court went on to hold as follows:

(20) Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the

Table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the Table above); some follow the multiplier with reference to Charlie (set out in column 4 of the Table above); many follow the multiplier given in the second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the Table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the Table above)...

14. It is thus apparent that the Apex Court has now approved the multiplier in column 4 of the aforesaid Table, I would, however, like to add a caveat on the basis of the law laid down in *Susamma Thomas* (supra) and *Trilok Chandra* (supra) and approved in *Sarla Verma* (supra). The choice of multiplier has to be based on the age of the deceased or the claimant whichever is higher. Therefore, if the parents are the claimants, it is age of the parents which will have to be taken into consideration while fixing the multiplier. This Table is also not to be blindly followed and the Tribunal may well be within its jurisdiction to make departure from this Table in particular cases. For example, if the deceased was aged between 41 and 45 years as per this judgment the multiplier of 14 is to be used. However, the deceased, if he had married late, may have left behind a very young widow and two small children. The Tribunal in such a case may be justified in increasing the multiplier to 15. On the other hand, there may be a case where the deceased who was aged between 41 and 45 years has not left behind a widow and the claimants are sons who are major and are not dependent. The multiplier may be suitably reduced in such cases. This has to depend on the facts of each case. However, it is obvious that as per the law laid down by the Apex Court normally the deduction for the personal expenses of the deceased is to be $\frac{1}{3}$ rd where the dependent family is 2 to 3 and $\frac{1}{4}$ th where the number of dependent family members is 4 to 6 and $\frac{1}{5}$ th where the number of dependent family members exceeds 6. In case the deceased was a bachelor and the claimants are the parents normally deduction of 50 per cent should be made for the personal expenses of the deceased. However, this can be reduced to $\frac{1}{3}$ rd if the dependants are many.

15. Now coming to the fact of this case, I find that the deceased had left behind 5 dependants, i.e., his widow aged 35 years, his 3 minor sons and mother. In this case, there is no proof that the income of the deceased was to increase substantially. There is nothing on record to show that he was getting increments. Therefore, the prospect of future growth cannot be taken into account. This is also apparent from the income tax return filed, which shows that the income of the deceased was not consistent and was changing from year to year.

16. In the evidence it has come that the mother of the deceased was not residing with him but was in fact residing with her younger son. She may not be totally dependent on the deceased.

17. The income of the deceased was not consistent. In 1998 he had returned the highest income but in 2000-01 the income was much less. Taking into

consideration all these factors, I feel that it would not be unreasonable to assess the income of the deceased at Rs. 3,22,470 which was the last income return filed by him and which also is approximately the average income. However, on this income the deceased had paid the income tax. This income tax in the year in question was Rs. 64,615. This amount of tax has to be deducted to assess the net income. The net disposable income of the deceased works out to Rs. 2,57,855. Following the principles laid down by the Apex Court "4th has to be deducted for the personal expenditure of the deceased, since the deceased had left behind at least 4 if not 5 dependants. The annual personal expenses of the deceased work out to Rs. 64,464. After deducting this amount the loss of dependency of the family works out to Rs. 1,93,391 per annum.

18. Next comes the question of the multiplier to be used as per law laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, The multiplier in the case of a person aged 36 to 40 years is 15. However, since one of the claimants is the mother who is aged about 65 years, I feel that the appropriate multiplier should be 14 and the compensation is assessed at Rs. 27,07,477. Claimant is also held entitled to Rs. 5,000 under the head of loss to the estate and Rs. 5,000 for funeral expenses and Rs. 10,000 as consortium. The total compensation therefore, works out to Rs. 27,27,477.

19. The aforesaid amount is apportioned as follows:

Naina Thakur, widow Rs. 7,27 477 Lokesh Kumar (major), son Rs. 4,00,000
Yogesh Kumar (minor), son Rs. 6,00,000 Vikrant Kumar (minor), son Rs.
6,00,000 Dhani Devi, mother Rs. 4,00,000

20. In view of above discussion, the appeal is allowed. Award of the learned Motor Accidents Claims Tribunal is modified and the compensation enhanced from Rs. 15,10,000 to Rs. 27,27,477. The enhanced amount of compensation shall bear interest at the rate of 7.5 per cent from the date of filing of the claim petition. The amount be deposited in the Registry of this Court within 12 weeks from today.

21. The Registry is directed to send a copy of this judgment to all the Motor Accidents Claims Tribunals in the State who are directed to assess the compensation as per the law laid down by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,