

(2002) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 190 and 456 of 1997

Rajasthan State Road Transport Corporation

APPELLANT

Vs

Dhanwanti and Others

RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2003) 2 ACC 692 : (2004) ACJ 1217 : (2003) 2 WLC 686

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : B.S. Bhati, for the Appellant; Rajesh Panwar and M.L. Khatri, for the Respondent

Judgement

Sunil Kumar Garg, J.—The above-mentioned two appeals are being decided by this common judgment as in both of them, common questions of law and facts are involved and both have been preferred against the same judgment and award dated 30.10.1996 passed by the learned Judge, Motor Accidents Claims Tribunal, Banner.

S.B. Civil Misc. Appeal No. 456 of 1997:

2. It arises in the following circumstances:

On 31.3.1995, a bus bearing No. RJ 14-P 2264 belonging to the appellant Rajasthan State Road Transport Corporation (for short "the Corporation"), was going towards Balotra to Sanchoe and that bus was being driven by Anoop Singh (hereinafter referred to as "the deceased" and the claimant-respondent Nos. 1 to 5 in Appeal No. 190 of 1997 are his LRs) and the conductor of that bus was Jagdish (hereinafter referred to "as deceased" and the claimant-respondent Nos. 1 to 7 in this appeal are his LRs) and at that time, at about 2.30 p.m., another bus bearing No. JP 14-P 2212 belonging to the appellant Corporation came from opposite side at Nagar village and that bus was being driven rashly and negligently by the respondent No. 8 Nathu Ram who dashed his bus against

bus No. RJ 14-P 2264 and caused accident, as a result of which driver of the said bus, namely, Anoop Singh died on the spot and two other persons, namely, Jagdish and Jogaram also died on the spot.

Thereafter, claimant-respondent Nos. 1 to 7, who are legal representatives of deceased Jagdish filed a claim petition before the Motor Accidents Claims Tribunal, Barmer (hereinafter referred to as "the Claims Tribunal") on 7.8.1995 stating, inter alia, that deceased Jagdish was conductor in the employment of the appellant Corporation and at the relevant time his age was about 34 years and he left behind his widow, son, daughters and mother and through that claim petition, Rs. 9,00,684 as compensation were claimed by the claimant-respondent Nos. 1 to 7.

A reply to the claim petition was filed by the appellant Corporation.

Thereafter, issues were framed by the learned Claims Tribunal on 10.7.1996 and both parties led evidence in support of their respective cases.

After hearing both the parties and after considering the entire evidence and the material available on record, the learned Claims Tribunal through judgment and award dated 30.10.1996 awarded a sum of Rs. 3,98,432 as compensation to claimant-respondent Nos. 1 to 7 holding, inter alia:

(i) That at the time of the accident, the monthly salary of the deceased Jagdish was Rs. 2,268.

(ii) That at the time of accident, about eleven persons were dependent on the deceased Jagdish.

(iii) That out of the amount of Rs. 2,268 about Rs. 412 were to be spent by the deceased Jagdish on himself and rest amount of Rs. 1,856 were to be spent on other members of his family. Thus, if the amount of Rs. 1,856 was multiplied by 12 months, the annual dependency came to Rs. 22,277.

(iv) That after placing reliance on the Second Schedule attached with Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988"), a multiplier of 16 years was applied by the learned Claims Tribunal and thus, learned Claims Tribunal came to the conclusion that claimant-respondent Nos. 1 to 7 were entitled to Rs. 3,56,432 as compensation.

Apart from that amount, the learned Tribunal further awarded a sum of Rs. 2,000 as cremation expenses and Rs. 5,000 to the wife of the deceased on account of loss of consortium and loss to estate. Furthermore, Rs. 5,000 were awarded to each claimant totalling Rs. 35,000 on account of mental agony. Rs. 3,98,432 in all were awarded as compensation to the claimant-respondent Nos. 1 to 7 and, accordingly, the award was passed against the present appellant Corporation.

Aggrieved from the said judgment and award dated 30.10.1996 passed by the learned Claims Tribunal, this appeal has been filed by the appellant Corporation.

3. In this appeal, the following two submissions have been made by the learned counsel appearing for the appellant Corporation:

(i) That the learned Claims Tribunal has arbitrarily awarded a huge amount of Rs. 35,000 to claimant-respondent Nos. 1 to 7 on account of mental agony, as when multiplier method was being adopted by the learned Claims Tribunal, therefore, separate amount for mental agony should not have been awarded by the learned Claims Tribunal.

(ii) That the learned Claims Tribunal has also committed illegality in placing reliance on Second Schedule attached with Section 163-A of the Act of 1988 as the Hon'ble Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, has held that the Second Schedule attached with Section 163-A of the Act of 1988 is defective and, therefore, multiplier of 16 years was not just and, thus, from this point of view the amount awarded by learned Claims Tribunal to the claimant-respondent Nos. 1 to 7 by applying the multiplier of 16 years was not just and proper.

4. On the other hand, the learned counsel for the respondent-claimant Nos. 1 to 7 supported the impugned judgment and award passed by learned Claims Tribunal.

5. I have heard the learned counsel appearing for the appellant Corporation and the learned counsel appearing for the respondent-claimant Nos. 1 to 7 and gone through the materials available on the record.

Law on Multiplier

6. Lord Wright, who is said to be the propounder of multiplier method, laid down the mode of calculation in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) AC 601, as under:

"There is no question here of what may be called sentimental damage, bereavement or pain and suffering. 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 on 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 thereby ceased to be a dependant, and other like matters of speculation and doubt."

In elaborating his theme, further said Lord Wright:

"The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the circumstances which may be legitimately pleaded in the diminution of the damages must be

considered the actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source comes to him by reason of the death."

7. Subsequent decisions of the English courts as well as the Indian courts show that Lord Wright's method is quite efficient and dependable in calculations. The Hon'ble Supreme Court of India recognised this method in various decisions, including *Municipal Corporation of Delhi v. Subhagwanti* 1966 ACJ 57 (SC); *C.K. Subramonia Iyer v. T. Kunhi Kuttan Nair*, 1970 ACJ 110 (SC); *Madhya Pradesh State Road Trans. Corporation v. Sudhakar*, 1977 ACJ 290 (SC) and *Sheikhupura Transport Co. Ltd. v. Northern India Transporters' Ins. Co. Ltd.*, 1971 ACJ 206 (SC).

8. The above method has been further approved by the Hon'ble Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, and in that case, the method has been well described in the following manner:

(i) The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising 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.

(ii) It is necessary to reiterate that the multiplier method is logically sound and legally well established.

(iii) The multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

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

(v) Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the choice of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of claimant, whichever is higher, the ascertainment of the multiplicand is a more difficult exercise.

(vi) In the absence of evidence, it is not unusual to deduct one-third of the gross income towards personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependants.

(vii) Apart from the compensation awarded on the basis of multiplier method, the usual award for loss of consortium and loss to the estate each in the conventional sum of Rs. 15,000 should be awarded.

(viii) The Tribunal will take all this into account and invest as much of the amount as it thinks reasonable in several deposits yielding adequate returns permitting the claimants to withdraw the interest periodically to be used for their maintenance and upkeep. The Tribunal will make appropriate orders within two months from the date of deposit of the balance to be made by the appellant with interest at the rate of 12 per cent per annum.

9. The method of multiplier described in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, was further approved by the Hon"ble Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, the Hon"ble Apex Court has further formulated the method of working out compensation on the basis of multiplier, in the following manner:

"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. Let us illustrate: X, male aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs. 3,500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make $2 + 2 = 4$ units and each minor one unit, i.e., 3 units in all, totalling 7 units. Thus, the share per unit works out to $\text{Rs. } 3,500/7 = \text{Rs. } 500$ per month. It can thus be assumed that Rs. 1,000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expense has to be estimated. In the present case we estimate the out-of-pocket expense at Rs. 250. Thus, the amount spent on the deceased X works out of Rs. 1,250 per month leaving a balance of $\text{Rs. } 3,500 - \text{Rs. } 1,250 = \text{Rs. } 2,250$ per month. This amount can be taken as the monthly loss to X's dependants. Thus, the annual dependency comes to $\text{Rs. } 2,250 \times 12 = \text{Rs. } 27,000$. This annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependants. Take the appropriate multiplier to be 15. The compensation comes to $\text{Rs. } 27,000 \times 15 = \text{Rs. } 4,05,000$. To this we may also add the conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs. 3,000, but now having regard to the fall in the value of rupee, it can be raised to a figure of not more than Rs. 10,000. Thus, the total comes to $\text{Rs. } 4,05,000 + \text{Rs. } 10,000 = \text{Rs. } 4,15,000$."

10. On applicability of Second Schedule attached with Section 163-A of the Act of 1988, the Hon"ble Supreme Court in the case of U.P. State Road Transport

Corporation and Others Vs. Trilok Chandra and Others, has observed that the Table given in the Schedule abounds in mistakes and the Tribunals/courts not to go by the ready reckoner and it can only be used as a guide.

11. The law laid down in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, has been further approved by Hon"ble Apex Court in the latest decision in Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, and on Second Schedule attached with Section 163-A of the Act of 1988, the Hon"ble Apex Court observed as follows;

"In calculating the amount of compensation in this case we lean ourselves to adopt the structured formula provided in the Second Schedule to the Motor Vehicles Act. Though it was formulated for the purpose of Section 163-A of the Motor Vehicles Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned."

12. Keeping the above position in mind, if the multiplier of 16 years was applied by the learned Claims Tribunal, it cannot be said that it was applied arbitrarily by the learned Claims Tribunal. No illegality has been committed by the learned Claims Tribunal in applying the multiplier of 16 years.

13. In the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, the Hon"ble Apex Court has clearly observed that Tribunal should not go by the ready reckoner that is found in the Second Schedule attached with Section 163-A of the Act of 1988, but that Second Schedule should be taken as a guide and in the latest decision in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, the Hon"ble Supreme Court further observed that in calculating the amount of compensation in that case, we lean ourselves to adopt the structured formula provided in the Second Schedule to the Motor Vehicles Act and though it was formulated for the purpose of Section 163-A of the Motor Vehicles Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as that case is concerned.

14. In these circumstances, no hard and fast rule can be formulated that in any way Second Schedule attached with Section 163-A of the Act of 1988 cannot be looked into and, thus, if the learned Claims Tribunal had based his judgment on the basis of that Schedule and applied multiplier of 16 years, no illegality has been committed by the learned Claims Tribunal in doing so. Apart from this, looking to the age of the deceased Jagdish which was below 40 years, in any case, application of multiplier for 16 years cannot be said to be improper or unjust as in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, it was observed by the Hon"ble Apex Court that operation of the multiplier should not exceed 16 years, but in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, this limit was increased up to 18 years in appropriate

cases. Thus, applying the multiplier of 16 years by the learned Claims Tribunal cannot be said to be unjust and unreasonable.

15. However, so far as the awarding of amount of Rs. 35,000 to the claimant-respondent Nos. 1 to 7 on account of mental agony is concerned, the same cannot be justified because of the simple reason that when the multiplier method has been adopted in conventional form, the amount on other heads should not be allowed otherwise it would overlap with each other. Therefore, awarding of Rs. 35,000 by the learned Claims Tribunal on account of the mental agony cannot be justified and sustained.

16. So far as the amount awarded towards the head "cremation expenses" is concerned, no doubt the same should not have been awarded, but the same has not been touched because the amount awarded under the head "loss of consortium and loss to estate" was less as only Rs. 5,000 were awarded and it could have been awarded up to Rs. 15,000. It is made clear that in case where the multiplier method is applied, other heads except of loss of consortium and loss to estate should not be taken into consideration, while calculating the amount of compensation in case of death.

17. For the reasons stated above, no interference is called for with applying of multiplier of 16 years by learned Claims Tribunal, but awarding of Rs. 35,000 on account of mental agony cannot be sustained and to that extent, the impugned judgment and award of the learned Claims Tribunal are liable to be modified and this appeal deserves to be allowed partly in the terms just mentioned above.

Accordingly, this appeal filed by the appellant Corporation is partly allowed in the manner that awarding of Rs. 35,000 by the learned Claims Tribunal to claimant-respondent Nos. 1 to 7 for mental agony suffered by them on account of the death of deceased Jagdish is set aside, but rest amount of compensation awarded by the learned Claims Tribunal through impugned judgment and award dated 30.10.1996 is maintained. In other words, claimant-respondent Nos. 1 to 7 will be entitled to compensation after deducting the amount of Rs. 35,000 which was awarded by the learned Claims Tribunal on account of mental agony. The impugned judgment and award of the learned Claims Tribunal stand modified accordingly in the manner as indicated above.

No order as to costs.

S.B. Civil Misc. Appeal No. 190 of 1997:

18. In this appeal, the deceased Anoop Singh was driver of the bus in question, who died in the alleged accident and his monthly income was found by the learned Claims Tribunal as Rs. 3,958 and he was to maintain about 8 persons and the learned Claims Tribunal came to the conclusion that Rs. 988 were to be spent by deceased on himself and rest amount of Rs. 2,970 were to be spent on other members of his family and after taking into consideration the Second Schedule attached with Section 163-A of the Act of 1988 and treating the age of

deceased as 55 years, the learned Claims Tribunal came to the conclusion that the multiplier of 11 years was proper and after applying the multiplier of 11 years, the learned Claims Tribunal came to the conclusion that claimant-respondent Nos. 1 to 5 were entitled to compensation of Rs. 3,92,040. Apart from that amount, the learned Claims Tribunal further awarded a sum of Rs. 2,000 towards cremation expenses and Rs. 5,000 were awarded to the widow of the deceased for loss of consortium and loss to estate and furthermore, Rs. 20,000 were awarded on account of mental agony and, thus, Rs. 4,19,040 as compensation were awarded by learned Claims Tribunal to claimant-respondent Nos. 1 to 5.

19. The questions of law and facts involved in this appeal are the same which have been decided in the above S.B. Civil Misc. Appeal No. 456 of 1997 and thus, for the reasons given in S.B. Civil Misc. Appeal No. 456 of 1997, no interference is called for with applying of multiplier of 11 years by the learned Claims Tribunal, as looking to the age of the deceased Anoop Singh, which was 55 years, application of multiplier for 11 years cannot be said to be unjust and unreasonable and, thus, no illegality was committed by the learned Claims Tribunal in applying the multiplier of 11 years, but awarding of Rs. 20,000 to the claimant-respondent Nos. 1 to 5 on account of mental agony cannot be sustained and to that extent, the impugned judgment and award of the learned Claims Tribunal are liable to be modified and this appeal deserves to be allowed partly in the terms just mentioned above.

Accordingly, this appeal filed by the appellant Corporation is partly allowed in the manner that awarding of Rs. 20,000 by the learned Claims Tribunal to claimant-respondent Nos. 1 to 5 for mental agony suffered by them on account of death of deceased Anoop Singh is set aside, but rest amount of compensation awarded by the learned Claims Tribunal through impugned judgment and award dated 30.10.1996 is maintained. In other words, claimant-respondent Nos. 1 to 5 will be entitled to compensation after deducting the amount of Rs. 20,000 which was awarded by the learned Claims Tribunal on account of mental agony. The impugned judgment and award of the learned Claims Tribunal stand modified accordingly in the manner as indicated above.

No order as to costs.