
(2009) 04 SC CK 0135

In the Supreme Court Of India

Case No : Civil Appeal No. 2241 of 2009 (Arising out of SLP (C) No. 20207 of 2007)

Rani Gupta and Others

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 173, 2(14)

Citation : (2009) ACJ 1605 : AIR 2009 SC 3226 : (2009) AIRSCW 3243 : (2009) 2 AWC 1894 Supp : (2009) 5 JT 314 : (2009) 4 RLW 2852 : (2009) 5 SCALE 439 : (2009) 13 SCC 498 : (2009) 5 SCR 721 : (2009) 3 Supreme 535

Hon'ble Judges : S. B. Sinha, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Ashok K. Mahajan and Shantha Devi Raman, for the Appellant; A.K. De, Rajesh Diwedi, Pbitra Biswal and Debasis Misra, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. This appeal is directed against the judgment and order dated 31.5.2007 passed by the High Court of Delhi in MAC No. 986 of 2006 whereby and whereunder an appeal preferred by the first respondent herein u/s 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') was allowed.

3. Appellant filed an application before the Motor Vehicles Accidents Claims Tribunal praying for payment of compensation for the death of her husband Praveen Kumar Gupta who was travelling in a private Indica Car driven by his friend Shri Avtar Singh.

Shri Ankit and Shri Rajendra Jindal (the deceased) were returning from Agra after attending some business promotion work. The accident took place as the said car ran into a tree. Praveen Kumar Gupta and Rajendra Jindal died on the spot. Ankit suffered injuries.

4. Before the learned Tribunal, one of the questions which was raised is as to whether a passenger in a car which was being driven negligently would be covered by the policy of insurance.

5. The learned Tribunal, applying the principle of Res Ipsa Loquitor, opined that Shri Avtar Singh was driving the car rashly and negligently. Having regard to the income tax returns filed by the deceased, the learned Tribunal arrived at the finding that his annual income was Rs. 1,87,500/-. In view of the age of the deceased and the children having attained the age of majority, multiplier of 13 was applied in determining the amount of compensation. Upon deducting 1/3rd of the annual income towards personal use from his annual income, the total amount of compensation, thus, was arrived at in the following terms:

Annual Income Rs. 1,25,000

Future Increase in income Rs. 2,50,000 -----

Rs. 3,75,000

Mean/Average income Rs. 1,87,500 Less: 1/3rd towards personal use

An consumption Rs. 62,500 -----

Annual Dependency Rs. 1,25,000

Hence

a) Loss of Financial dependency Rs. 16,25,000 (1,25,000 x 13)

b) Loss of consortium Rs. 25,000

c) Loss of love and affection Rs. 75,000 (25,000 X 3)

d) Funeral expenses Rs. 15,000 ----- TOTAL COMPENSATION

Rs.17,40,000 -----

6. First Respondent preferred an appeal thereagainst.

7. The question raised before the High Court was as to whether the deceased having been travelling as a gratuitous passenger in a private car would fall within the meaning of 'third party' and, thus, would be covered by the statutory policy u/s 147 of the Act.

The learned Judge noticed that the policy was "Private Car Package Policy" as notified by the Tariff Advisory Committee with effect from 1.7.2002, the terms and conditions whereof are:

SECTION II - LIABILITY TO THIRD PARTY

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall

become legally liable to pay in respect of:

(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(ii) Damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.

8. It was furthermore opined that the object and purpose of Section 146 and 147 is that policy of insurance should cover liability in respect of death or bodily injury of a person including owner of the goods or its authorized representative who may be carried in a goods vehicle/carriage as defined in Section 2(14) of the Act.

9. The learned Judge, however, having regard to several decisions of this Court in particular U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , as also various other decisions including The New India Assurance Company Limited Vs. Smt. Kalpana and Others, , opined that appropriate multiplier to be adopted was 10. On the aforementioned premise loss of dependency was determined at Rs. 1,87,500/- per annum. The learned Judge further apportioned 2/3rd as labour input, i.e., personal input of the deceased in business and treated 1/3rd as yield from the capital asset, loss occasioned due to death of the deceased was held to be Rs. 12,50,000/-, stating:

The remaining loss of Rs. 6,25,000/- could be made good by the family by renting out the factory or after liquidating the capital asset investing the money in an annuity yielding income by way of interest.

10. Mr. Ashok K. Majhajan, learned Counsel appearing on behalf of the appellant, would contend that the High Court committed a serious error in applying the multiplier of 10 only as in terms of the Second Schedule appended to the Act, the appropriate multiplier which should have been applied is 13. It was urged that for the purpose of calculation of annual dependency, in a case of this nature, the High Court should have been kept in view the backdrop of events, namely, the deceased who took loan for a sum of Rs. 14,00,000/- from the bank for the purpose of purchasing an industrial plot in NOIDA in 1985, had paid up the same.

11. Mr. A.K. De, learned Counsel appearing on behalf of the respondent, on the other hand, contended that the income of the deceased can only be assessed on net earnings and what was actually lost is his labour and other's contributions to run his business, and, thus, the loss of dependency should be determined on the value of such services or contribution of labour being in the nature of skill and knowledge that he had been contributing thereto. It was urged that indicator of the value of his services could only be the profitability of the business which must be shown and established upon bringing on appropriate materials on record.

12. Determination of the amount of compensation arising out of loss of life of a person, who was the earning member of the family, would depend upon a large number of factors; one of them being the nature of job or business he was doing. For the said purpose, an average gross future monthly income must be arrived at by adding the actual gross income at the time of his death to the maximum which he might have got, had he not met a pre-mature death.

The learned Tribunal, keeping in view the fact that within a short time, appellant had been able to wipe off the entire loan taken by him from the bank and, thus, became the owner of an industrial plot and furthermore in view of the fact that he was only aged 46 years at the relevant time, thought that his income would have doubled at the time of his death. We think that the approach of the learned Tribunal was correct.

13. This Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, took into consideration the future prospect of the deceased in great details. It was held that multiplier method involving the ascertainment of the loss of dependency should be applied in appropriate case. It took into consideration the decision of English Courts to opine that the said method is appropriate. It opined that only in rare cases, the said method should be departed from. As regards adoption of proper multiplier, it was held:

7. So far as the adoption of the proper multiplier is concerned, it was observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance 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 the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful.

14. Average life expectancy in India also is one of the factors which must be taken into consideration for the purpose of calculating the average gross future monthly income. The average life expectancy in India is now 60-61 years. It is necessary to subtract personal and living expenses and other statutory liabilities like payment of income tax etc.

This Court in National Insurance Company Ltd. Vs. Indira Srivastava and Others, , held:

17. This Court in Asha did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term "just compensation" was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be "just compensation" must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-package is what the dependants have lost due to death of the deceased. It is in the nature of compensation for future loss towards

the family income.

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.

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.

25. The expression "just" must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

15. Ordinarily and subject to just exceptions, a lump sum amount equivalent to 1/3rd of the income of the deceased, i.e., living and miscellaneous expenses from the income should be deducted. [See Sunil Kumar Vs. Ram Singh Gaud and Others,].

16. We may, however, note that in a case of permanent disability, where the injured even for a very small thing would have to depend on the services of another, a direction to deduct the said amount may not be insisted upon.

17. Deduction of 1/3rd is, thus, the ordinary rule.

Upon applying the aforementioned principle, the multiplicand would be annual dependency multiplied by life expectancy minus age of the deceased.

On the aforementioned premise, we may consider the applicability of multiplier method for the purpose of calculating the amount of compensation. The said method was applied in *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 (1) All ELR 657, wherein it was held:

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 thus ceased to be dependant, and other like matters of speculation and doubt.

In *Trilok Chand* (supra), this Court noticed as under:

7. The same principles were recalled by this Court in the case of *Municipal Corporation of Delhi Vs. Subhagwanti and Others*, . In this case the claim for compensation arose on account of loss of life caused by the collapse of the Clock Tower abutting a highway. The Court referred to both the aforementioned judgments, and extracted the following passage from the judgment in the case of *Davies*:

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 dependant, and other like matters of speculation and doubt.

In *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, , this Court stated the law, thus:

32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do.

In regard to the choice of the multiplier, *Halsbury's Laws of England* in Vol. 34, states, thus:

However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high taxpayer. The multiplicand is based on the rate of

wages at the date of trial. No interest is allowed on the total figure.

The legislation being a beneficent one, the provisions thereof should be interpreted liberally but it is also well settled that it does not contemplate unjust enrichment. We may, however, notice that in *New India Assurance Co. Ltd. Vs. Charlie and Another*, this Court held:

14. 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.

In *United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc.*, however, this Court following the earlier decisions in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, as also *Trilok Chand (supra)*, held:

16. What thus emerges from the above decisions is that the court must adhere to the system of multiplier in arriving at the proper amount of compensation, and also with a view to maintain uniformity and certainty. Use of higher multiplier has been deprecated and it is emphasized that it cannot exceed 18. The multiplier, as would be evident from the observations quoted earlier, may differ in the peculiar facts and circumstances of a particular case as according to the example cited, where a bachelor dies at the age of 45, the age of his dependent parents may be relevant for selecting a proper multiplier. Meaning thereby that a multiplier less than what is provided in the Schedule could be applied in the special facts and circumstances of a case. In the later cases also this Court has taken the same view that multiplier system is a more appropriate and proper method for calculating the amount of compensation. *Lata Wadhwa and Others Vs. State of Bihar and Others*, may be referred to. Decision in the case of *Susamma Thomas* and other English decisions considered in the judgments referred earlier, namely, *Davies v. Taylor*, *Davies v. Powell Duffryn Associated Collieries Ltd.* and *Mallett v. McMonagle* have been referred to.

18. By and large, therefore, the Court had proceeded on the basis that the multiplier mentioned in the Second Schedule should be taken to be the guide but it may not be.

19. The multiplier specified in the Second Schedule may not be decisive for calculating compensation in cases of death. In fact, the word multiplier has been used only for the purpose of calculating damages in the case of permanent disability and not in the case of death as would appear from note 5 and 6 appended thereto.

20. The Second Schedule provides for payment of the amount of compensation to the persons whose income is from Rs. 3,000/- to Rs. 40,000/- per annum, depending upon the age of the deceased; as for example if the age of the deceased is 15 years, the amount of compensation payable would be 60,000/-, but where the annual income is Rs. 3,000/-, a sum of Rs. 50,000/- has been specified therefore even if the age of the deceased is between 35 to 65 years.

21. The Parliament had, therefore, thought that Rs. 50,000/- should be the minimum amount of compensation payable to legal representatives of those persons whose annual income is Rs. 3,000/- per month. For the said purpose, the multiplier specified in the Second Schedule has no role to play. Even in absence of the multiplier in the Second Schedule, the amount of compensation payable would be the same irrespective of the multiplier specified therein.

22. We may, however, notice that in a given case even in terms of the Second Schedule where the compensation is payable on the basis of a no fault liability, the amount of compensation may be higher than the one which has been specified in the Second Schedule in case of a fault liability.

23. The question, in an appropriate case, may require consideration by a larger Bench.

24. In this case, however, the deceased was a businessman. What was the actual loss of dependency to the family was his contribution to run the business. The assets of the business remained. The amount of compensation, therefore, was required to be determined keeping in view that factor in mind.

25. Application of the multiplier of 10, therefore, cannot be said to be bad in law. In terms whereof the amount of compensation would come out to Rs. 12,50,000/-, although the High Court, in our opinion, might not, thus, be entirely correct in opining that the remaining loss could be made good. We, however, need not delve into the said question any further as we are of the opinion that the ultimate decision of the High Court is correct.

26. We, therefore, do not find any merit in this appeal, which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.