

(2010) 01 AHC CK 0056
In the Allahabad High Court

U.P. State Road Transport Corporation	Vs	APPELLANT
Smt. Naima Rehman and Others		RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Insurance Act, 1938 — Section 64VB
Motor Vehicles Act, 1988 — Section 147, 149, 163A, 166
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Motor Vehicles Act, 1988 — Section 147, 149, 163A, 166
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Motor Vehicles Act, 1988 — Section 147, 149, 163A, 166

Citation : (2010) 3 AWC 2435

Hon'ble Judges : Ram Autar Singh, J;Prakash Chandra Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ram Autar Singh, J.—This first appeal arises out of judgment and award dated 27.5.2006 passed by Shri P. K. Mishra, learned Additional District Judge/Motor Accident Claims Tribunal (hereinafter "The Tribunal"), Rampur in M.A.C.P. No. 141 of 2004 whereunder the claim of Rs. 12,50,000 as compensation alongwith 4% per annum interest from the date of filing of the claim petition has been allowed.

2. Being aggrieved thereby the U.P.S.R.T.C. appellant (hereinafter the appellant) has preferred this appeal. The facts of the case in a narrow compass are recapitulated hereinbelow:

3. The petition was moved by the claimant-respondents against appellant and two others u/s 166 of Motor Vehicles Act, 1988, with this allegation that on 1.7.2004 Khalid Hussain, husband of the claimant Smt. Naima Rehman alongwith his brother Kamran Ahmad was coming from Dhamora to Rampur by Motorcycle No. U.P.22-C/0791 with moderate speed on left side of the road and when he reached in front of Wings & Nest Hotel at about 11.30 a.m., the offending bus No. U.P.53-L/9942 being driven by its driver rashly and negligently came from

opposite direction and its driver without showing any indicator turned the said bus with the same fast speed on wrong direction towards the said Hotel and collided with motorcycle, in which Khalid Hussain, driver of the motor-cycle sustained grievous injuries and died in District Hospital, Rampur due to his injuries, but pillion rider Kamran Ahmad had narrow escape.

4. It has further been alleged that deceased Khalid Hussain during his life time was working as A.G.-1 (d) in Food Corporation of India and drawing Rs. 15,512 per month as salary, out of which he used to maintain his family and due to his sudden death all the petitioners were deprived of the said income of the deceased. The petitioner No. 1 Smt. Naima Rehman, wife of the deceased and petitioners No. 2 and 3, being son and daughter claimed themselves to be his legal heirs and filed claim petition for a compensation of Rs. 50 lacs.

5. The U.P.S.R.T.C. opposite party No. 1 filed its written statement alleging that on 1.7.2004 its bus No. U.P.53-L/9942 was going from Delhi to Siddharth Nagar and its driver was driving the same with moderate speed and when it reached near Wings & Nest Hotel, Rampur at about 11 a.m., its driver after giving signal turned the said bus towards the said hotel and when it crossed half of pitch road, all of sudden a motorcycle being driven by its driver negligently came from opposite direction, lost control over the same and collided with the bus, in which the driver of the motorcycle sustained injuries and died in District Hospital, Rampur and thus the accident took place due to negligence of deceased.

6. The opposite party No. 2-United India Insurance Company in its written statement expressed its ignorance about fact relating to accident in question. The insurance company also expressed his ignorance about the age, income and profession of the deceased Khalid Hussain. It has been alleged by opposite party No. 2 that the said motorcycle was not insured with the insurance company and it was unnecessarily impleaded in the petition.

7. The opposite party No. 3 claiming himself to be the owner of the said motorcycle No. U.P.22-C/0791 filed his written statement alleging that the said motorcycle No. U.P.22-C/0791 was insured with opposite party No. 2 on the date of the accident and the deceased was having effective and valid driving licence at that time. Admitting the allegations made in the claim petition opposite party No. 3 alleged that at the time of accident motorcycle No. U.P.22-C/0791 of opposite party No. 3 was being driven by deceased with moderate speed and when he reached in front of Wings & Nest Hotel, bus No. U.P.53-L/9942 being driven by its driver negligently and rashly, came from opposite direction and all of sudden, driver of the said bus turned the same towards the said hotel on wrong direction and collided with the motorcycle, as a result of which Khalid Hussain sustained grievous injuries and he succumbed to same.

8. The learned Tribunal framed following six issues on the basis of pleading of parties.

1. Whether the accident took place due to rash and negligent driving of bus No.

U.P.53L/9942 on 1.7.2004 at 11.30 a.m. in front of Wings & Nest Hotel within the circle of P.S. Civil Lines, District Rampur, in which driver of the above bus collided the same with motorcycle No. U.P.22-C/0791 being driven by Khalid Hussain from Dhamora to Rampur in which Khalid Hussain sustained, injuries and ultimately died due to his injuries?

or

Whether the accident took place due to motorcycle being driven by Khalid Hussain rashly and negligently, in which Khalid Hussain succumbed to his injuries?

2. Whether the deceased Khalid Hussain driver of motorcycle was having valid and effective driving licence at the time of the accident?

3. Whether motorcycle involved in the accident was insured with opposite party No. 2 at the time of the accident?

4. Whether the petition is barred by Section 64VB of Insurance Act?

5. Whether the petition is barred by Section 147/149 of Motor Vehicle Act?

6. Whether the petitioners are entitled to get any amount of compensation? If so, to what amount and from whom?

9. On behalf of petitioners, P.W. 1 Kamran Ahmad was examined to prove the factum of accident as alleged in petition. Opposite party No. 1 examined/D.W. 1 Panchmeshwar Tripathi in defence. The petitioners also filed documentary evidence in support of allegations made in petition. The learned Tribunal decided issue No. 1 in favour of the petitioners holding that the accident took place due to rash and negligent driving of the driver of bus No. U.P.53-L/9942, who turned the said bus without giving any signal/indicator towards Wings & Nest Hotel on wrong direction on 1.7.2004 at 11.30 a.m. and collided the same with motorcycle No. U.P.22-C/0791, in which Khalid Hussain sustained grievous injuries and ultimately he died in District Hospital, Rampur, during his treatment. The learned Tribunal decided issues No. 2 and 3 in negative against the opposite parties. No argument was advanced on issues No. 4 and 5 and thus these issues were decided in negative. The learned Tribunal decided issue No. 6 in favour of the petitioners and awarded Rs. 12,50,000 as compensation on account of death of Khalid Hussain in the said accident giving reasons therein.

10. The opposite party No. 1 has challenged said judgment and award contending that this is a case of head-on-collision but the Motor Accident Claims Tribunal wrongly fastened the liability upon the appellant.

11. We have considered submissions made on behalf of parties and carefully examined the evidence on record.

12. The learned Counsel for the appellant has contended that the offending bus was being driven with moderate speed and was taken turn after giving signal,

but the learned Tribunal recorded the findings otherwise that the bus was being driven rashly and negligently. The bus could not be driven with fast speed while taking turn otherwise it could be turned turtle and thus the findings recorded by the learned Tribunal was not based upon cogent reasons and it completely ignored the possibility of contributory negligence. It has further been contended that the deceased was not having a valid driving licence and he was not a skilled driver, at the time of the accident. The learned Tribunal calculated the amount of compensation on the basis of gross salary of Rs. 14,500, whereas the deceased was getting only Rs. 12,811 per month after mandatory deductions.

13. The learned Counsel for respondents repelling the above contentions has contended that the learned Tribunal rightly held the driver of the bus of appellant liable for causing accident because on the basis of the evidence the driver of the said bus turned it towards Wings & Nest Hotel on wrong direction without giving signal and collided the same with motorcycle of the deceased coming from opposite direction.

14. A perusal of the record would go to show that the learned Tribunal has rightly placed reliance on the testimony of P.W. 1 Kamran Ahmad, who was a pillion rider of the motorcycle at the time of the accident and he witnessed the entire scene of the incident. He categorically stated that he alongwith his brother Khalid Hussain was coming from Dhamora to Rampur on 1.7.2004 by motorcycle No. U.P.22-C/0791 and when he alongwith him reached at about 11.30 a.m. in front of Wings & Nest Hotel, the offending bus No. U.P.53-L/9942 being driven in rash and negligent manner came from opposite direction, i.e., Rampur side and its driver without giving signal turned the said bus towards the said hotel and collided it with their motorcycle in which his brother Khalid Hussain sustained grievous injuries and ultimately he died in District Hospital, Rampur and the driver of the said bus eluded his capture. He also stated that he lodged an F.I.R. at P.S. Shahzad Nagar about the said accident.

15. Nothing was elicited in his cross-examination which could make his testimony unreliable. This witness in his cross-examination further stated that the motorcycle was being driven by deceased Khalid Hussain with moderate speed at the time of the accident but the driver of offending bus turned it towards his right hand, i.e., Wings & Nest Hotel without giving signal and due to rash and negligent driving of the bus the said accident took place. The learned Tribunal rightly believed the testimony of P.W. 1 Kamran Ahmad and rejected the testimony of D.W. 1 Panchmeshwar Tripathi, conductor of the said bus, on the ground that he admitted in his cross-examination that he could not see actual scene of occurrence from his seat. The learned Tribunal rightly recorded its findings on the basis of the evidence of D.W. 1 Panchmeshwar Tripathi and circumstances attending to the case that the bus was being driven with fast speed at the time of the accident and driver of the bus turned it with same speed. Issue No. 1 has been rightly decided in favour of the petitioners with which no interference is required.

16. The learned Tribunal has rightly held that non-production of driving licence of the deceased Khalid Hussain would not affect the rights of the petitioners in getting the compensation. He further held that no insurance policy certificate could be filed on behalf of the petitioners, as a result of which presumption would be drawn that there was no insurance policy of the motorcycle at the time of the accident and at the most liability of the insurance, company could be held in respect of third party.

17. No liability was fastened on opposite party No. 2 by the learned Tribunal. No argument has been advanced on behalf of the appellant on issues No. 4 and 5 before this Court. The findings recorded by Tribunal on issues No. 2, 3, 4 and 5 have not been challenged by appellant in this appeal.

18. The learned Counsel for appellant has vehemently contended that the learned Tribunal committed factual and legal error in calculating the amount of compensation, because the amount of compensation should have been calculated on the basis of basic pay and D.A. out of which the amount of G.P.F. and income tax was liable to be deducted. Moreover the amount awarded by Tribunal is highly excessive and liable to be reduced in view of personal expenditure to be incurred on deceased.

19. So far as the findings recorded by learned Tribunal on issue No. 6 is concerned, there is evidence on record to this effect that the deceased Khalid Hussain was drawing Rs. 15,512 per month as salary while he was working as A.G.-1 (d) in Food Corporation of India. The salary certificate has been proved by P.W. 3 Jai Ram Sharma working as accountant in Food Corporation of India, who has stated that deceased Khalid Hussain was working on above post in Food Corporation of India till the time of accident. This fact has also been corroborated by P.W. 2 Smt. Naima Rehman, wife of the deceased in her testimony. The learned Tribunal on the basis of evidence on record deducted Rs. 1,000 as income tax from total income of Rs. 15,512 and found Rs. 14,512 per month as actual salary of deceased and taking round figure found his monthly income at Rs. 14,500 and annual income at Rs. 1,74,000.

20. The learned Tribunal further held that 1/3rd amount as personal expenditure to be incurred on deceased should be deducted which came to Rs. 58,000 and thus net income of the deceased came to Rs. 1,16,000/per annum. The learned Tribunal adopting the multiplier of 11 calculated the amount of compensation as Rs. 12,76,000 in addition to funeral expenses of Rs. 2,000, mental agony of Rs. 5,000 and loss of property of Rs. 2,500 and thus total amount of compensation worked out to be Rs. 12,85,500 and taking the round figure learned Tribunal calculated the amount of compensation at Rs. 12,50,000 and held that out of the said amount petitioner No. 1 Smt. Naima Rehman would get Rs. 6,50,000 and petitioners No. 2 and 3 would get Rs. 3,00,000 each. It was further directed that the share of petitioner No. 1 would be deposited in any nationalised bank in fixed deposit scheme for a period of six years and the petitioners would get interest at the rate of 4% on the said amount of compensation from the date of

presentation of petition till date of actual payment.

21. The learned Counsel for the respondents/claimants has relied on the decision in the case of *Asha and Others Vs. United India Insurance Co. Ltd. and Another*, wherein the salary certificate of the deceased shows that the salary of the deceased was Rs. 8,632, but the High Court after making necessary deductions held the salary to be Rs. 6,642. The Hon''ble Apex Court held that the High Court was wrong in deducting the allowances and amounts paid towards L.I.C., Society charges and H.B.A. etc. because the claimants would have been receiving the same amount at the time when the deceased was alive. Thus, the claimants are entitled to get compensation for the loss suffered by them. There can be no doubt the dependents would only be receiving the net amount less 1/3rd for his personal expenses.

22. The Hon''ble Apex Court in the case of *Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.* 2009 (2) TAC 677 : 2009 (2) ACCD 924 : 2009 (3) AWC 2138 (SC), has discussed various aspect of accident cases settling the judgments in this regard. The Hon''ble Apex Court has observed that it would be appropriate to recall the relevant principles relating to assessment of compensation in cases of death. Earlier, there used to be considerable variation and inconsistency in the decisions of Courts/Tribunals on account of some adopting the Nance method enunciated in *Nance v. British Columbia Electric Railway, Company Limited* 1991 AC 601, and some adopting the view method enunciated in *Devies v. Powell Dufryn Associated Collieries Limited* 1942 AC 601. The difference between the two methods was considered and explained in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, . After exhaustive consideration, the Hon''ble Apex Court preferred the Davies method to Nance method. In *Susamma Thomas* case the principles laid down can be reproduced as below:

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 imponderable e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his 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 the deceased might have got better employment or income or might have lost his employment or income altogether.

The matter 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 year's 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 award 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.

23. In 17. U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, the Hon'ble Apex Court while reiterating the preference to Davies method followed in *Susamma Thomas* has made following observations:

In the method adopted by Viscount Simon in the case of *Nance* 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 dependent, remarriage, accelerated payment and increased earning 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 life-span taken. This 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 *Susamma Thomas* case, usually English Courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when Tribunals/Court 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*, 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 dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multipliers.

24. In Susamma Thomas case it has been observed that the proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation. 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 to the age of 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 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.

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 dependant family, constitutes the multiplicand.

Step 2.

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 the age has been identified. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3.

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

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

25. 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 *Susamtna Thomas*, it has been held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand and that where the deceased had a stable job, the Court can take note of the prospects of the future and it would be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death.

26. The personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependents. 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 the 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 towards personal and living expenses of the deceased, one third of the income if the deceased was a married, and one-third of income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction, got statutory recognition under Second Schedule to the Act, in respect of claims u/s 163A of the Motor Vehicles Act, 1988.

27. But such percentage of deduction is not an inflexible rule and offers merely a guideline. In *Susamma Thomas* case, it was observed that in the absence of evidence, it is not unusual to deduct one-third of the gross income towards 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 of the deceased.

28. The Hon'ble Apex Court in the case of *Oriental Insurance Company Limited v. Deo Patodi and Ors.* 2009 (4) AWC 3331 : 2009 (3) ACCD 1421 (SC), has observed that deduction of one-third towards personal expenses is ordinarily the rule in India. In the case of *National Insurance Co. Ltd. Vs. Pitam Singh and Another*, it has also been observed that the deduction of one-third made by the Tribunal calls for no interference. In the case of *Bilkish v. United India Insurance Company Limited and Anr.* 2008 (2) AWC 2043 : 2008 (2) ACCD 851 (SC), it has been observed that one-third amount should be deducted as personal expenses of the deceased from his income.

29. So far as multiplier used in the present case is concerned, Second Schedule of M. Vehicles Act, provides the multiplier of 11 in the case of the deceased between 51 to 55 years. In view of the permanent account No. OAA HPH 1597 the date of birth of the deceased has been found as 1.1.1951 and thus the age of the deceased Khalid Hussain has been found to be 53 years at the time of

accident and thus the learned Tribunal has rightly used multiplier of 11 in this case which does not suffer from any error or illegality.

30. The salary slip relating to June, 2004 filed in the court below has been proved by P.W. 3 Jai Ram Sharma in view of which the deduction of Rs. 1,000 as Income Tax has been shown and sum of Rs. 1,691 has been shown to be deducted towards G.P.F. The learned Tribunal has rightly held that the amount of G.P.F. is contributed by the employee himself and on retirement he gets this amount alongwith interest and thus the amount of G.P.F. deducted from the salary cannot be excluded from his income. On account of deduction of Rs. 1,000 per month as Income Tax from the salary of the deceased the net income of the deceased comes to Rs. 14,512 per month and the learned Tribunal has rightly held that the said amount in round figure comes to Rs. 14,500 per month. No other amount can be said to be deductible from the income of the deceased in order to calculate the amount of compensation on account of his death in the accident. The learned Tribunal has rightly deducted one-third amount from the income of the deceased which has been presumed to have been spent on the deceased himself during his life time as he would have spent this amount on himself and thus learned Tribunal has not committed any error in deducting one-third amount from his income.

31. In view of above discussions, we are in full agreement with the findings recoded by the learned Tribunal, which do not suffer from infirmity or illegality. No error is found in the award passed by the learned Tribunal in calculating the amount of compensation granted to the petitioners. There is no illegality or irregularity in the judgment and award which does not require any interference. Consequently this appeal lacks merit and is dismissed. The judgment and award passed by the learned Tribunal is confirmed. The parties shall bear their own costs.