

CASE NO.:
Appeal (civil) 4267 of 2002

PETITIONER:
U.P. State Road Transport Corpn.

RESPONDENT:
Krishna Bala & Ors.

DATE OF JUDGMENT: 13/07/2006

BENCH:
ARIJIT PASAYAT & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this Appeal is to the judgment of a Division Bench of the Allahabad High Court which dismissed the First Appeal filed by the appellant against the Award passed by a Motor Accident Claims Tribunal (XII Additional District Judge, Meerut) (in short the 'Tribunal'.)

By the Award made, the Tribunal awarded compensation of Rs.5,12,000/- to the respondents (hereinafter referred to as the 'Claimants'). One Rajveer Singh (hereinafter referred to as the 'deceased') died in a motor accident on 29.11.1990. The claimants filed a claim petition under the Motor Vehicles Act, 1988 (in short the 'Act'). Age of the deceased was around 36 years and he is earning monthly salary of Rs.2300/- per month. Though claim of agricultural income was made, the Tribunal did not accept the same. It adopted multiplier of 22 on the ground that the deceased had 22 years of service left. It was further noted that thereafter the deceased would have got pension. The widow of the deceased and children were awarded Rs.20,000/- towards love and affection, and Rs.5,000/- for funeral rites. After adopting a multiplier of 22 the amount was fixed Rs.6,07,200/-. After taking note of personal expenses the loss of dependency was fixed at Rs.1600 per month. In addition interest at the rate of 12% from the date of application was granted.

The Corporation questioned correctness of the award before the High Court. It, inter alia, submitted that the multiplier adopted and the rate of interest therein was high. The High Court dismissed the appeal almost summarily holding that the award was not excessive.

In support of the appeal, learned counsel for the appellant\026Corporation submitted that the multiplier of 22 adopted by the Tribunal and maintained by the High Court is high considering the age of deceased. Similarly rate of interest is 12% per annum as awarded by the trial court and maintained by the High Court is characterized as high.

Learned counsel for the respondents submitted that the multiplier and the interest have been correctly applied. It is further submitted that the amount awarded is very small and hence this Court should not interfere.

Certain principles were highlighted by this Court in the case of *Municipal Corporation of Delhi v. Subhagwanti* (1966 (3) SCR 649) in the matter of fixing the appropriate multiplier and computation of compensation. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death. "How much has the widow and family lost by the father's death?" The answer to this lies in the oft quoted passage from the opinion of Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* (All ER p.665 A-B) which says:

"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 sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt."

There were two methods adopted to determine and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in *Davies* case (supra) and the second in *Nance v. British Columbia Electric Railway Co. Ltd.* (1951 (2) All ER 448) .

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.

The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in *Mallett v. Mc Mongle* (1969 (2) All ER 178) where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

"The starting point in any estimate of the amount of the 'dependency' is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But....there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As

his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4- 1/2% the present value of an annuity for 20 years of which the first ten years are at \$ 100 per annum and the second ten years at \$ 200 per annum, is about 12 years' purchase of the arithmetical average annuity of \$ 150 per annum, whereas if the first ten years are at \$200 per annum and the second ten years at \$ 100 per annum the present value is about 14 years' purchase of the arithmetical mean of \$ 150 per annum. If therefore the chances of variations in the 'dependency' are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the 'dependency' used for the purpose of assessing the damages."

In regard to the choice of the multiplicand the Halsbury's Laws of England in vol. 34, para 98 states the principle thus:

"98. Assessment of damages under the Fatal Accident Act, 1976 \026 The courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the

deceased's working life at the date of death."

As to the multiplier, Halsbury states:

"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 tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure."

In both Susamma Thomas and Trilok Chand's cases (supra) the multiplier appears to have been adopted taking note of the prevalent banking rate of interest.

In Susamma Thomas's case (supra) it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16 the multiplier of 18 as was adopted in Trilok Chandra's case (supra) appears to be appropriate. In fact in Trilok Chand's case (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian Citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age. (See: New India Assurance Co. Ltd. v. Charlie and Another [2005 (10) SCC 720].

Considering the principles as set out above the multiplier as adopted by the Tribunal and maintained by the High Court is clearly indefensible. Considering the age of the deceased the aforesaid multiplier would be 13. Calculated on that basis by taking monthly loss of dependency at Rs.2.000/- (after

adjusting for personal expenses and likelihood of increase in salary) the compensation to be awarded would be Rs.3,12,000/-. To the aforesaid sum would be added Rs.25,000/- awarded by the Tribunal for deprivation of love and affection and funeral expenses and, therefore, entitlement of the claimants is Rs.3,37,000/-. The accident took place on 29.11.1990. Therefore, the rate of interest would be 9% from the date of filing of the claim petition. Claimants would be entitled accordingly. Appeal is allowed to the aforesaid extent. No orders as to costs.

JUDIS