REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 105 OF 2009
[Arising out of SLP (Civil) No. 6227 of 2006]

Mohan Singh …Appellant

Versus

Kashi Bai & Ors. …Respondents

J U D G M E N T

S.B. SINHA, J :

1. Leave granted.

2. Appellant before us is the driver and owner of the jeep bearing registration No. MP-04J 1824 which met with an accident on 21.11.1999 having collided with a truck. The deceased Balma @ Balram Gond, Ramgopal and Shankarlal admittedly were travelling in the said vehicle.

3. A First Information Report was lodged. The heirs and legal representatives of the deceased filed applications for grant of compensation

in terms of Section 166 of the Motor Vehicles Act, 1988 (for short "the Act") which was marked as Claim Case Nos. 76, 78 and 79 of 2002.

4. The learned Tribunal, having regard to the rival contentions of the parties, framed the following issues:

> "1. Whether on 21.11.99 in the night at about 8 a.m. near village Semri, non applicant No. 1 driving Jeep No. MP04 1824 and truck No. MP04K2028 driven negligently and rashly the collision between the two vehicle occurred and in the result Shankarlal died.
> 2. Whether there was contributory negligence on the part of both the drivers? If so, effect.
> 3. At 8 p.m. Jeep No. MP04J1824 was dashed by truck No. MP04 K 2028 and the accident was caused, if so, effect..
> 4. Whether applicants are entitled for compensation.
> 5. Relief & Cost."

5. The learned Tribunal upon consideration of the depositions of the witnesses held that neither the truck No. MP04K 2028 was involved in the accident, nor was it caused on account of rash and negligent driving on the part of its driver. The learned Tribunal passed awards in all the three cases as under:

Claim Case No. 76 of 2002	Rs. 1,32,000/-
Claim Case No. 78 of 2002	Rs. 1,92,000/-
Claim Case No. 79 of 2002	Rs. 4,22,400/-

6. Appeals were preferred thereagainst by the appellant. By reason of the impugned judgment, the High Court, however, reversed the said findings, holding:

> "16. Coming to question of negligence, though Mohan Singh and two other witnesses examined by the claimant has stated that it was the truck driver who drove it in rash and negligent manner. However, in the claim petition, it was rightly mentioned that jeep driver also drove it in rash and negligent manner and the accident took place when two vehicles dashed against each other. Both were coming from opposite direction, thus, it was the duty of both the drivers to avoid the collision in which they have failed. Thus, we come to the conclusion that it is a case of contributory negligence in equal proportion of both drivers."

Although we are of the opinion that the High Court in doing so should have considered the matter at some details and it was further required to assign some reasons in support thereof, but, it is not necessary

for us to consider that aspect of the matter as the owner or the insurer of the truck having not preferred any appeal, the same has attained finality.

In this appeal we are concerned with only one question, viz., as to whether any case has been made out for enhancement of the amount of compensation in favour of the appellant.

7. So far as the quantum of compensation is concerned, the Tribunal proceeded on the basis that the age of the deceased Shankarlal was 35 years. His monthly income was assessed at Rs. 1500/- per month. One-third of the said amount was deducted as his personal expenditure. Applying the multiplier of 10, it was held that the applicants were entitled to compensation of Rs. 1,20,000/-.

As regards the quantum of compensation payable to the heirs and legal representatives of the deceased Balma is concerned, the loss of dependency was determined at Rs. 12,000/- per annum by the Tribunal. Having regard to the fact that he was aged 25 years, the multiplier of 15 was used to hold that a compensation for a sum of Rs. 1,92,000/- should be granted.

The deceased Ram Gopal was aged 31 years at the time of the accident. A multiplier of 12 was used in his case and the amount of compensation of Rs. 4,22,400/- was held to be payable to him on the premise that the loss of dependency was Rs. 34,200/- per annum.

8. The High Court, however, although did not interfere with these finding of facts, applied the multiplier of 17 in all the cases.

9. Mr. Shiv Sagar Tiwari, learned counsel appearing on behalf of the appellant would contend that the High Court committed a serious error in holding that the multiplier of 17 should be applied in modification of the order of the Tribunal.

10. The liability to pay compensation in a case where a vehicle meets with an accident is principally that of the owner thereof. The age of the deceased as also the loss of dependency suffered by his heirs respectively and legal representatives is seriously not in dispute.

11. The core question, therefore, which arises for consideration is as to whether the multiplier specified in the table contained in the Second Schedule appended to the Act should have been applied. Although the

Second Schedule is applicable only in respect of the claim petitions filed under Section 163A of the Act, indisputably, the same provides for some guidelines. In a case where the deceased was above 25 years but not exceeding 30 years, in terms of the said Second Schedule, the multiplier of 18 is to be applied. In the case of the deceased whose age was above 30 years but not exceeding 35 years, the multiplier of 17 in terms of the Second Schedule is required to be applied. The High Court, therefore, in our opinion, has applied the correct multiplier. The quantum of multiplicand, as noticed hereinbefore, is not in question. In a case of this nature, it is not necessary to go into the larger question, viz., as to whether the courts should apply the multiplier specified in the Second Schedule in a proceeding under Section 166 of the Act.

12. In General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and others, [(1994) 2 SCC 176] apart from applying the structured formula for determination of the amount of compensation with regard to the future prospect of the deceased, it was opined :-

> "19. In the present case the deceased was 39 years of age. His income was Rs 1032 per month. 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 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. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs 1032 per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs 2000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier. In the present case we can take about Rs 1400 per month or Rs 17,000 per year as the loss of dependency and if capitalized on a multiplier of 12, which is appropriate to the age of the deceased, the compensation would work out to (Rs 17,000 x 12 = Rs 2,03,000) to which is added the usual award for loss of consortium and

> loss of the estate each in the conventional sum of Rs 15,000."

In Kaushnuma Begum v. New India Assurance Co. Ltd., [(2001) 2 SCC 9] this Court observed:-

> 22**.** The appellants claimed a sum of Rs 2,36,000. But PW 1 widow of the deceased said that her husband's income was Rs 1500 per month. PW 4 brother of the deceased also supported the same version. No contra-evidence has been adduced in regard to that aspect. It is, therefore, reasonable to believe that the monthly income of the deceased was Rs. 1500. In calculating the amount of compensation in this case we lean ourselves to adopt the structured formula provided in the Second Schedule to the MV Act. Though it was formulated for the purpose of Section 163-A of the MV 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."

In United India Insurance Co. Ltd. v. Patricia Jean Mahajan, [(2002) 6 SCC 281], however, this Court held :-

> "21. The purpose to compensate the dependants of the victims is that they may not be suddenly deprived of the source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be a just and fair compensation. But in cases where the amount of compensation may go much higher than the

> amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases, the amount of multiplicand becomes relevant. The intention is not to overcompensate.
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> 22. We therefore, hold that ordinarily while awarding compensation, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as the one in hand, which may fall in the category having special features or facts calling for deviation from the multiplier usually applicable."

It is evident from the above that this Court in the said decisions had taken a departure from the Second Schedule.

In Jyoti Kaul v. State of M.P., [(2002) 6 SCC 306] multiplier of 15 was adopted, stating :-

> "The aforesaid decision makes it clear that the principle of multiplier would depend on the facts and circumstances of each case. Looking to the facts of this case we find that the Tribunal has given good reasons for applying the multiplier of 15. This was in addition of taking into consideration that the predecessors of the deceased all lived for more than 80 years. The High Court reduced the multiplier from 15 to 10 without taking into consideration circumstances considered by the Tribunal and thus committed the error. We, accordingly, set aside the findings of

> the High Court only to the extent of the application of multiplier and uphold other findings including reduction of interest. The present appeal, accordingly, succeeds in part. The computation of compensation now shall be made on the basis of multiplier of 15. The difference of enhanced amount which has yet not been paid by the respondent State shall be paid to the claimants within a period of three months from today."

In Smt. Supe Dei & Ors. v. M/s. National Insurance Co. Ltd. & Anr. [JT 2002 (Suppl.1) SC 451], this Court held:

> "…While considering the question of just compensation payable in a case all relevant factors including the appropriate multiplier are to be kept in mind. The position is well settled that the second schedule under Section 163A to the Act which gives the amount of compensation to be determined for the purpose of claim under the section can be taken as a guideline while determining the compensation under Section 166 of the Act. In that view of the matter, there is no reason why multiplier of 17 should not be taken as the appropriate multiplier in the case."

In Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Another [(2003) 3 SCC 148], this Court held:

> "11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.
>
> 12. The victim at the relevant time was 40 years of age. The Tribunal and the High Court, therefore, cannot be said to have committed an error in applying the multiplier of 15. The only question which is required to be considered now is as to how the multiplicand should be arrived at.
>
> 13. The deceased at the time of accident was a young man. He had a stable job. A reasonably liberal view of his future prospects should have, therefore, been taken into consideration by the High Court as well as by the Tribunal.
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> 14. Having regard to the prospects and advancement of the future career, a higher estimate of the yearly income at Rs.45,000 would not be out of place. From the said amount, one-third of the gross income towards personal living expenses should be deducted. The amount of Rs 30,000 should thus be determined as the loss of dependency. The said sum should be capitalized by applying the multiplier of 15, which comes to Rs 4,50,000."

In Kanhaiyalal Kataria and Others v. Mukul Chaturvedi and Others [(2005) 12 SCC 190], this Court held:

> "3. Learned counsel for the claimants made submissions seeking enhancement of compensation on the ground that the income of the deceased has not been properly estimated. We are not going into any other aspect except the question of proper multiplier for computation of compensation. In our opinion, by taking the multiplier of 17, the amount of compensation deserves to be increased. The compensation amount may be suitably recomputed by the Tribunal by applying the multiplier of 17 and interest at the rate of 12 per cent per annum on the increased amount be also granted."

In Bilkish v. United India Insurance Company Limited and Another [(2008) 4 SCC 259], this Court held:

> "4. After hearing learned counsel for the parties, we are of the opinion that the view taken by the High Court and the Tribunal is not correct. The incumbent was a bachelor and he could not have spent more than 1/3rd of his total income for personal use and rest of the amount earned by him would certainly go to the family kitty. Therefore, determining the loss of dependency by 50% was not correct. Therefore, we assess that he must be spending 1/3rd towards personal use and contributing 2/3rd of his income to his family. Therefore, we work out that Rs 30,000 was earned by him per annum. The loss of dependency was 2/3rd i.e. Rs 20,000. The multiplier of '11' applied for loss of dependency was also not correct and as per Schedule appended to the Motor Vehicles Act, 1988 it should be '12'. Applying the multiplier of 12 the total loss of dependency will

> be Rs 20,000 x 12 = Rs 2,40,000 and Rs 10,000 towards loss of estate and funeral expenses, the total compensation comes to Rs 2,50,000 and incumbent is entitled for interest @ 9% p.a. from the date of the petition. The appeal is allowed with the aforesaid modification."

13. We, therefore, keeping in view the aforementioned peculiar facts and circumstances of the case, are of the opinion that the judgment of the High Court in applying the multiplier of 17 need not be interfered with.

14. For the reasons aforementioned, there is no 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.

…….J.
[S.B. Sinha]

..……J.
[Cyriac Joseph]

New Delhi;
January 13, 2009