

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4762 OF 2006

MOHD. AMEERUDDIN & ANR.

... APPELLANTS

VERSUS

UNITED INDIA INSURANCE CO. LTD.
& ANR.

... RESPONDENTS

J U D G M E N T

Aftab Alam, J.

This is the claimants' appeal by grant of special leave arising from a motor accident claim case. The appeal is directed against the judgment and order dated July 28, 2004, passed by the Andhra Pradesh High Court in Civil Miscellaneous Appeal No.2081 of 2004. By the impugned order, the High Court partly allowed the appeal filed by the Insurance Company (the respondent herein) and reduced the amount of compensation awarded by the Tribunal under the head "loss of earnings" from Rs.5,00,000/- to Rs.2,60,000/-.

The appellants' son namely, Aslamuddin died in a motor accident on October 22, 1997. He worked as a Cleaner on the lorry tanker that met with the accident. His parents, the present appellants filed a claim application (O.P. no.954 of 1997) before the Motor Accident Claims Tribunal (Additional District Judge), Nizamabad claiming Rs.5,00,000/- as compensation for his death. Before the Tribunal, the proceedings were held *ex parte* against the owner of the tanker but the respondent, the insurer of the vehicle appeared and resisted the claim of the appellants. The Tribunal

found that the accident took place due to rash and negligent driving by the driver of the tanker. It further found that at the time of death Aslamuddin was aged 20 years. He was getting a salary of Rs.2,500/- per month besides 'batta' (daily allowance) at the rate of Rs.50/-. His monthly earning, thus, came to Rs.4,000/- that is to say Rs.48,000/- per annum. After deducting 1/3rd towards the personal expenses of the deceased, his net contribution to the claimants was held to be Rs.32,000/- per annum.

The Tribunal further noticed that at the time of death Aslamuddin was unmarried and the age of his mother - claimant No.2 was 40 years. It, therefore, took the age of the mother of the deceased for the purpose of assessing compensation. Applying the multiplier of 16 on the basis of the age of the mother of the deceased being 40 years, the Tribunal came to the figure (Rs.32,000 x 16) of Rs.5,12,000/-. However, since the claimants had only made a claim of Rs.5,00,000/-, it awarded the slightly lesser amount as claimed by the appellants.

Against the judgment and order passed by the Tribunal, the Insurance Company filed an appeal before the High Court, which, as noticed above, was partly allowed. For assessing the monthly income of the deceased, the High Court took into account only the monthly salary of the deceased and excluded the amount of daily allowance (Rs.50/-) from consideration observing as follows:

"However, the Tribunal has erred in including batta of Rs.50/- per day, as a part of the salary and assessed the monthly income of the deceased. Batta is not paid as a part of the salary, but it is paid whenever there is work. It is now well settled that batta shall not be calculated in the salary in assessing the income of the deceased."

The High Court further observed that the proper multiplier, appropriate to the age of the mother of the deceased in terms of the ratio laid down by this Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas*, (1994) 2 SCC 176, is 13. Thus, multiplying Rs.30,000 by 13, the High Court arrived at the figure of Rs.3,90,000/- and taking away from it 1/3rd towards the personal expenses of the deceased held that the loss of dependency of the claimants would be not more than Rs.2,60,000/- under the head "loss of future earnings".

We are unable to appreciate the view taken by the High Court on both counts. First, there was no evidence that the daily allowance of Rs.50/- was not paid to the deceased every day or even that he was not on work on every day of the month. On the contrary, there is evidence on record that apart from the monthly salary of Rs.2500/- he was getting Rs.50/- as daily allowance. We, therefore, hold that the Tribunal was right in assessing the monthly income of the deceased at Rs.4,000/-.

Coming now to the question of multiplier, in light of the decision of this Court in *Sarla Verma v. Delhi Transport Corporation*, (2009) 6 SCC 121, 18 would be the proper multiplier where the age of the deceased is between 15 and 25 years and 15 where the age is between 36 and 40 years. The Tribunal has taken the age of the mother for determining the amount of compensation, and, therefore, the proper multiplier in this case would be 15 and on applying the said multiplier, the figure would come to Rs.4,50,000/-. We, accordingly, fix the amount of compensation receivable by the appellants under the head "loss of earnings" at

Rs.4,50,000/- .

The rest of the award made by the Tribunal and affirmed by the High Court remains unmodified.

Needless to say that the differential amount would carry interest at the rate of 9% per annum from the date of the application till the date of payment.

In the result, the appeal is allowed but with no order as to costs.

New Delhi;
November 18, 2010.

.....J.
(Aftab Alam)

.....J.
(R.M. Lodha)



JUDGMENT