U.P. STATE ROAD TRANSPORT CORPORATION AND ORS. A

v.

TRILOK CHANDRA AND ORS.

MAY 7, 1996

[A.M. AHMADI, C.J., N.P. SINGH AND M.K. MUKHERJEE, JJ.] B

Motor Vehicles Act, 1939 : Section 110-B.

Fatal accident—'Just' compensation—Determination of—Held : multiplier method to be applied—To bring uniformity and certainty of the awards made all over the country. C

Motor Vehicles Act, 1988 : Sections 163-A, 163-B, 165-A, 168 and second Schedule.

Fatal accident—Compensation—Calculation of—Held : Second Schedule suffered from several defects in calculation of compensation—Neither Tribunals nor Courts could go by ready reckoner—It could only be used as guide—Selection of multiplier not solely dependent on Age of deceased. D

The respondent, aged 26 years, was knocked down by an omnibus belonging to the appellant-Corporation. His legal representatives preferred a claim for compensation. Taking his earning capacity at Rs. 300 per month, it was estimated that he spent Rs. 200 per month on his family members. Fixing the life expectancy at 60 years, the Tribunal deducted 36 years and held that the family was deprived of his earning for 24 years. The compensation was thus worked out at Rs. 57,600 (200x12x24). This amount was raised to Rs. 81,600 as it was realised that the Tribunal had wrongly taken the age of the deceased at 36 instead of 26 years and had, therefore, committed an error in employing the multiplier of 24 years' purchase factor instead of 34 years' purchase factor. Thus the compensation came to Rs. 200x12x34 = 81,600. The question before this Court was whether the Tribunal was right in employing the multiplier of 24 or the High Court was right in employing the multiplier of 34. E F G

Disposing of the appeal, this Court

HELD : 1. In *Susamma Thomas'* case this Court reiterated that the H

multiplier method is the sound method of assessing the compensation. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168 of the Motor Vehicles Act, 1988) envisaged payment of 'just' compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country. [451-H-452-B]

General Manager, Kerala State Road Transport, Trivandrum v. *Susamma Thomas,* [1994] 2 SCC 176, relied on.

2. It is necessary to reiterate the method of working out 'just' compensation because, of late, the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determining compensation. It must be realised that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two English decisions, viz., *Davies* and *Nance* provide the guidelines for assessing the loss occasioned to the victim. Under the formula advocated 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 multiplier. In the method adopted 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 dependency was reduced, depending on the life-span taken. That is the reason why courts in India as well as in England preferred the *Davies'* formula as being simple and more realistic. However, usually

English courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when Tribunals/Courts began to use a hybrid method of using *Nancy's* method without making deduction for imponderables. [452-C-F, 453-D-F] A

Gobald Motor Services Limited & Anr. v. *R.M.K. Veluswami and others*, AIR (1962) SC 1; *Municipal Corporation of Delhi* v. *Subhagwanti & Ors.*, AIR (1966) SC 1750; *Hirji Virji Transport & Ors.* v. *Basiranbibi,* (1971) 12 Guj LR 783; *C.K.S. Iyer* v. *T.K. Nair,* AIR (1970) SC 376; *Davies* v. *Powell Duffryn Associated Collieries Ltd.*, (1942) AC 601 and *Nance* v. *British Columbia Electric Railways Co. Ltd.*, (1951) AC 601, referred to. B

C

Taylor v. *O' Conor*, [1970] 1 All ER 365 and *Mallett* v. *McMonagle,* [1969] 2 All ER 178, cited.

3.1. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by amendment insofar as it relates to determination of compensation is the insertion of Sections 163A, 163B and 165A. Under the Second Schedule to the Act the maximum multiplier can be upto 18 and not 16 as was held in *Susamma Thomas'* case. Therefore, the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. However, the calculation of compensation and the amount worked out in the Schedule suffer from several defects. Neither the Tribunals nor the Courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. But these mistakes are limited to actual calculations only and not in respect of other items. [453-G, 454-B, E] D E F

3.2. In the instant case, the Tribunal/Court fell into an error in the choice of the multiplier. But, in the circumstances of the case, there is no need to interfere with the quantum of compensation since while the multiplier was excessive, a very low multiplicand was used as the loss of dependency. If the multiplicand is corrected and the correct multiplier is used, the compensation would work out the near about the same figure. [455-A, 454-H] G

This Court directed that copy of this judgment in this case be sent to all the High Courts with a direction to circulate it to the Courts/Tribunals dealing with the Motor Accident compensation cases. [455-B] H

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7760-7761 of 1996.

From the Judgment and Order dated 18.3.93 of the Allahabad High Court in F.A.O. Nos. 268/81 and 281 of 1982.

B Raju Ramachandran and Ms. S. Ramachandran, for the Appellants.

R.A. Mishra for K.K. Gupta for the Respondent Nos. 1-4.

M.H. Baig, Mrs. P.S. Shroff for S.A. Shroff and Mukul Mudgal for the Respondent No. 5.

C

The Judgment of the Court was delivered by

AHMADI, CJ. Special leave granted.

The short question which we are called upon to consider in this D appeal relates to the use of the correct multiplier for determination of compensation to be awarded to the legal representatives of a victim of a road accident. The question arises in the backdrop of the following facts.

Prem Chandra, aged about 26 years, met with a fatal accident on 1st E August, 1977. He was knocked down by an omnibus bearing Registration No. UTW 1802 belonging to the U.P. State Road Transport Corporation. His legal representatives preferred a claim for compensation. Taking his earning capacity at Rs. 300 per month, it was estimated that he spent Rs. 200 per month on his family members. Fixing the life expectancy at 60 years, the Tribunal deducted 36 years and held that the family was deprived F of his earning for 24 years. The compensation was thus worked out at Rs. 57,600 (200x12x24). This amount was raised to Rs. 81,600 as it was realised that the Tribunal had wrongly taken the age of the deceased at 36 instead of 26 years and had, therefore, committed an error in employing the multiplier of 24 years purchase factor instead of 34 years purchase factor. Thus the compensation came to Rs. 200x12x34 = 81,600. The question G then is whether the Tribunal was right in employing the multiplier of 24 or the High Court was right in employing the multiplier of 34?

India is one of the countries with the highest number of road accidents. Motor accidents are every day affairs. A large number of claims for H compensation for injury caused by road accidents are pending in various

Motor Accident Claims Tribunal. In a fatal accident the dependents of the deceased are entitled to compensation for the loss suffered by them on account of the dead. The most commonly practised method of assessing the loss suffered is to calculate the loss for a year and then to capitalise the amount by a suitable multiplier. To that is added the loss suffered on account of loss of expectation of life and the like. the Tribunals and High Courts have adopted divergent methods to determine the suitable multiplier. Even this Court has not been uniform; maybe because the principle on which this method came to be evolved has been forgotten. It has, therefore, become necessary to examine the law and to state the correct principles to be adopted.

The topic of compensation for causing death by negligent driving came up for serious discussion before this Court in *Gobald Motor Services Limited & Anr.* v. *R.M.K. Veluswami and Others*, AIR (1962) SC 1. The Court referred to the House of Lords decision in *Davies* v. *Powell Duffryn Associated Collieries Ltd.*, 1942 Ac 601 and quoted the following passage from the judgment :

> "The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered.
>
> ..... The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other any pecuniary advantage which from whatever source comes to him by reason of the death."

The Court also referred to the judgment by Viscount Simon in *Nance* v. *British Columbia Electric Railways Co. Ltd.*, (1951) AC 601 in which the same principles were enunciated for estimating the damages, the method adopted however differed. Various factors that would enter the calculation as per Viscount Simon were set out in the judgment as under :

> "..... at first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of pre-mature determination of his life by later accidents; secondly, the amount required for the future provision of his wife shall be

A estimated having regard to the amounts he used to spend on her during his lifetime, and other circumstances; thirdly, the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death; fourthly, further deductions must be made for the B benefit accruing to the widow from the acceleration of her interest in his estate; and, fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life; and it should also be taken into account that there is the possibility of the widow remarrying much to the C improvement of her financial position. It would be seen from the said mode of estimation that many imponderables enter into the calculation."

The same principles were recalled by this Court in the case of *Municipal Corporation of Delhi* v. *Subhagwanti & Ors.*, AIR (1966) SC D 1750. 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*:

E 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 dictum or basic figure which will generally be turned into a lump sum by taking a certain F 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 dependent, and other like matters of speculation and doubt."

G In the case before the Court the deceased was Ram Prakash aged 30 years. The High Court found it proper to estimate the amount that the deceased would have spent on his wife and children in a year and capitalised that for a period of 15 years and observed that the Trial Court's calculation was not excessive.

H The compensation to be awarded has two elements. One is the

pecuniary loss to the estate of the deceased resulting from the accident, the other is the pecuniary loss sustained by the members of his family for his death. The Court referred to these two elements in the *Gobald Motor Service's* case. These two elements were to be awarded under Section 1 and Section 2 of the Fatal Accidents Act, 1855 under which the claim in that case arose. The Court in that case cautioned that while making the calculations no part of the claim under the first or the second element should be included twice. The Court gave a very lucid illustration, which can be quoted with profit:

> "An illustration may clarify the position. X is the income of the estate of the deceased, Y is the yearly expenditure incurred by him on his dependents (we will ignore the other expenditure incurred by him). X-Y i.e. Z, is the amount he saves every year. The capitalised value of the income spent on the dependents, subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalised value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the entire loss caused to the estate, they cannot claim again under the head of personal loss the capitalised income that might have been spent on them if the deceased were alive. Conversely, if they got compensation under S.1, representing the amount that the deceased would have spent on them, if alive, to that extent there should be deduction in their claim under S.2 of the Act in respect of compensation for the loss caused to the estate. To put it differently if under S.1 they got capitalised value of Y, under S.2 they could get only the capitalised value of Z, for the capitalised value Y + Z = X would be the capitalised value of his entire income."

The High Court of Gujarat in the case of *M/s. Hirji Virji Transport & Ors.* v. *Basiranbibi*, (1971) 12 Gujarat Law Reporter 783 referred to all the three judgments of this Court mentioned above, considered the principle laid down in *Davies* and *Nance* and explained the law to be applied for ascertaining the damages in such cases. Reference was also made to the judgment of Lord Reid in *Taylor* v. *O'Conor*, (1970) 1 All England Reports 365 and the High Court reiterated Lord Reid's words which we extract:

A "In ordinary cases which do not involve special factors, as one in *Taylor's* case as regards the questions of income tax and surtax, the wealth of experience of Judges and Counsels would be an adequate guide to the selection of this multiplier without any necessity of any expert evidence, so that on this method by adopting a common multiplier the loss of dependency over a period of years can be worked out a lump sum to be given to the dependents."

B

The Gujarat High Court also pointed out that the principles laid down in the case of *Davies* and that in the case of *Nance* led to the same end-results because, although, as per Vascount Simon the dependency C amount is required to be multiplied by the figure of the expected useful life of the deceased, the sum has to be discounted because equivalent amount in lump sum has to be worked out keeping in view the fact that the sum was to be spread over a period of years and secondly, allowance had to be made for uncertainties like the possible pre-mature death of the D dependents or of the deceased had he been alive, remarriage of the widow, acceleration over other interest of the estate, etc. The Gujarat High Court expressed the opinion that if proper discount is done after arriving at the lump sum equivalent to this dependency, spread over for a period of years the end-result will be the same as that calculated by using a proper multiplier to the annual loss. This multiplier is the year's purchase factor. E Referring to the decision of Lord Diplock in *Mallett* v. *McMonagle,* (1969) 2 All England Reports 178 at 191, wherein an annuity table was worked out, the High Court observed that 12 to 15 years' should be the normal multiplier and for the case before the court the outer multiplier of 15 years purchase would be proper. The same view in regard to the range for a F healthy young man was expressed by this Court in *C.K.S. Iyer* v. *T.K. Nair,* AIR (1970) SC 376.

For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of *General Manager, Kerala State Road Transport, Trivandrum* v. *Susamma Thomas*, [1994] 2 SCC 176. In that case G this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed :

H "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 principle was explained and illustrated by a mathematical example :

"The multiplier represents the number of Years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs. 1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs. 10,000 would be 20. Then the multiplier i.e., the number of Years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up."

It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B Motor Vehicles Act, 1939 (corresponding to the present provision of Section 168 Motor Vehicles Act, 1988) envisaged payment of 'just' compensation since the multiplier method is the accepted method for determining and ensuring

payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country.

In the facts of that case the Court said that 12 years was the correct multiplier to be applied for assessing compensation for the death of the victim of the road accident who was 39. Further 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. The court further awarded a conventional sum towards loss of consortium and loss of estate.

We though it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the award made by Tribunals and Courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. 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 multiplier. Let us illustrate: X, male, aged about 35 year, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs. 3,500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make 2 + 2 = 4 units and each minor one unit i.e. 3 units in all, totalling 7 units. Thus the share per unit works out to Rs. 3,500 ÷ 7 = Rs. 500 per month. It can thus be assumed that Rs. 1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expense has to be estimated. In the present case we estimate the out-of-pocket expense at Rs. 250. Thus the amount

spent on the deceased X works out to Rs. 1250 per month leaving a balance of Rs. 3500-1250 = Rs. 2250 per month. This amount can be taken as the monthly loss to X's dependents. The annual dependency comes to Rs. 2250 x 12 = Rs. 27,000. This annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependents. Take the appropriate multiplier to be 15. The compensation comes to Rs. 27,000 X 15 = Rs. 4,05,000. To this may be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs. 3000 but now having regard to the fall in the value of the rupee, it can be raised to a figure of not more than Rs. 10,000. Thus the total comes to Rs. 4,05,000 + 10,000 = Rs. 4,15,000.

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. That 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/Courts began to use a hybrid method of using *Nance's* method without making deduction for imponderables.

The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act, 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163A and 163B in Chapter XI entitled 'Insurance of Motor Vehicles against Third Party Risks'. Section 165A begins with a *non-obstante* clause and provides for payment of compensation, as indicated in the Second

A Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and
B the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this schedule the maximum multiplier can be upto 18 and not 16 as was held in *Susamma Thomas'* case.

C We must at once point out that the calculation of compensation and the amount worked out in the schedule suffer from several defects. For example, in item No. 1 for a victim aged 15 years, the multiplier is shown to be 15 years' and the multiplicand is shown to be Rs. 3000. The total should be 3000 x 15 = 45,000 but the same is worked out at Rs. 60,000.
D Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9000; the total should have been Rs. 1,44,000 but shown to be Rs. 1,71,000. To put it briefly, the table abounds in such mistakes. Neither the Tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely
E dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed
F 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in *Davies'* case.

G We had indicated we would not interfere with the amount awarded, since in our view, while the multiplier used is excessive, we are satisfied that a very low multiplicand was used as the loss of dependency. If we were to correct the multiplicand and use the correct multiplier, the compensa-
H tion would work out to near about the same figure. Therefore, while

agreeing with the learned Advocate for the appellant, we are disinclined to interfere with the figure of compensation. We, therefore, hold that the Tribunal/Court fell into an error in the choice of the multiplier and allow the appeal to that extent but we do not, in the circumstances of the case, interfere with the quantum of compensation. No order as to costs. A

The copy of this Judgment may be sent to all the High Courts with a direction to circulate it to the Court/Tribunals dealing with the Motor Accident compensation cases. B

V.S.S. Appeal allowed.