A H.S. AHAMMED HUSSAIN AND ANR.

*v.*

IRFAN AHAMMED AND ANR.

JULY 9, 2002

B [R.C. LAHOTI AND B.N. AGRAWAL, JJ.]

*Motor Vehicles Act, 1988—Section 149(2)—Motor accident—Award of compensation—Joint appeal by insured and insurer challenging quantum of*
C *compensation—Maintainability of—Held, maintainable—In such case Court should delete the name of insurer and proceed with appeal of insured.*

*Second Schedule—Motor accident—Award of compensation—Application of multiplier—High Court applied multiplier of 13 for age of 45 years and 14 for the age of 40 years—Held, the correct multiplier in the age of 45 years*
D *is 15 and for 40 years is 16.*

*Motor Accident—Compensation—Award of—Interest thereon at the rate of 6%—Held, appropriate rate of interest is at the rate of 9%.*

**In a petition for claim of compensation by the appellants for the**
E **death of their sons, Motor Accident Claims Tribunal found from the evidence that the income of each of the victim was Rs. 3000 p.m., and awarded compensation in favour of the parents of the victims accordingly along with interest thereon at the rate of 6%.**

**The Respondents i.e. insurer and the insured filed joint appeal before**
F **High Court challenging quantum of compensation. High Court disbelieved the evidence regarding the income of the victims and found their income to be Rs.1500 per month. Under Second Schedule of Motor Vehicles Act, 1988, in selecting multiplier the age of younger out of the two parents was taken into consideration and since the age of mother of one of the victims**
G **was 40, the multiplier applied was 14 and since the age of another victim was 45 the multiplier, in his case was applied as 13. Thus the compensation with regard to both the victims was reduced while the rate of interest was maintained at 6%. The court directed that 25% out of the compensation was to be paid to the fathers and 75% to the mothers. It further directed that the compensation payable to the mothers shall be kept in fixed deposit**

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in nationalized bank for a term of 5 years with liberty to draw interest. A

In appeal to this Court appellants contended that High Court was not justified in entertaining and allowing joint appeals by insured and insurer challenging the quantum of compensation as insurer was entitled to raise only such defences as are enumerated in Section 149(2) of the Act and quantum of compensation is not a ground available to the insurer B under the Section. Therefore, allowing such appeals would defeat the very purpose engrafted under the Section ; that the High Court was not justified in interfering with the finding of the tribunal regarding income of the two victims; that under Second Schedule to the Act, providing compensation based on a formula, the multiplier which was applicable was 15 as age of C mother of one the victims was 45 years whereas in the case of another victim whose mother's age was 40 the correct multiplier should have been 16; that the rate of interest should have been 9%; and that the amount of compensation payable to the mothers should not have been directed to be kept in fixed deposit.

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Allowing the appeals, the Court

HELD: 1. It cannot be said that joint appeal by the insurer as well as the insured was not maintainable. In such an eventuality, the course which a Court should adopt is to delete name of the insurer from the cause E title and proceed with appeal of the insured and decide the same on merit. [84-E, F]

*Chinnama George and Ors.* v. *N.K. Raju and Anr.*, [2000] 4 SCC 130, distinguished.

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*Narendra Kumar and Anr* v. *Yarenissa and Ors.*, [1998] 9 SCC 202, relied on.

*United India Insurance Co. Ltd.* v.. *Bhushan Sachdeva and Ors.*, [2002] 2 SCC 265, referred to.

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2. High Court did not find evidence adduced on behalf of the claimants reliable and satisfactory, it fixed their income at Rs.1500 per month and this being a question of fact, it is not possible to interfere with the same especially when it could not be pointed out that there was any error therein. [84-G, H] H

A **3. According to the Second Schedule , if the age is above 40 years but not exceeding 45 years, the multiplier applicable is 15 and if the age is above 35 years but not exceeding 40 years, the multiplier would be 16. In the case of compensation to the parents of 'V', multiplier 15 should have been adopted instead of 13 and the compensation should not have been reduced from Rs. 3,13,000 to Rs. 1,71, 000 but the same should have** B **been reduced to Rs. 1, 95,000. In the case of compensation to the parents of 'R', the correct multiplier should have been 16 and not 14 and the High Court was not justified in reducing the compensation from Rs. 3,49,000 to Rs. 1,83,000 which should have been reduced to Rs. 2,07,000. Thus, the parents of 'V' are entitled to total compensation to the tune of Rs. 1,95,000** C **and that of 'R' to the tune of Rs. 2,07,000. [85-D, E, F]**

*C.K. Subramonia Iyer and Ors.* **v.** *T. Kunhikuttan Nair and Ors.,* **AIR 1970 SC 376 and** *National Insurance Company Ltd.* **v.** *M/s Swarnalatha Das and Ors.,* **[1993] Suppl. 2 SCC 743, referred to.**

D **4. Claimants shall be entitled to interest on the aforesaid amount at the rate of 9% per annum from the date of filing of the petitions till realization. [86-A]**

**5. In the facts and circumstances of the present case, the amount of** E **compensation awarded in favour of the mothers should not be kept in fixed deposit in a nationalized bank. In case the amounts have not been already invested by depositing the same in fixed deposit in a nationalized bank, there may be its premature withdrawal in case the parties so intend. [86-B, C]**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3670 of 2002.

From the Judgment and Order dated 23.6.2000 of the Karnataka High Court in M.F.A. No. 1112 of 1997.

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G Civil Appeal No. 3671 of 2002.

Ms. Kiran Suri for the Appellants.

A.K. Raina and Anil Kumar Jha for the Respondents.

H The Judgment of the Court was delivered by

**B.N. AGRAWAL, J.** Leave granted. A

By the impugned judgments rendered by Karnataka High Court in two separate appeals jointly preferred by the insurer as well as the insured, the same have been partly allowed and compensation awarded by the Motor Accident Claims Tribunal has been reduced viz. in one case from Rs. 3,13,000 to Rs. 1,71,000 and in another from Rs. 3,49,000 to Rs. 1,83,000. While B disposing of the appeals, the High Court directed that out of the compensation awarded, 25% shall be payable to fathers of the respective victims and 75% to their mothers together with proportionate interest. It was further directed that out of the amount of compensation payable to the mothers of the victims, Rs. 50,000 shall be kept in fixed deposit in a nationalised bank for a period C of five years with liberty to draw the interest.

The short facts are that one Irfan Ahammed-respondent No. 1 owned a lorry bearing No. CNG-6409 and Vazeer Ahamed and Rafeeq Ahamed , sons of the appellants of these appeals were working as a coolie therein. On Ist June, 1996, when respondent No. 1 was driving the said vehicle in which D the aforesaid two persons were also travelling as coolie, the same met with an accident at 10.00 a.m. as a result of rash and negligent driving of the respondent No. 1 resulting the death of Vazeer and Rafeeq, for which two claim petitions were filed before the Motor Accident Claims Tribunal by parents of each of the victims for awarding compensation in their favour on account of death of their sons under the Motor Vehicles Act, 1988 (hereinafter E referred to as 'the Act'). Age of victim Rafeeq was 21 years and his father's age was 45 years whereas that of his mother was 40 years. The age of another victim Vazeer was 22 years and that of his father and mother was 53 years and 45 years respectively at the time of the accident. The claimants in both the petitions claimed the income of their respective sons to be Rs. 4500 per F month. The claim was contested by the owner as well as the insurance company on grounds, *inter alia,* that the accident had not taken place on account of any rash or negligent act on the part of the owner in driving the vehicle. Both the cases were heard together. On behalf of the claimants, two witnesses were examined. Father of Rafeeq was examined as PW1 and that of Vazeer as PW2 and in their evidence, they stated that the monthly income of their G sons was Rs. 3,000 .The owner of the vehicle was examined as RW1 who, in his deposition, denied payment of Rs. 3,000 per month to each of the victims. The Tribunal by a common judgment having found the income of each of the victims to be Rs. 3,000 per month, awarded compensation to the tune of Rs. 3,49,000 in favour of the parents of Rafeeq and Rs. 3,13,000 in H

A favour of those of Vazeer together with interest thereon at the rate of 6% per annum from the date of filing of the petition till realisation. Two different appeals were preferred before the High Court against awards of the Tribunal and each of the appeals was jointly filed by insurer as well as the insured. The High Court was of the view that the evidence in relation to income of the two victims was neither reliable nor satisfactory but found their income B to be Rs. 18,000 per annum which was little more than Rs. 1500 per month that was prescribed as notional income as a non-earning person under the Second Schedule to the Act. After deducting 1/3rd towards personal and living expenses of the deceased, the contribution towards family was assessed at Rs. 12,000 per annum. According to the High Court in selecting multiplier, C the age of younger out of the two parents was required to be taken into consideration. As the age of the mother of Rafeeq was found to be 40 years, the High Court held that the multiplier to be applicable was 14 and compensation was reduced to Rs. 1,83,000 from Rs. 3,49,000 . So far Vazeer is concerned, as the age of his mother was found to be 45 years, it was held that the multiplier applicable would be 13 and consequently the compensation D awarded by the Tribunal to the tune of Rs. 3,13,000 was reduced to Rs. 1,71,000 . It was directed that 25% of compensation shall be paid to the father of each of the victims and 75% to their mothers and the compensation payable to the mothers shall be kept in fixed deposit in a nationalised bank for a term of five years with liberty to draw the interest. Hence, these appeals E by special leave.

Ms. Kiran Suri, learned counsel appearing on behalf of the appellants in these two appeals submitted that the High Court was not justified in entertaining and allowing joint appeals preferred by insured and insurer both challenging the quantum of compensation awarded by the Tribunal as insurer F was entitled to raise only such defences as are enumerated in Section 149(2) of the Act and quantum of compensation is not a ground available to the insurer under Section 149(2) of the Act, therefore, allowing such appeals would defeat the very purpose engrafted under Section 149(2) of the Act. A reference in this connection was made to a decision of this Court in the case of *Chinnama George and Ors.* v. *N.K. Raju and Anr.* [2000] 4 SCC 130 G wherein against the quantum of compensation, joint appeal was preferred before the High Court by the insurer as well as the insured and the same was allowed in part and compensation awarded by the Tribunal was reduced. When the matter was brought to this Court in appeal on a special leave, the same was allowed and order of the High Court was set aside on the ground H that the joint appeal by the insurer as well as the insured was not maintainable

in view of the provisions of Section 149(2) of the Act. On the other hand, learned counsel appearing on behalf of the respondents heavily relied upon two decisions of this Court in the cases of *Narendra Kumar and Anr.* v. *Yarenissa and Ors.*, [1998] 9 SCC 202 and *United India Insurance Co. Ltd.* v. *Bhushan Sachdeva and Ors.*, [2002] 2 SCC 265. In *Narendra Kumar* (supra), which was a case under the Motor Vehicles Act, 1939 (hereinafter referred to as '1939 Act'), against the award of the Tribunal, a joint appeal was preferred by the insurer as well as the insured challenging the quantum of compensation. A Single Judge of the Rajasthan High Court dismissed the same on the ground that such appeal was not maintainable in view of the fact that under Section 96(2) of the 1939 Act which is similar to Section 149(2) of the Act, only certain grounds were available to the insurer and quantum of compensation is not a ground enumerated under Section 96(2) of the 1939 Act. The decision of the Single Judge was affirmed by Division Bench of the High Court. Thereafter, when the matter was brought to this Court, reference was made to the provisions of Section 110-C(2-A) of 1939 Act which provides that where in the course of inquiry, the claims Tribunal is satisfied that there is collusion between the person making the claim and the person against whom it is made, or the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer, who may be liable in respect of such claim, be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds available to the person against whom the claim was made. Ultimately, the court found that even in the case of a joint appeal by insurer and the insured if an award has been made against the tort feasors as well as the insurer even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tort feasor can proceed with the appeal after the cause title is suitably amended by deleting the name of the insurer. Even though, this Court held that the appeal of the insured could proceed on merit and could not have been dismissed merely because the insurer joined therein, as it did not find any ground to interfere with the quantum of compensation on merit, order of the High Court was not upset. In *United India Insurance Co. Ltd.* (supra), which was a case under the Act against the order awarding compensation, no appeal was preferred by the insured but only the insurer filed petition under Article 227 of the Constitution of India before the High Court. During the pendency of the said petition, a motion was made for the stay of execution of the award but the High Court had only chosen to issue notice to show cause why the revision petition be not entertained. Against the said order, when the matter was brought to this Court, it was directed that the petition under Article 227

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A of the Constitution filed by the insurer should be treated to be an appeal under Section 173 of the Act. The Court relied upon the provisions of Section 170 of the Act which lays down that where in the course of inquiry, the Claims Tribunal is satisfied that there is collusion between the person making the claim and the person against whom the claim is made, or the person against whom the claim is made has failed to contest the claim, it may, for B reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against C whom the claim has been made. This Court laid down that if the insured failed to prefer any appeal against the award of the Tribunal, that would also amount to failure to contest the claim within the meaning of Section 170 of the Act. Therefore, the decisions of this Court in the cases of *Narendra Kumar* (supra) and *Chinnama George* (supra) were distinguished on facts. That apart the case of *Chinnama George* (supra) is otherwise also D distinguishable as in that case, on behalf of the insured, no argument was addressed whereas the appeal was argued only on behalf of the insurer. That apart the provisions of Section 170 of the Act which have been taken notice of in the case of *United India Insurance Co. Ltd.* (supra) were not considered therein. In the present case, appeal was whole hog pressed on behalf of the E insured challenging the quantum of compensation awarded by the Tribunal. Thus, the decision of this Court in the case of Chinnama George and others (supra) can be of no avail to the appellant and we do not find any merit in the submission that joint appeal by the insurer as well as the insured was not maintainable. In such an eventuality, the course which a Court should adopt is as noticed in the case of Narendra Kumar (supra) to delete name of the F insurer from the cause title and proceed with appeal of the insured and decide the same on merit.

Learned counsel next submitted that the High Court was not justified in interfering with finding recorded by the Tribunal to the effect that income of the two victims was Rs. 3,000 per month and holding that their income G was Rs. 1500 per month. It appears that after taking into consideration the evidence adduced by the parties, as the High Court did not find evidence adduced on behalf of the claimants reliable and satisfactory, it fixed their income at Rs. 1500 per month and this being a question of fact, it is not possible to interfere with the same especially when it could not be pointed H out that there was any error therein.

Learned counsel then submitted that under Second Schedule to the Act providing compensation based on a formula, the multiplier which was applicable was 15 and not 13 as age of mother of victim Vazeer was 45 years in which case the correct multiplier should have been 15 and not 13 whereas in the case of victim Rafeeq, as age of his mother being 40 years, the correct multiplier should have been 16 and not 14. On the other hand, learned counsel appearing on behalf of the respondents submitted that compensation has been awarded in accordance with the Second Schedule. It is well settled that life expectancy of the deceased or the beneficiaries whichever is shorter is an important factor. Reference in this connection may be made to the decision of this Court in the case of *C.K. Subramonia Iyer and Ors* v. *T. Kunhikuttan. Nair and Ors* AIR (1970) SC 376. In the case of *National Insurance Co. Ltd.* v. *M/s Swaranlata Das and Ors.*, [1993] Suppl. 2 SCC 743, it was observed that "the appropriate method of assessment of compensation is the method of capitalisation of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependants whichever multiplier is lower." According to the Second Schedule, if the age is above 40 years but not exceeding 45 years, the multiplier applicable is 15 and if the age is above 35 years but not exceeding 40 years, the multiplier would be 16 but the High Court has taken the multiplier as 13 and 14 instead of 15 and 16 respectively. In the case of compensation to the parents of Vazeer, the multiplier 15 should have been adopted instead of 13 and the compensation should not have been reduced from Rs. 3,13,000 to Rs. 1,71,000 but the same should have been reduced to Rs. 1,95,000. In the case of compensation to the parents of Rafeeq, the correct multiplier should have been 16 and not 14 and the High Court was not justified in reducing the compensation from Rs. 3,49,000 to Rs. 1,83,000 which should have been reduced to Rs. 2,07,000. Thus, we hold that the parents of Vazeer are entitled to total compensation to the tune of Rs. 1,95,000 and that of Rafeeq to the tune of Rs. 2,07,000.

Learned counsel thereafter submitted that the High Court was not justified in upholding award of interest at the rate of 6% per annum and the same should have been awarded at the rate of 9% per annum. Reliance in this connection was placed upon a decision of this Court in the case of *Kaushnuma Begum (Smt.) and Ors* v. *New India Assurance Co. Ltd. and Ors.*, (2001) 2 SCC 9 wherein this Court noticed that "earlier, 12% was found to be the reasonable rate of simple interest. With a change in the economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% per annum from the date of the claim." Therefore, it was directed in that case that the

A claimant was entitled to interest at the rate of 9% per annum. In our view, the submission is well founded and must be accepted. Accordingly, we hold that the claimants shall be entitled to interest on the aforesaid amount at the rate of 9% per annum from the date of filing of the petitions till realisation.

Learned counsel for the appellant lastly submitted that the amount of
B compensation payable to mothers of the victims should not have been directed to be kept in fixed deposit in a nationalised bank. In the facts and circumstances of the present case, we are of the view that the amount of compensation awarded in favour of the mothers should not be kept in fixed deposit in a nationalised bank. In case the amounts have not been already invested, the
C same shall be paid to the mothers, but if, however, invested by depositing the same in fixed deposit in a nationalised bank, there may be its premature withdrawal in case the parties so intend.

In the result, the appeals are allowed in part and the judgments of the High Court are modified to the extent as indicated above. In the circumstances
D of the case, parties shall bear their own costs.

K.K.T. Appeals allowed.