

ORIENTAL INSURANCE CO. LTD.

v.

RAM PRASAD VARMA & ORS.

(Civil Appeal No.106 of 2009)

JANUARY 13, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Motor Vehicles Act, 1988 – ss.166 and 163A:

Claimant, employee in public sector undertaking, suffering permanent disability due to accident – Both his legs amputated – Claimant 55 years of age at that time and earning gross income of Rs.2.3 lacs – Determination of compensation by applying structured formula as contained in the Second Schedule – Appropriate multiplier – Held: Though Second Schedule, as such, might not have been applicable as maximum annual income of a deceased or an injured which could be taken into consideration therefor is Rs.40,000/-, however, keeping in view the peculiar factual circumstances of the case, the Tribunal was justified in adopting the multiplier of eight.

Claimant suffering permanent disability – While determining compensation, Tribunal not deducting 1/3rd income towards miscellaneous expenses – Challenge to – Held: Where claimant, though alive, is not in a position to move and for every small thing has to depend upon others, a direction to deduct 1/3rd amount from his income need not always be insisted upon – On facts, no interference called for.

Compensation – Determination of – While determining compensation, Tribunal not deducting amount of income tax from gross salary of claimant – Challenge to – Held: An employee when not in employment is not to pay his tax – Income tax payable from salary, therefore, was required to be deducted.

A Respondent No.1 was an employee in ONGC, a public sector undertaking. He was hit by a lorry which ran over his legs. Consequently both his legs were amputated. At the relevant time, respondent no.1 was 55 years of age and was earning a gross salary of about 2.3 lacs p.a. Respondent No.1 having suffered permanent disability filed claim petition for compensation. The Claims Tribunal applied the structured formula as contained in the Second Schedule appended to the Motor Vehicles Act and adopting the multiplier of eight, awarded a sum of Rs.19.63 lakhs with interest at the rate of 12% p.a. from the date of filing of the petition till realization. Appeal thereagainst by the insurance company was dismissed by the High Court, which however, considering the prevailing rate of interest, reduced the rate of interest to 9% p.a.

In appeal to this Court, it was contended by the insurance company that the Tribunal, and consequently the High Court, committed serious error in applying the multiplier of eight as respondent no.1 was to retire within few years, i.e. on attaining the age of sixty years and that while determining compensation, the Tribunal further erred in not deducting the amount of income tax from the gross salary of claimant as also in not deducting his one-third income towards miscellaneous expenses.

Disposing of the appeal, the Court

HELD:1.1. The life expectancy of an Indian citizen is about 62 years. Respondent no.1 was a highly placed employee in a prestigious public sector undertaking. He was to retire within a few years, but in view of the injuries suffered he had to give up his job. A person on retirement, in the event if pension scheme is applicable, would be entitled to pensionary benefits. Had respondent no.1 worked for five years more, the amount of pension calculated on the basis of last pay drawn would have

been more than what might have become payable in the year 1998 when he met with the accident. By reason of termination of service, he was not only deprived of his salary but also various other allowances to which he was otherwise entitled to. His family members could have taken benefit of some of the allowances. [Paras 10 and 15] [215-F-G; 218-C]

1.2. The amount of compensation which represents the loss of income can be calculated either in terms of the structured formula as contained in the Second Schedule appended to the Motor Vehicles Act or on the basis of the other materials brought on record. In a case of this nature, the Tribunal cannot be said to have committed any illegality in applying the structured formula. The Second Schedule as such may not have any application as the maximum annual income of a deceased or an injured which could be taken into consideration therefor is Rs.40,000/ – per annum. However, keeping in view the peculiar factual circumstances of the case, the proper multiplier which should be adopted is eight for the purpose of determining fair compensation. [Paras 8 and 9] [215-C-E]

1.3. One-third amount is deducted from computation of compensation from the total income on the premise that some expenses were necessary for one's own survival. Incidentally, from the note appended to the Second Schedule, it is clear that the amount of compensation arrived in the case of fatal accident claims is required to be reduced by one-third in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. A person, although alive, but when he is not in a position to move and even for every small thing he has to depend upon the services of another, a direction to deduct 1/3rd of the

A amount from his total income need not always be insisted upon. [Para 11] [215-H; 216-A-C]

B 1.4. In the peculiar facts and circumstances of this case, it is not necessary to interfere either with the application of multiplier of eight or non-deduction of 1/3rd from his net salary. However, the net salary of the respondent for the said purpose should have been determined. An employee when not in employment is not to pay his tax. Income tax payable from the salary, therefore, was required to be deducted. [Para 18] [220-F-G]

D 1.5. No case has been made out for interference with the rate of interest as directed to be paid by the High Court. The appeal is dismissed subject to the modification that from the gross income of the respondent, the amount of income tax as was applicable at the relevant time should be deducted. The Tribunal is directed to redetermine the amount of compensation in the light of this judgment. [Para 19] [222-B]

E *General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas (Mrs.) & ors. (1994) 2 SCC 176; U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. (1996) 4 SCC 362; Bangalore Metropolitan Transport Corporation. v. Sarojamma and Anr. (2008) 5 SCC 142 and National Insurance Company Ltd. v. Indira Srivastava and Ors. (2008) 2 SCC 763, relied on.*

G *New India Assurance Co. Ltd. v. Charlie and Anr. (2005) 10 SCC 720; Sunil Kumar v. Ram Singh Gaud & Ors. (2007) 12 SCALE 792 and BijoyKumar Dugar v. Bidyadhar Dutta and Ors. (2006) 3 SCC 242, referred to.*

H *Halsbury's Laws of England, Vol.34, para 98, referred to.*

Case Law Reference:

(2005) 10 SCC 720	referred to	Para 12	A
(2007) 12 SCALE 792	referred to	Para 13	
(2006) 3 SCC 242	referred to	Para 14	B
(1994) 2 SCC 176	relied on	Para 16	
(1996) 4 SCC 362	relied on	Para 17	
(2008) 5 SCC 142	relied on	Para 17	
(2008) 2 SCC 763	relied on	Para 18	C

CIVIL APPELLATE JURISDICTION : Civil Appeal No.106 of 2009.

From the Judgment and final Order dated 17.2.2006 of the High Court of Judicature, Andhra Pradesh, Hyderabad, in CMA No. 3499 of 2000.

Pankaj Seth and Manjeet Chawla for the Appellants.

K.V. Vishwanathan, A. Ramesh, G. Madhavi, Anup Kumar, Venkat Suramania and T.N. Rao for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Ram Prasad Varma, respondent No. 1, an Assistant Executive Engineer, was employed with Oil and Natural Gas Corporation (ONGC) at Rajahmundry. On or about 9.9.1998, while he was going to the workshop, he was hit by a lorry bearing registration No. AP-16-W-5839. The lorry ran over his legs. He was admitted in the hospital. Indisputably, both his legs were amputated. The fact that an accident had taken place owing to rash and negligent driving on the part of the driver of the said lorry is not in dispute. It is also not in dispute that, at the relevant time, respondent was aged 55 years and his annual

A income was Rs.2,27,471.00.

3. Respondent having suffered permanent disability filed a Claim Petition in terms of Section 166 of the Motor Vehicles Act claiming compensation of a sum of Rs.20 lakhs; Rs.50,000/ – towards extra nourishment; Rs. 50,000/ – towards compensation for mental agony, pain and suffering; Rs. 50,000/ – for loss of amenities in life and Rs.2 lakhs for the expenditure of attendant throughout the life and Rs.16.50 lakhs towards loss of future earnings.

C 4. The Motor Accidents Claims Tribunal awarded a sum of Rs.19,63,000/ – with interest at the rate of 12% per annum from the date of filing of the petition till realization.

D 5. An appeal preferred thereagainst by the Insurance Company before the High Court in terms of Section 173 of the Act has been dismissed by reason of the impugned judgment. The High Court, however, considering the prevailing rate of interest reduced the rate of interest from 12% per annum to 9% per annum.

E 6. Mr. Pankaj Seth, learned counsel appearing on behalf of appellant would contend:

F (i) The learned Tribunal, and consequently the High Court, committed a serious error in applying multiplier of eight although respondent would have retired from services on attaining the age of sixty.

G (ii) The Tribunal in determining the amount of compensation should have deducted the amount of income tax from his gross salary as compensation has been granted on the basis of the structured formula.

H (iii) The Tribunal in determining the said amount of compensation should have deducted one-third from the total amount of his income by way of

miscellaneous expenses.

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7. Indisputably, the respondent was an Assistant Executive Engineer. He was an income tax payee. He had submitted income tax return for the year 1998-99 showing his gross salary at Rs.2,27,471.40 and the amount of income-tax deducted at source was Rs.30,748.00.

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8. A claimant who had suffered injuries in a motor vehicle accident resulting in amputation of both legs is entitled to 100% compensation in terms of the First Schedule appended to the Workmen's Compensation Act, 1923. The amount of compensation which represents the loss of income can be calculated either in terms of the structured formula as contained in the Second Schedule appended to the Motor Vehicles Act or on the basis of the other materials brought on record. It is not in dispute that in a case of this nature, the Tribunal cannot be said to have committed any illegality in applying the structured formula.

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9. The Second Schedule as such may not have any application as the maximum annual income of a deceased or an injured which could be taken into consideration therefor is Rs.40,000/- per annum. However, keeping in view the peculiar factual circumstances of the case, the proper multiplier which, in our opinion, should be adopted is eight for the purpose of determining fair compensation.

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10. Indisputably, he was to retire within a few years, but in view of the injuries suffered he had to give up his job. The life expectancy of an Indian citizen is about 62 years. A person on retirement, in the event if pension scheme is applicable, would be entitled to pensionary benefits. Had the respondent worked for five years more, the amount of pension calculated on the basis of last pay drawn would have been more than what might have become payable in the year 1998.

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11. One-third amount is deducted from computation of

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- A compensation from the total income on the premise that some expenses were necessary for one's own survival. Incidentally, we may notice that in the note appended to the Second Schedule, the amount of compensation arrived in the case of fatal accident claims is required to be reduced by one-third in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. A person, although alive, but when he is not in a position to move and even for every small thing he has to depend upon the services of another, in our opinion, a direction to deduct 1/3rd of the amount from his total income need not always be insisted upon.

12. Our attention, however, has been drawn to a decision of this Court in *New India Assurance Co. Ltd. v. Charlie and Anr.* [(2005) 10 SCC 720] wherein 1/3rd was directed to be deducted towards personal expenditure, we do not find that any legal principle was laid down therein. It also does not appear that the premise on which such deduction is allowed and what would happen in a case, where such a premise does not exist, did not fall for consideration.

- E In *Charlie* (supra), this court itself opined that in a case, where the injured had suffered 100% disability, the legal principle for determination of compensation applicable to a deceased can, in appropriate cases, taking note of all relevant factors be reasonably applied even in a case of totally permanent disabled person. This Court referred to Halsbury's Laws of England, Volume 34, para 98 wherein it was held that the multiplier may be increased where the plaintiff is a high tax payer. That principle is also applicable in this case.

- G In *Halsbury* (supra), it was stated that in applying the structured formula 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.

- H It was stated:

"14. 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."

13. Our attention has also been drawn to a recent decision of this Court in *Sunil Kumar vs. Ram Singh Gaud & Ors.* [2007 (12) SCALE 792] wherein a Division Bench has opined as under:-

"9. Taking into consideration the present income of the appellant as Rs.4,000/ – per month; and the permanent disability of 45% suffered by him, we are of the view that the capacity of the appellant to earn in future would be reduced by Rs.1,800/ – per month approximately. If 1/3rd is deducted towards miscellaneous expenses, the loss of income comes to Rs.1,200/ – per month which, in turn, comes to Rs.14,400/ – per annum. Appellant was 29 years of age at the time of accident. Taking the multiplier to be 18 [as per the Second Schedule to Section 163A of the Act], the total loss of income comes to Rs.2,59,200/-."

In that case, the injured suffered permanent disability of 45%. Even therein the multiplier of 18 was applied. It was held that by reason of disability suffered by the claimant his earning capacity would be reduced.

In the instant case, respondent has become totally immobile.

A 14. Our attention has also been drawn to a decision of this Court in *Bijoy Kumar Dugar v. Bidyadhar Dutta and Ors.* [(2006) 3 SCC 242]. In that case, multiplier of 12 was applied. However, some observations were made that in regard to future prospects of income in the course of employment or business or profession, as the case may be, some cogent and reliable evidence have to be led.

C 15. In this case, respondent was a highly placed employee in a prestigious public sector undertaking. By reason of termination of service, he is not only deprived of his salary but also various other allowances to which he was otherwise entitled to. His family members could have taken benefit of some of the allowances.

D 16. We may, however, notice that in *General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas (Mrs.) & ors.* [(1994) 2 SCC 176], this Court held:

E "9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

G 10. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance

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and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of year's purchase.

11. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the over-all picture that matters" and the court must try to assess as best as it can the loss suffered."

17. This aspect of the matter has also been considered in *U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors.* [(1996) 4 SCC 362] by a Three-Judge Bench of this Court in the following terms:

"9. 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 Seivice's* [AIR 1962 SC 1] 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

A 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

B 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

C got compensation under Section 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 Section 2 of the Act in respect of compensation for the loss caused to the estate. To put it differently if under Section 1 they

D got capitalised value of Y, under Section 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."

E {See also *Bangalore Metropolitan Transport Corporation. vs. Sarojamma and Anr.* [(2008) 5 SCC 142]}

18. Following the aforementioned precedents, we are of the opinion that in the peculiar facts and circumstances of this case, it is not necessary to interfere either with the application

F of multiplier of eight or non-deduction of 1/3rd from his net salary. However, what was the net salary of the respondent for the said purpose should have been determined. An employee when not in employment is not to pay his tax. Income tax payable from the salary, therefore, was required to be

G deducted. It was so held in *National Insurance Company Ltd. v. Indira Srivastava and Ors.* [(2008) 2 SCC 763], stating:

"17. This Court in *Asha* (supra) did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term 'just compensation'

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was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.

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19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

Incidentally, we may notice that in that case also this Court held:

"21. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

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25. The expression 'just' must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into

A consideration."

19. The High Court has directed payment of interest at the rate of 9% per annum. We do not think that any case has been made out for interference with the rate of interest. The appeal is dismissed subject to the modification that from the gross income of the respondent, the amount of income tax as was applicable at the relevant time should be deducted. The Tribunal is directed to redetermine the amount of compensation in the light of this judgment. However, in the facts and circumstances of this case, there shall be no order as to costs.

C B.B.B. Appeal disposed of.