

NATIONAL INSURANCE COMPANY LTD.

v.

SMT. SAROJ AND ORS.

(Civil Appeal No. 3483 of 2009)

MAY 12, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Motor Vehicles Act, 1988 – ss.166 and 168 – Second Schedule – Vehicular accident resulting in death of a person – Compensation – Determination of – Appropriate multiplier – Held: Compensation must be just – While determining compensation, amount of monetary loss which had been and would be suffered by heirs and legal representatives of deceased should be considered – For such purpose, the take-home salary of deceased, other allowance and perks which would have benefited the deceased's entire family and the prospective loss of future earnings should be borne in mind – On facts, where deceased was a 41 year old technician employed in a Multinational company earning around Rs.17000 per month, Courts below were justified in adopting a multiplier of 16 and in awarding compensation of Rs.22.12 lakhs though only Rs.20 lakhs was claimed as compensation – The submission that the Court should have awarded only the sum claimed is not correct.

Rani Gupta v. United India Insurance Company & Ors. (2009) 5 SCALE 439; United India Insurance Co. Ltd. v. Bindu & Ors. JT2009(4) SC 315; United India Insurance Co. Ltd. etc. v. Patricia Jean Mahajan & Ors. (2002) 6 SCC 281; The Managing Director, TNSTC Ltd. v. K.I. Bindu & Ors. (2005) 8 SCC 473 and Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya and two Ors. (2005) 6 SCC 236; National Insurance Co. Ltd. v. Indira Srivastava & Ors. (2008) 2 SCC 763 and Abati Bezbaruah v. Dy. Director General Geological Survey of India & Anr. (2003) 3 SCC 148,

A referred to.

Mallett v. Mc Mongle 1969 (2) All ER 178, referred to.

Case Law Reference:

| | | | |
|---|---------------------|-------------|---------|
| B | (2009) 5 SCALE 439 | referred to | Para 9 |
| | JT 2009(4) SC 315 | referred to | Para 12 |
| | 1969 (2) All ER 178 | referred to | Para 12 |
| C | (2002) 6 SCC 281 | referred to | Para 13 |
| | (2005) 8 SCC 473 | referred to | Para 13 |
| | (2005) 6 SCC 236 | referred to | Para 13 |
| | (2008) 2 SCC 763 | referred to | Para 14 |
| D | (2003) 3 SCC 148 | referred to | Para 15 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3483 of 2009.

E From the Judgment & Order dated 29.5.2007 of the High Court of Punjab & Haryana at Chandigarh in F.A.O. No. 2041 of 2006.

F Dr. Meera Agarwal and Ramesh Chandra Mishra for the Appellant.

Dr. Sushil Balwada for the Respondents.

The Judgment of the Court was delivered by

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

2. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 29.05.2007 passed by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh in FAO No.2041 of 2006 whereby and H whereunder a First Appeal preferred by the appellant herein

against a judgment and award dated 03.2.2006 passed by the Motor Accident Claims Tribunal, Rohtak directing the appellant herein to pay compensation with interest to the respondent, was dismissed. A

3. One Joginder Singh, husband of respondent No.1 and father of respondent Nos. 2 to 4, while riding a two wheeler met with an accident on 29.11.2003 as it collided with a truck. The said truck was insured with the appellant by its owner who is respondent No.5 herein. B

4. A claim petition was filed before the Motor Vehicles Accident Claims Tribunal claiming a sum of Rs.20,00,000/-. The deceased was an employee of Maruti Udyog Limited and had been drawing a sum of Rs.16,110/- per month. The Tribunal determined his income at Rs.17,244/- per month by its award dated 3.2.2006. His age was determined as 41 years 10 months and 9 days. A multiplier of 16 was applied to arrive at the amount of compensation at a sum of Rs.22,12,200/-. C D

5. A First Appeal preferred by the appellant has been dismissed by the High Court by reason of the impugned judgment dated 29.05.2007. E

6. Dr. Meera Agarwal, learned counsel appearing on behalf of the appellant, would urge :

(1) The Tribunal and consequently the High Court should have restricted the award of compensation only to the sum claimed by the claimant in the claim petition. F

(2) Provisions of Schedule II attached to Section 163-A being applicable strictly in cases where the income of the deceased does not exceed Rs.40,000/- per annum, the multiplier specified therein should not have been applied. G

(3) The claimants having not disclosed as to what amount they had received from the insurance company and who was the insurer of the scooter driven by the deceased, the H

A impugned judgment should not be sustained.

7. Mr. A.V. Rao, learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgment.

B 8. The deceased was occupying the post of Technical in a Weld Shop Work in Maruti Udyog Limited. His net salary was Rs.16,110/- per month. Both the courts below, however, in terms of the evidences brought on record found salary payable to the deceased at Rs.17,244.95 per month. This finding of the
C Tribunal had not been questioned before the High Court.

Indisputably, again the age of the deceased at the time of death was found to be 41 years 10 months and 9 days.

D 9. It has not been denied or disputed that the multiplier method can be applied for the purpose of determination of the amount of compensation in a motor accident in terms of the provisions of the Motor Vehicles Act, 1988.

E We have, however, do not mean to suggest that the multiplier specified in the Second Schedule should be applied automatically.

F In *Rani Gupta v. United India Insurance Company & Ors.* [2009 (5) SCALE 439] this Court observed that in an appropriate case, the matter may require consideration by larger Bench keeping in view paragraphs 5 and 6 of the Note appended to the Second Schedule of the Act in terms whereof the multiplier was to be adopted only in a case of permanent total or partial disability.

G 10. The Second Schedule provides for a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income in a more liberal or rational way.

H If that be so, a question arises as to why the injured

claimant and/or heirs and legal representatives of the victim in A
a case of death on proof of negligence on the part of the driver
of a motor vehicle would get a lesser amount than the one
specified in the Second Schedule although both are similarly
situated. Such a dichotomy, in our opinion, could be resolved
by finding the applicability of multiplier in the cases where the B
victims have suffered injuries resulting in permanent total
disablement or permanent partial disablement.

Probably, it is in that view of the matter, there is some sort
of a cleavage of opinion in the matter of application of multiplier.
Whereas in one set of decisions multiplier specified in the C
Second Schedule has been applied, in another set of decisions,
a lesser multiplier was applied. In either set of the decisions
sometimes, no principle of law has been laid down. It is,
however, accepted at the Bar that the multiplier specified in the
Second Schedule should be taken to be the guidelines. D

11. We may notice a few precedents in this behalf.

In *Rani Gupta* (supra), it is stated :

"18. By and large, therefore, the Court had proceeded on E
the basis that the multiplier mentioned in the Second
Schedule should be taken to be the guide but it may not
be.

19. The multiplier specified in the Second Schedule may F
not be decisive for calculating compensation in cases of
death. In fact, the word multiplier has been used only for
the purpose of calculating damages in the case of
permanent disability and not in the case of death as would
appear from note 5 and 6 appended thereto. G

20. The Second Schedule provides for payment of the
amount of compensation to the persons whose income is
from Rs.3,000/- to Rs.40,000/- per annum, depending upon
the age of the deceased; as for example if the age of the
deceased is 15 years, the amount of compensation H

A payable would be 60,000/-, but where the annual income is Rs.3,000/-, a sum of Rs.50,000/- has been specified therefor even if the age of the deceased is between 35 to 65 years.

B 21. The Parliament had, therefore, thought that Rs.50,000/- should be the minimum amount of compensation payable to legal representatives of those persons whose annual income is Rs.3,000/- per month. For the said purpose, the multiplier specified in the Second Schedule has no role to play. Even in absence of the multiplier in the Second Schedule, the amount of compensation payable would be the same irrespective of the multiplier specified therein.”

C
D 12. Recently, in *United India Insurance Co. Ltd. v. Bindu & Ors.* [JT 2009(4) SC 315], this Court applied the multiplier of 13 where the age of the deceased was 32 years. The Court referring to *Mallett v. Mc Mongle* [1969 (2) All ER 178] and other decisions preceding the same, opined :

E “11. In both *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* [1994 (2) SCC 176] and *U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors.* [JT 1996 (5) SC 356; 1996 (4) SCC 362], the multiplier appears to have been adopted by this Court taking note of the prevalent banking rate of interest.

F
G 12. In fact in *Trilok Chand's* case (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian Citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age.

H

NATIONAL INSURANCE COMPANY LTD. v. SAROJ 87
AND ORS. [S.B. SINHA, J.]

13. Keeping in view the parameters indicated above it would be appropriate to fix the multiplier at 13 and the rate of interest at 6% p.a. The MACT shall work out the entitlements on the aforesaid basis.” A

13. Reliance has been placed by Dr. Agarwal on a decision of this Court in *United India Insurance Co. Ltd. Etc. v. Patricia Jean Mahajan & Ors.* [(2002) 6 SCC 281], wherein multiplier of 10 has been used where the deceased used to get salary in US \$.

Yet again in *The Managing Director, TNSTC Ltd. v. K.I. Bindu & Ors.* [(2005) 8 SCC 473], this Court held :

“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.” D E

Reliance has also been placed on *Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya and two Ors.* [(2005) 6 SCC 236], wherein it was held :

“12. 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 H

A 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.”

B 14. The amount of compensation which is required to be
determined by the Tribunal must be just. In certain situations as
for example in the case of the death of only son to a mother,
no monetary compensation would be sufficient. Whereas the
C court, while determining the amount of compensation, should
consider the amount of monetary loss which had been and
would be suffered by the heirs and legal representatives of the
deceased, the same should not be a windfall. It is for the
D aforementioned purpose, not only the take home salary is to
be taken into consideration but also other allowance and perks
which would have benefited the entire family. [See *National
Insurance Co. Ltd. v. Indira Srivastava & Ors.* [(2008) 2 SCC
763].

E 15. The prospective loss of future earnings should also be
borne in mind. The quantum of compensation must be
determined on certain legal principles. The deceased might
have a bright future prospect. He would have been, in normal
situation, considered for promotion immediately. Although rigid
F tests are difficult to be laid down, any kind of hypothesis, as
far as possible should be avoided.

In *Abati Bezbaruah v. Dy. Director General Geological
Survey of India & Anr.* [(2003) 3 SCC 148], this Court observed

G “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
H Vehicles Act lays down the guidelines for determination of
the amount of compensation in terms of Section 166

thereof. Deviation of 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."

In this case, the deceased was a technician employed in a Multinational company. The Tribunal as also the High Court while determining the amount of compensation did not bestow its consideration to future prospects. It is trite that the Court should look into the circumstances of each and every case for arriving at a just compensation. His future prospect has not been taken into consideration. In case of this nature, therefore, we do not think that application of multiplier of 16 was on a higher side.

16. Submission of Mr. Agarwal that the Court should have awarded only the sum claimed by the claimant, in our opinion, is not correct.

17. Contention raised on behalf of the appellant that the claimant had not disclosed as to what amount they had received from the insurance company with whom the scooter driven by the deceased was insured cannot be considered by us for the first time as no such contention has been raised before the courts below. The legal representatives of the deceased examined themselves as witnesses. They should have cross-examined on the said question. The insurance company could have found out from other insurance company also as to whether, in fact, a claim had been advanced and whether insurance company paid any amount to them.

18. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly with costs. Counsel's fee assessed at Rs.10,000/-.

B.B.B.

Appeal dismissed.