

P. S. SOMANATHAN AND ORS.

v.

DISTRICT INSURANCE OFFICER AND ANR.
(Civil Appeal No. 1891 of 2011)

FEBRUARY 17, 2011

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Motor Vehicles Act, 1988 – ss.166 and 163A – Motor accident – Compensation claim – Quantum of compensation – Fixation of – Appropriate multiplier – In the present case, the original claim petition had been filed by the mother and brother of the deceased and the deceased was 33 years of age when he died in the accident – The deceased was looking after the entire family – Tribunal calculated compensation by considering a multiplier of 16 – High Court, however, held that the deceased’s mother was the real legal representative and others could not claim to be the legal representatives of the deceased, and accordingly reduced compensation by applying a multiplier of 5 – Held: The High Court took a very technical view in the matter of applying the multiplier – The High Court could not have kept out of its consideration the claim of the daughter of the first claimant, since later the daughter was also impleaded in the claim petition – Reasoning of the High Court not correct in view of the ratio in Sarla Verma’s case – Following the same, the High Court should have proceeded to compute the compensation on the age of the deceased – Judgment of the High Court set aside and the award of the Tribunal restored.

A 33 year old unmarried man died due to injuries sustained in an accident when a lorry suddenly hit him while he was walking on the Highway. The lorry was insured with the first respondent and was owned by the second respondent.

A The appellants, who are family members of the deceased, filed claim petition before the Motor Accident Claims Tribunal (MACT) under Section 166 of the Motor Vehicles Act, 1988, claiming Rs.1,75,000/- as compensation. The original claim petition was filed by the
 B mother and brother of the deceased. Later on, the daughter of the first claimant was also impleaded in the claim petition. The MACT concluded that the accident had occurred in view of the rash and negligent driving of the second respondent; that the monthly income of the
 C deceased was Rs.1,200/- and that he had been looking after the entire family. By applying a multiplier of 16, the MACT awarded a total compensation of Rs.1,71,600/- together with interest at the rate of 12% p.a. and cost of Rs.1,500/-. The first respondent appealed against the
 D judgment of the MACT before the High Court. The High Court held that the mother of the deceased was the real legal representative and others could not claim to be the legal representatives of the deceased, and accordingly applied a multiplier of 5 and thus reduced the compensation to Rs.85,000/- along with interest at the
 E rate of 12% p.a. Hence the present appeal against the judgment of the High Court.

Allowing the appeal, the Court

F HELD: In the present case, the claimants had filed for compensation under Section 166 of the Motor Vehicles Act, 1988. The original claim petition had been filed by the mother and brother of the deceased and the deceased was 33 years of age when he died in the accident. For
 G the purpose of calculating the multiplier, the High Court held that mother was the real legal representative and others could not claim to be the legal representatives of the deceased, and accordingly applied a multiplier of 5, whereas the Tribunal had calculated compensation by
 H considering a multiplier of 16. The High Court

unfortunately took a very technical view in the matter of applying the multiplier. The High Court cannot keep out of its consideration the claim of the daughter of the first claimant, since the daughter was impleaded, and was 49 years of age. Admittedly, the deceased was looking after the entire family. In determining the age of the mother, the High Court should have accepted the age of the mother at 65, as given in the claim petition, since there is no controversy on that. By accepting the age of mother at 67, the High Court further reduced the multiplier from 6 to 5, even if the reasoning of the High Court is accepted to be correct. The reasoning of the High Court is not correct in view of the ratio in *Sarla Verma's* case. Following the same, the High Court should have proceeded to compute the compensation on the age of the deceased. The judgment of the High Court is therefore set aside and the award of MACT is restored. [Paras 20, 21, 23 and 25] [378-D-E; G-H; 379-A-B, D]

Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121 – relied on.

Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979) 118 ITR 507(SC); General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors. AIR 1994 SC 1631; U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. (1996) 4 SCC 362; Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya & Ors. AIR 2005 SC 2985; United India Insurance Co. Ltd. v. Bindu & Ors. (2009) 3 SCC 705; Supe Dei (Smt) & Ors. v. National Insurance Co. Ltd. & Anr. (2009) 4 SCC 513 and New India Assurance Co. Ltd. v. Charlie & Anr.(2005) 10 SCC 720 – referred to.

Case Law Reference:

(1979) 118 ITR 507(SC) referred to Para 11

AIR 1994 SC 1631 referred to Para 12, 14, 19 H

- A (1996) 4 SCC 362 referred to Para 14, 19
- AIR 2005 SC 2985 referred to Para 15
- (2009) 3 SCC 705 referred to Para 16
- B (2009) 4 SCC 513 referred to Para 17
- (2009) 6 SCC 121 relied on Para 18, 22, 23, 24
- (2005) 10 SCC 720 referred to Para 19

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1891 of 2011.

From the Judgment & Order dated 5.1.2007 of the High Court of Kerala at Ernakulam in MFA No. 444 of 2001.

D Alex Jeseeph for the Appellant.

R. Sathish for the Respondent.

The Judgment of the Court was delivered by

E **GANGULY, J** 1. Delay condoned.

2. Leave granted.

F 3. One Suresh Chandra Babu, was walking along the side of Alappuzha-Kollam National Highway near Punnapra junction on 25.07.1994, when a lorry (bearing registration No. KL 4/6802) which was being driven rashly suddenly hit him. As a result of which he sustained serious injuries and died on the spot. The lorry which was insured with the first respondent was owned by the second respondent.

G 4. The appellants (claimants) who are the family members of the deceased filed a claim petition before the Motor Accident Claims Tribunal (MACT), claiming Rs.1,75,000/- as compensation. The same was contested by the first and second
H respondents.

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5. Before the MACT, the following issues were framed: A

- i. Whether the accident was due to the rash and negligent driving of the second respondent herein?
- ii. Whether the petitioners were entitled to get any compensation and if so, what was the quantum and who all were liable?" B

6. Based on the evidence on record, MACT concluded that the accident had occurred in view of the rash and negligent driving of the second respondent and it awarded a total compensation of Rs.1,71,600/- together with interest at the rate of 12% p.a. and cost of Rs.1,500/-. It calculated the same as follows: C

"...Suresh Chandra Babu aged 33 years died due to injuries sustained in the accident. PW1 swears that at the time of accident Suresh Chandra Babu was working as an operator in Motherland Industries, Punnapra and was getting Rs.4,500/- p.m. In Ext. A1 FIR, it is stated that Suresh Chandra Babu was working as a mechanic operator in Motherland Industries Company. PW1 swears that Suresh Chandra Babu was unmarried and he was looking after the affairs of the family. Considering the nature of the work done by deceased Suresh Chandra Babu, his monthly income can be assessed as Rs.1,200/- for the purpose of calculating just compensation. After deducting his personal expenses he would be contributing Rs.800/- p.m. to his mother- the first petitioner. In this manner, the annual dependency of the first petitioner of the deceased comes to Rs.9,600/-. In this case 16 can be determined as suitable multiplier. Therefore, the amount of compensation on account of loss of dependency comes to Rs.1,53,000/-. Rs.15,000/- can be awarded towards compensation for pain and suffering. Rs.1,900/- can be awarded towards transportation charges and Rs.2,000/- D E F G

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A can be awarded towards funeral expenses. Thus, in total,
 the petitioner is entitled to get Rs.1,71,600/- as
 compensation.”

B 7. The first respondent appealed against the judgment of
 the MACT before the High Court of Kerala at Ernakulam.

8. The High Court, vide its impugned judgment, reduced
 the compensation to Rs.85,000/- along with interest at the rate
 of 12% p.a., the relevant portion of High Court judgment reads
 as follows:

C “Heard both sides. The learned Government Pleader
 submits that father was aged about 70 years even at the
 time of the accident and therefore the Tribunal had
 committed an error in fixing the multiplier at 16 whereas it
 D has to only apply a multiplier of 5. In the award, the age of
 first claimant is not shown but the daughter of the first
 claimant namely Leela has filed an affidavit before this
 Court for getting impleaded as I.A. 1407/06 where her age
 is shown as 61 years. So it is clear that she would be 49
 E years at the time of the accident and therefore even if the
 minimum age that can be fixed for the mother will be 67
 years and not less. The mother is the real legal
 representative and others cannot claim the status of legal
 representative and therefore the appropriate multiplier to
 be used in this case is only 5. It is true that the Tribunal
 F has taken his income at Rs.1,200/- per month whereas
 claimants claimed that the deceased was getting an
 amount of Rs.1,500/- as his income. We fix it at Rs.1,500/
 - deduct 1/3rd for personal expenses and applying a
 multiplier of 5 the loss of dependency compensation would
 G come to Rs.60,000/-. The Tribunal has awarded
 Rs.15,000/- towards pain and suffering, Rs.1,000/- towards
 transportation charges and Rs.2,000/- for funeral
 expenses. They are only just and reasonable and we do
 not find any ground to interfere with the same. But the
 H Tribunal has not awarded any amount towards love and

affection. Hence, we grant an amount of Rs.5,000/- under that head and also award a sum of Rs.2,500/- towards loss of estate. Therefore, the total compensation that the claimants are entitled to will be Rs.85,000/-." A

9. Aggrieved with the judgment of the High Court, the appellants (claimants) filed a Special Leave Petition before this Court. B

10. On the question of fixing the quantum of compensation in motor accident claim cases, this Court has laid down several guidelines. C

11. In the case of *Concord of India Insurance Co. Ltd. v. Nirmala Devi* [(1979) 118 ITR 507(SC)], Justice Krishna Iyer, speaking for a Bench of this Court, observed that the determination of compensation must be liberal, not niggardly since the law values life and limb in a free country in generous scales. D

12. In the case of *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors.* [AIR 1994 SC 1631], this Court held that: E

"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 together. F G

The manner of arriving at the damages is to ascertain the H

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

C 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 overall picture that matters" and the court must try to assess as best as it can the loss suffered."

D 13. The Bench also observed that the proper method of computation is the multiplier-method, which was an accepted method of arriving at 'just' compensation. Any departure, save in exceptional and extraordinary cases, would introduce
 E inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Further, the Bench held that the multiplier was determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever was
 F higher.

14. The principles laid down in *Susamma* (supra) were upheld in the case of *U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors.* [(1996) 4 SCC 362].

G 15. In the case of *Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya & Ors.* [AIR 2005 SC 2985], this Court observed that the choice of the multiplier was to be determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what the capital sum, if
 H invested at a rate of interest appropriate to a stable economy,

would yield by way of annual interest. In ascertaining this, regard was also to be had to the fact that ultimately the capital sum would also be consumed-up over the period for which the dependency was expected to last.

16. In *United India Insurance Co. Ltd. v. Bindu & Ors.* [(2009) 3 SCC 705], this Court again reiterated that the choice of the multiplier was to be determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation of a capital sum which, if invested at a rate of interest appropriate to a stable economy, would yield by way of annual interest.

17. In *Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. & Anr.* [(2009) 4 SCC 513], the Court observed that while considering the question of just compensation payable in a case all relevant factors including appropriate multiplier had to be considered, and that the Second Schedule under Section 163-A to the Motor Vehicles Act, 1988, which gave amount of compensation to be determined for purpose of claim under the section, could be taken as a guideline while determining the compensation under Section 166 of the Act.

18. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.* [(2009) 6 SCC 121], this Court formulated the principles very lucidly and which are quoted below:

"Basically only three facts need to be established by the claimants for assessing compensation in the case of death:

- (a) age of the deceased;
- (b) income of the deceased; and the
- (c) the number of dependents.

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

- A (i) additions/deductions to be made for arriving at the income;
- (ii) the deduction to be made towards the personal living expenses of the deceased; and
- B (iii) the multiplier to be applied with reference of the age of the deceased.

C If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

D To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

E The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

G Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the

H

deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family."

19. Further, this Court considered the principles laid down in *Susamma* (supra), *Trilok Chandra* (supra) and *New India Assurance Co. Ltd. v. Charlie & Anr.* [(2005) 10 SCC 720] and gave the following table for multiplier:

| Age of the Deceased | Multiplies Scale as envisaged in <i>Susamma Thomas</i> | Multiplier Scale as adopted by <i>Trilok Chandra</i> | Multiplier Scale in <i>Trilok Chandra</i> as clarified in <i>Charlie</i> | Multiplier specified in Second Column in the Table in Second Schedule to the MV Act | Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of Compensation) |
|---------------------|--|--|--|---|--|
| (1) | (2) | (3) | (4) | (5) | (6) |
| Up to 15 yrs | - | - | - | 15 | 20 |
| 15 to 20 yrs | 16 | 18 | 18 | 16 | 19 |
| 21 to 25 yrs | 15 | 17 | 18 | 17 | 18 |
| 26 to 30 yrs | 14 | 16 | 17 | 18 | 17 |
| 31 to 35 yrs | 13 | 15 | 16 | 17 | 16 |
| 36 to 40 yrs | 12 | 14 | 15 | 16 | 15 |

| | | | | | | |
|---|-----------------|----|----|----|----|----|
| A | 41 to 45 yrs | 11 | 13 | 14 | 15 | 14 |
| | 46 to 50 yrs | 10 | 12 | 13 | 13 | 12 |
| B | 51 to 55 yrs | 9 | 11 | 11 | 11 | 10 |
| | 56 to 60 yrs | 8 | 10 | 09 | 8 | 8 |
| | 61 to 65 yrs | 6 | 08 | 07 | 5 | 6 |
| C | Above 65 Yrs | 5 | 05 | 05 | 5 | 5 |

D 20. In the present case, the claimants had filed for compensation under Section 166 of the Motor Vehicles Act, 1988. The original claim petition had been filed by the mother and brother of the deceased and the deceased was 33 years of age when he died in the accident.

E 21. For the purpose of calculating the multiplier, the High Court held that mother was the real legal representative and others could not claim to be the legal representatives of the deceased, and accordingly applied a multiplier of 5, whereas the Tribunal had calculated compensation by considering a multiplier of 16.

22. This Court is of the opinion that the law as has been laid correctly in the case of *Sarla Varma* (supra), in a very well considered judgment, is to be followed.

G 23. The High Court unfortunately took a very technical view in the matter of applying the multiplier. The High Court cannot keep out of its consideration the claim of the daughter of the first claimant, since the daughter was impleaded, and was 49 years of age. Admittedly, the deceased was looking after the entire family. In determining the age of the mother, the High

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Court should have accepted the age of the mother at 65, as given in the claim petition, since there is no controversy on that. By accepting the age of mother at 67, the High Court further reduced the multiplier from 6 to 5, even if we accept the reasoning of the High Court to be correct. The reasoning of the High Court is not correct in view of the ratio in *Sarla Verma* (supra). Following the same the High Court should have proceeded to compute the compensation on the age of the deceased.

24. Thus, the finding of the High Court is contrary to the ratio in *Sarla Verma* (supra), which is the leading decision on this question and which we follow.

25. This Court, therefore, cannot sustain the High Court judgment and is constrained to set aside the same. The award of MACT is restored.

26. The appeal is allowed. No costs.

B.B.B.

Appeal allowed.