

A                   JITENDRA KHIMSHANKAR TRIVEDI & ORS.

V.

KASAM DAUD KUMBHAR & ORS.

(Civil Appeal No. 1415 of 2015)

FEBRUARY 03, 2015

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**[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]**

*Motor Vehicles Act, 1988: s. 166 – Compensation – Fatal accident due to rash and negligent driving – Deceased aged 22 years, a housewife and doing embroidery and knitting work – Tribunal assessed the income of the deceased at Rs. 1500 p.m. – After deducting 1/3rd for personal expenses and after adopting multiplier of 18, tribunal calculated the loss of dependency at Rs. 2.16 lacs – Driver/owner of offending vehicle filed appeal – High Court partly allowed the appeal taking the income of the deceased at Rs. 1350 p.m. and deducting 1/3rd for personal expenses, held the claimants entitled to compensation of Rs. 2.09 lacs – On claimant's appeal, held: Considering the nature of work and evidence of witnesses, the deceased would not have earned less than Rs.3000 p.m. had she been alive – Even otherwise, as deceased was a home maker, it is reasonable to fix her income at Rs.3000. p.m. – Deducting 1/3<sup>rd</sup> for personal expenses contribution of the deceased is calculated at Rs.2,000/- p.m. – Taking multiplier to be adopted is 18 – Total loss of dependency comes to Rs.4,32,000/- (Rs.2000 x 12 x 18) – Rs.1,00,000/- awarded towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the minor children – Towards loss of estate and funeral expenses, award of compensation of Rs.15,000/- awarded by the High Court is maintained – Thus, the claimants are entitled to a total compensation of Rs.6,47,000/- – As against the award passed by the tribunal even though the claimants have not preferred any appeal and even though the claimants have*

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*then prayed for compensation of Rs.2.96 lacs for doing complete justice to the parties, exercising jurisdiction u/Article 142 of the Constitution of India, it is deemed appropriate to award enhanced compensation of Rs. 6,47,000/ to the claimants – Constitution of India, 1950 – Article 142.*

**Partly allowing the appeal, the Court**

**HELD: 1.** The tribunal observed that in the district of Kachchh embroidery work, stitching work and local traditional embroidery work is doing well and had the deceased been alive she would have earned Rs.1,500/- per month. Deducting 1/3<sup>rd</sup> for personal expenses and adopting multiplier of 18, tribunal calculated the loss of dependency at Rs.2,16,000/- (Rs.1000 x 12 x 18). Though in their cross-examination, parents-in-law deposed that they did not keep voucher and account books, reasoning of the tribunal that the embroidery and tailoring work is doing well in the district of Kachchh and that the deceased would have earned not less than Rs.1,500/- per month is well merited. The respondents have not adduced any evidence to prove that the deceased was not doing any embroidery or tailoring work or the like. While so, in the light of the factual findings recorded by the tribunal, High Court was not justified in reducing the income of the deceased to Rs.1,350/- per month from Rs.1,500/-. Thus, considering the nature of the work and the evidence of claimants' witnesses-father-in-law and mother-in-law of the deceased, had the deceased been alive she would have earned not less than Rs.3,000/- per month. [Paras 9 and 10] [126-G-H; 127-A-E]

**2.** Even assuming that the deceased was not self-employed doing embroidery and tailoring work, the fact remained that she was a housewife and a home maker. It is hard to monetize the domestic work done by a

- A house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased as the home maker, it is reasonable to fix her income at Rs.3,000/- per month. [Para 11] [127-E-H]

3. As against the award passed by the tribunal even though the claimants have not filed any appeal, but it is obligatory on the part of courts/tribunals to award just and reasonable compensation. In order to award just and reasonable compensation, the income of the deceased is taken as Rs.3000/- per month. Deducting 1/3<sup>rd</sup> for personal expenses contribution of the deceased is calculated at Rs.2,000/- per month. At the time of her death deceased was aged about 22 years, proper multiplier to be adopted is 18. Adopting multiplier of 18, total loss of dependency is calculated at Rs.4,32,000/- (Rs.2000 x 12 x 18). Rs.1,00,000/- is awarded towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the minor children. Towards loss of estate and funeral expenses, award of compensation of Rs.15,000/- awarded by the High Court is maintained. Thus, the claimants are entitled to a total compensation of Rs.6,47,000/-. As against the award passed by the tribunal even though the claimants have not preferred any appeal and even though the claimants have then prayed for compensation of Rs.2,96,480/-, for doing complete justice to the parties, exercising jurisdiction under Article 142 of the Constitution of India, it is deemed appropriate to

**award enhanced compensation of Rs. 6,47,000/- to the claimants. [Paras 13 to 15] [129-C-E; 130-A-D]**

*General Manager, Kerala S.R.T.C. v. Susamma Thomas* (1994) 2 SCC 176; *Arun Kumar Agrawal & Anr. v. National Insurance Company Ltd.* (2010) 9 SCC 218: 2010 (9) SCR 303; *Nagappa v. Gurudayal Singh* (2003) 2 SCC 274: 2002 (4) Suppl. SCR 499; *Oriental Insurance Company Ltd. v. Mohd. Nasir* (2009) 6 SCC 280:2009 (8) SCR 829; *Ningamma v. United India Insurance Company Ltd.* (2009) 13 SCC 710 : 2009 (8) SCR 683; *Rajesh v. Rajbir Singh* (2013) 9 SCC 54: 2013 (5) SCR 961; *Jiju Kuruvila v. Kunjujamma Mohan* (2013) 9 SCC 166: 2013 (7) SCR 276; *Oriental Insurance Company Limited v. Brij Mohan* (2007) 7 SCC 56: 2007 (6) SCR 843; *Deddappa v. Branch Manager, National Insurance Company Limited* (2008) 2 SCC 595:2007(13) SCR 287; *Amresh Kumari v. Niranjan Lal Jagdish Prasad Jain* (2010) ACJ 551; *Mohinder Kaur v. Hira Nand Sindhi (Ghoriwala)* (2007) ACJ 2123 – relied on.

**Case Law Reference**

Case Law Reference			E
(1994) 2 SCC 176	Relied on.	Para 4	
2010 (9) SCR 303	Relied on.	Para 12	
2002 (4) Suppl. SCR 499	Relied on.	Para 13	
2009 (8) SCR 829	Relied on.	Para 13	F
2009 (8) SCR 683	Relied on.	Para 13	
2013 (5) SCR 961	Relied on.	Para 14	
2013 (7) SCR 276	Relied on.	Para 14	G
2007 (6) SCR 843	Relied on.	Para 16	
2007 (13) SCR 287	Relied on.	Para 16	
(2010) ACJ 551	Relied on.	Para 17	
(2007) ACJ 2123	Relied on.	Para 17	H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1415 of 2015

From the Judgment and Order dated 16.01.2012 of the High Court of Gujarat at Ahmedabad in First Appeal No. 4021 of 1998

B Yadunandan Bansal, Abhijat P. Medh for the Appellants.

P. K. Seth, Manjeet Chawla, Sunanda Roy for the Respondents.

C The Judgment of the Court was delivered by

**R. BANUMATHI, J.** 1. Delay condoned. Leave granted.

D 2. Being dissatisfied with the quantum of compensation awarded by the High Court of Gujarat in First Appeal No. 4021 of 1998 dated 16.1.2012, the claimants have filed this appeal seeking enhancement of compensation on account of death of Smt. Jayvantiben Jitendra Trivedi in a motor accident on 21.9.1990.

E 3. Undisputed facts emerging from this case can be briefly stated as under:- On 21.9.1990 respondent No.1 while driving tempo bearing registration No. GQY-4701 in a rash and negligent manner lost the control over it and hit Smt. Jayvantiben Jitendra Trivedi (deceased) who subsequently succumbed to injuries. Appellant No.1 is the husband of deceased and appellant Nos. 2 to 5 are husband's sisters, daughter and father-in-law respectively of the deceased Jayvantiben. Claimants filed claim petition before the Motor Accidents Claims Tribunal, Bhuj-Kachchh, Gujarat, *inter alia*, claiming compensation under different heads to the tune of Rs.2,96,480/- along with interest at the rate of 18 per cent per annum. The appellants averred in the claim petition that the deceased was a housewife at the time of accident and was aged 22 years and that she was doing embroidery and knitting work and was

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earning Rs.900/- per month from the said work and was maintaining her family. Respondents No. 1 and 2 did not enter into defence. Respondent No.3—Insurance Company has filed counter statement denying averments made in the claim petition and contended that the compensation claimed is on the higher side.

4. After considering the oral and documentary evidence, the tribunal came to the conclusion that the death of Smt. Jayvantiben Jitendra Trivedi was caused due to the rash and negligent driving of respondent No.1. Based on the oral testimony of witnesses, tribunal came to the conclusion that deceased was earning Rs.900/- per month. Relying upon the decision in *General Manager, Kerala S.R. T.C. vs. Susamma Thomas & Ors.*<sup>1</sup>, the tribunal assessed the income of the deceased at Rs.1,500/- per month. After deducting 1/3<sup>rd</sup> for personal expenses and after adopting multiplier of 18, tribunal has calculated the loss of dependency at Rs.2,16,000/-. Adding conventional damages Rs.8,000/-, vide award dated 30.4.1998, the tribunal awarded total compensation of Rs.2,24,000/- with interest at the rate of 15 per cent per annum.

5. Being aggrieved by the award of the tribunal, respondents filed appeal being First Appeal No.4021/1998 under Section 171 of the Motor Vehicles Act 1988 before the High Court of Gujarat at Ahmedabad. Vide impugned judgment dated 16.1.2012, the High Court partly allowed the appeal taking the income of the deceased at Rs.1,350/- per month and deducting 1/3<sup>rd</sup> for personal expenses, the High Court held that the claimants are entitled to compensation of Rs.2,09,400/- along with interest at the rate of 12 per cent per annum from the date of filing of the claim petition till the date of realization.

6. Learned counsel for the claimants submitted that the owner has neither filed written statement nor contested the

<sup>1</sup>(1994) 2 SCC 176

A claim petition before the tribunal and while so the insurance company cannot challenge the award on merits. It was further submitted that the High Court did not keep in view that the deceased was self-employed person apart from being a home maker and while so, the High Court erred in reducing the compensation as well as the rate of interest.

7. Learned counsel for the respondents contended that in the absence of furnishing documentary proof like receipts of work, accounts books, any authenticated evidence of income no reliance can be placed on oral testimony to prove that the deceased was earning income as self-employed at the time of accident. Further, it is asserted that the deceased being self-employed therefore no enhancement in income could be lawfully granted in the light of future prospects of the deceased.

8. Admittedly, claimants adduced only oral testimony of the witnesses to substantiate their claim that deceased was self-employed and was earning Rs.900/- per month. Smt. Godavariben Khimshankar Trivedi—mother-in-law and Shri Khimshankar Raguram Trivedi, father-in-law have deposed to the effect that deceased at the time of accident was doing tailoring, embroidery and knitting and was earning Rs.900/- per month. They further deposed that their daughters were also doing the same work as the deceased Jayvantiben Jitendra Trivedi was then doing and that their daughters were earning Rs.3,000/- per month and had the deceased been alive, she would have also earned Rs.3,000/- per month.

9. The tribunal observed that in the district of Kachchh embroidery work, stitching work and local traditional embroidery work is doing well and had the deceased been alive she would have earned Rs.1,500/- per month. Deducting  $\frac{1}{3}$ <sup>rd</sup> for personal expenses and adopting multiplier of 18, tribunal has calculated the loss of dependency at Rs.2,16,000/- (Rs.1000 x 12 x 18). Though in their cross-examination, Smt. Godavariben Khimshankar Trivedi and Khimshankar Raguram

Trivedi deposed that they did not keep voucher and account books, reasoning of the tribunal that the embroidery and tailoring work is doing well in the district of Kachchh and that the deceased would have earned not less than Rs. 1,500/- per month is well merited. It is to be pointed out that the respondents have not adduced any evidence to prove that the deceased was not doing any embroidery or tailoring work or the like. While so, in the light of the factual findings recorded by the tribunal, High Court was not justified in reducing the income of the deceased to Rs. 1,350/- per month from Rs. 1,500/-.

10. As noticed earlier, tribunal has taken the income of the deceased at Rs. 1,500/- whereas the High Court has assessed the income of the deceased at Rs. 1,350/- per month. As observed by the tribunal, embroidery work, stitching work and local traditional embroidery work was doing well in the district of Kachchh and there was good earning. Considering the nature of the work and the evidence of claimants' witnesses-father-in-law and mother-in-law of the deceased, had the deceased Jayvantiben been alive she would have earned not less than Rs. 3,000/- per month.

11. Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased Jayvantiben Jitendra Trivedi as the home maker, it is reasonable to fix her income at Rs. 3,000/- per month.

A 12. Recognizing the services of the home maker and that domestic services have to be recognized in terms of money, in *Arun Kumar Agrawal & Anr. vs. National Insurance Company Ltd. & Ors.*<sup>2</sup>, this Court has held as under:-

B “The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.

C Household work performed by women throughout India is more than US \$612.8 billion per year (*Evangelical Social Action Forum and Health Bridge*, p. 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women’s high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing “just compensation”.

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G 13. The tribunal has awarded Rs.2,24,000/- as against the same, claimants have not filed any appeal. As against the award passed by the tribunal when the claimants have not filed

H <sup>2</sup>(2010) 9 SCC 218

any appeal, the question arises whether the income of the deceased could be increased and compensation could be enhanced. In terms of Section 168 of the Motor Vehicles Act, the courts/tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasized by this Court in *Nagappa vs. Gurudayal Singh & Ors.*<sup>3</sup>, *Oriental Insurance Company Ltd. vs. Mohd. Nasir & Anr.*<sup>4</sup>, and *Ningamma & Anr. vs. United India Insurance Company Ltd.*<sup>5</sup>. As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is appropriate to increase the compensation.

14. In order to award just and reasonable compensation income of the deceased is taken as Rs.3000/- per month. Deducting 1/3<sup>rd</sup> for personal expenses contribution of the deceased and the family is calculated at Rs.2,000/- per month. At the time of her death deceased Jayvantiben was aged about 22 years, proper multiplier to be adopted is 18. Adopting multiplier of 18, total loss of dependency is calculated at Rs.4,32,000/- (Rs.2000 x 12 x 18). With respect to the award of compensation under conventional heads, tribunal has awarded Rs.5,000/- towards loss of estate and Rs.3,000/- towards funeral expenses totaling Rs.8,000/-. The High Court has awarded conventional damages of Rs.15,000/- i.e. Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The courts below have not awarded any compensation towards loss of consortium and towards love and affection. In *Rajesh & Ors. vs. Rajbir Singh & Ors.*<sup>6</sup>, and *Jiju Kuruvila & Ors. vs. Kunjamma Mohan & Ors.*<sup>7</sup>, this Court

<sup>3</sup>(2003) 2 SCC 274

<sup>4</sup>(2009) 6 SCC 280

<sup>5</sup>(2009) 13 SCC 710

<sup>6</sup>(2013) 9 SCC 54

<sup>7</sup>(2013) 9 SCC 166

- A has awarded substantial amount of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection. Following the same, in the case in hand, Rs.1,00,000/- is awarded towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the minor children.
- B Towards loss of estate and funeral expenses, award of compensation of Rs.15,000/- awarded by the High Court is maintained. Thus, the claimants are entitled to a total compensation of Rs.6,47,000/-.

- C 15. As against the award passed by the tribunal even though the claimants have not preferred any appeal and even though the claimants have then prayed for compensation of Rs.2,96,480/-, for doing complete justice to the parties, exercising jurisdiction under Article 142 of the Constitution of India, we deem it appropriate to award enhanced
- D compensation of Rs. 6,47,000/- to the claimants.

- E 16. In situation of this nature, for doing complete justice to the parties, this Court has always exercised the jurisdiction under Article 142 of the Constitution of India. In *Oriental Insurance Company Limited vs. Brij Mohan and Ors.*<sup>8</sup> this Court held as under:-

- F “13. However, Respondent 1 is a poor labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of compensation awarded in his favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of Ms Indu Malhotra, we are inclined to exercise our extraordinary
- G jurisdiction under Article 142 of the Constitution of India so as to direct that the award may be satisfied by the appellant but it would be entitled to realise the same from the owner of the tractor and the trolley wherefor it would not be necessary for it to initiate

H <sup>8</sup>(2007) 7 SCC 56

any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act. A

“14. It is well settled that in a situation of this nature this Court in exercise of its jurisdiction under Article 142 of the Constitution of India read with Article 136 thereof can issue suit directions for doing complete justice to the parties”. B

In *Deddappa & Ors. vs. Branch Manager, National Insurance Company Limited*,<sup>9</sup> it was observed as under:- C

“26. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct Respondent 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz. Respondent 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly”. D

17. The next question falling for our consideration is the rate of interest to be awarded. The tribunal has awarded interest at the rate of 15 per cent which was reduced to 12 per cent by the High Court. The rate of interest awarded by both the courts is on higher side. In *Amresh Kumari vs. Niranjana Lal Jagdish Prasad Jain & Ors.*<sup>10</sup> and *Mohinder Kaur & Ors. vs. Hira Nand Sindhi (Ghoriwala) and Anr.*<sup>11</sup>, this Court has awarded the compensation amount payable to the claimants with interest at the rate of 9 per cent. E

18. The compensation reduced by the High Court from Rs. 2,24,000/- to Rs.2,09,400/- is enhanced to F

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<sup>9</sup>(2008) 2 SCC 595

<sup>10</sup>(2010) ACJ 551

<sup>11</sup>(2007) ACJ 2123

- A Rs.6,47,000/-. The quantum of compensation claimed is Rs.2,96,480/- i.e. payable with interest at the rate of 9 per cent from the date of the filing of the claim petition till the date of payment. So far as the enhanced compensation of Rs.3,50,520/- is payable with interest at the rate of 9 per cent
- B from the date of filing of the special leave petition till the date of realization. The enhanced compensation of Rs.3,50,520/- alongwith accrued interest shall be equally divided between the appellants No.1 and 4 Jitendra Khimshankar Trivedi, Ku. Preeti Jitendra Trivedi (husband and daughter respectively of the deceased-Jayvantiben Jitendra Khimshankar) in equal share.
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19. In the result, impugned judgment of the High Court is modified and the appeal is partly allowed in the above terms.

- D In the facts and circumstances of the case, we make no order to as to costs.

Devika Gujral

Appeal partly allowed