

New India Assurance Co.Ltd vs Gopali & Ors on 5 July, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3381, 2012 (12) SCC 198, 2012 AIR SCW 4330, 2012 AAC 2549 (SC), (2012) 117 ALLINDCAS 255 (SC), 2012 (117) ALLINDCAS 255, AIR 2013 SC (CIVIL) 2320, (2012) 4 PUN LR 593, 2012 (6) SCALE 534, (2012) 3 RECCIVR 818, (2012) 4 ACC 670, (2012) 4 MAD LW 629, (2012) 53 OCR 30, (2012) 4 TAC 353, (2012) 6 SCALE 534, (2012) 4 ACJ 2131, (2012) 94 ALL LR 210, (2012) 5 ALL WC 4807

Bench: Sudhansu Jyoti Mukhopadhaya, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5179 OF 2012
(Arising out of SLP(C)No. 11345 of 2007)

NEW INDIA ASSURANCE CO.LTD.

...Appellant

VERSUS

GOPALI & ORS.

...Respondents

O R D E R

Leave granted.

India is acclaimed for achieving a flourishing constitutional order, an inventive and activist judiciary, aided by a proficient bar and supported by the State. However, the Courts and Tribunals, which the citizens are expected to approach for redressal of their grievance and protection of their fundamental, constitutional and legal rights, are beset with the problems of delays and costs. In a country where 36 per cent of the population live below the poverty line, these deficiencies in the justice delivery system prevent a large segment of the population from availing legal remedies. The disadvantaged and poor are deprived of access to justice because of the costs of litigation, both in terms of actual expenses and lost opportunities, and the laudable goal of securing justice - social, economic and political enshrined in the Preamble to the Constitution

of India remains an illusion for them. The infrastructure of Courts and the processes which govern them are simply inaccessible to the poor. The State, which has been mandated by Article 39A of the Constitution to ensure that the operation of the legal system promotes justice by providing free legal aid and that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, has not been able to create an effective mechanism for making justice accessible to the poor, downtrodden and disadvantaged. In last two and a half decades the institution of the legal services authorities has rendered yeoman's service in the field of providing legal aid to the poor but a lot is required to be done for ensuring justice to economically deprived section of the society and those who suffer from other disabilities like illiteracy and ignorance.

We have prefaced the disposal of this petition, filed against order dated 22.3.2007 passed by the Division Bench of the Rajasthan High Court whereby the special appeal filed by the appellant against the judgment of the learned Single Judge was dismissed as not maintainable, by making the aforementioned observations because in last almost 20 years the claimants - the aged parents, wife and five children of Nanag Ram, who became a victim of road accident in 1992, must have exhausted all their resources in prosecuting and contesting the litigation till the stage of High Court and they must not have been left with money sufficient for engaging an advocate in this Court and also because in last almost five years, during which the special leave petition remained pending in this Court, they must have lost all hopes to get justice. The learned Single Judge of the High Court had allowed the appeal filed by the dependants of Nanag Ram under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') and enhanced the compensation awarded by Motor Accident Claims Tribunal, Jaipur (for short, 'the Tribunal') by an amount of Rs.4,85,000/- and directed the appellant to pay the enhanced compensation with interest at the rate of 12 per cent per annum from the date of filing the claim petition till 31.12.2000 and at the rate of 9 per cent from

1.1.2001 till the payment thereof, but on account of ex-parte interim order passed by this Court on 23.7.2007, the claimants could get a paltry sum of Rs. 2 lakhs and they perhaps thought that it will not be worthwhile to spend money for contesting the special leave petition filed by the appellant. This is perhaps the thinking of many thousands of poor litigants, who succeed in the Courts below and the High Courts but cannot afford the cost and expenses of contesting litigation in the highest Court of the country and suffer silently in the name of the Almighty God by treating it as their destiny.

Nanag Ram died in a road accident which occurred on 9.3.1992 when his motorcycle was struck by a truck owned by respondent No.10- Ram Chandra Paliwal and driven by Raghu Nath, whose name was deleted from the array of parties vide order dated 2.4.2009. At the time of accident, Nanag Ram's age was about 36 years and he was employed as a Machine Operator in National Engineering Company Ltd., Jaipur for a

salary of Rs.4,000/- per month.

The dependants of Nanag Ram filed a petition under Section 166 of the Act for award of compensation to the tune of Rs.24 lakhs by alleging that their bread winner had died due to rash and negligent driving of the truck by

Shri Raghu Nath. While the owner of the truck and its driver did not file a reply to contest the claim petition, the appellant raised all possible objections. In the reply filed on behalf of the appellant it was prayed that the claimants be directed to prove whether the driver of the offending vehicle was in the employment of the owner and had a valid and effective driving licence. The appellant also sought a direction to the owner for production of the original insurance policy and, as is usually done in such cases, it claimed that the accident was not caused due to rash and negligent driving of the truck. An alternative plea taken by the appellant was that if an award is passed, the contributory negligence of both the drivers be determined.

After considering the pleadings and evidence of the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the truck. The Tribunal also accepted the claimants' assertion that the deceased was employed as a Machine Operator in National Engineering Company, Jaipur. The Tribunal then referred to the evidence produced by the claimants on the issue of monthly income of the deceased and held that it could be taken as Rs.3,000/- per month. After deducting 1/3rd

towards personal expenses and applying the multiplier of 10, the Tribunal concluded that the claimants are entitled to total compensation of Rs.2,55,000/- with interest at the rate of 12 per cent per annum w.e.f. 5.9.1992.

The learned Single Judge of the High Court took cognizance of the fact that the employer was annually paying bonus to the deceased at the rate of 20 per cent of his salary, referred to the judgment of this Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (1994) 2 SCC 176 and held that the claimants are entitled to total compensation of Rs.6,45,300/-. The learned Single Judge made additions of small amounts towards pains and sufferings, loss of love and affection, consortium, security and protection and directed the appellant to pay an additional amount of Rs.4,85,000/- with interest at the rate of 12 per cent per annum.

The special appeal filed by the appellant was dismissed by the Division Bench of the High Court by relying upon Section 100A of the Code of Civil Procedure.

On 23.7.2007, this Court ordered notice on the special leave petition and indirectly stayed the judgment of the learned Single Judge of the High Court. For the sake of reference that order is extracted below:

“Issue notice.

Without prejudice to the claims involved, let the petitioner deposit a sum of Rupees three lakhs with the concerned MACT within four weeks from today. A sum of Rupees two lakhs shall be permitted to be withdrawn by the claimant without furnishing security."

As is the fate of large number of other special leave petitions, this petition was not listed before the Court for next five years for effective hearing and the appellant continued to enjoy the benefit of ex-parte interim order. For the first time, the case was listed before the Registrar on 15.10.2008 i.e. after almost one year and three months of the issue of notice. The Registrar noted that notice has not been served upon respondent Nos. 1 to 8 and 10 and an application has been filed for deleting respondent No. 9 from the array of parties. On 2.4.2009, the application was allowed by the Chamber Judge. For next two years and five months, the file of the case did not see the light of the day. On 14.9.2011, the case was listed before the Registrar, who recorded the statement of the appellant's counsel that he does not want to bring on record the legal representatives of respondent Nos. 1 and 3. On 12.10.2011, the matter was again listed before the Registrar, who directed that the matter be placed before the Chamber Judge. When the matter was listed before the Chamber Judge, he noted that the legal representatives of respondent Nos. 1 and 3 are already on record. It should be a matter of concern for those who are associated with this institution as to why an ex-parte interim order passed by the Court should continue to operate for years together without the matter being listed for effective hearing. If the claimants had been members of economically affluent sections of the society, they would have engaged an eminent advocate and taken steps for hearing of the matter at an early date but, as noted earlier, they do not have the financial capacity and resources to engage any advocate for contesting the special leave petition.

We have heard learned counsel for the appellant and carefully perused the record.

In our view, the appellant's challenge to the impugned order is meritless and the appeal is liable to be dismissed. We are also convinced that this is a fit case in which the Court should exercise power under Article 142 of the Constitution and enhance the compensation determined by the High Court by applying appropriate multiplier.

We shall first consider whether the High Court was justified in not applying the rule of 1/3rd deduction towards personal expenses of the deceased.

In *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121, the two Judge Bench made an endeavor to standardise the parameters for determination of the compensation payable by the insurer and / or the owner of the offending vehicle. While dealing with the issue of deduction towards personal expenses, the Court made the following observations:

"We have already noticed that the personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependants. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. The claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one.

It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardise the deductions to be made under the head of personal and living expenses of the deceased. This led to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction got statutory recognition under the Second Schedule to the Act, in respect of claims under Section 163-A of the Motor Vehicles Act, 1988 ("the MV Act", for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline."

The Bench then referred to the judgments in *Kerala State Road Transport Corporation v. Susamma Thomas* (1994) 2 SCC 176, *U.P.SRTC v. Trilok Chandra* (1996) 4 SCC 362 and *Fakeerappa v. Karnataka Cement Pipe Factory* (2004) 2 SCC 473 and held:

"Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and

households in different MPCE classes												
All-India	monthly per capita expenditure (Rs.) on item group for households in class (Rs.)											
item group	0 - 235	235 - 270	270 - 320	320 - 365	365 - 410	410 - 455	455 - 510	510 - 580	580 - 690	690 - 890	890 - 1155	1155 & more
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
education	1.91	2.14	2.98	5.32	6.07	7.19	8.70	11.03	15.74	24.54	33.70	95.1
medical-institutional	0.25	0.58	0.80	1.57	4.07	4.14	3.67	4.42	5.40	11.31	24.02	94.1
medical-non-inst.	5.26	5.63	9.85	11.75	11.90	17.98	19.29	23.94	28.05	42.80	57.93	125.3
entertainment	0.64	0.69	0.50	0.81	1.71	1.34	2.40	2.34	3.80	4.68	8.76	18.1
goods for personal care	0.23	0.34	0.24	0.29	0.92	0.59	1.08	1.41	1.44	1.99	2.52	4.6
toilet articles	5.42	6.32	7.60	9.41	10.25	11.42	12.79	14.49	16.79	20.18	24.61	43.1
sundry articles	3.98	5.45	5.95	7.14	8.10	9.31	10.38	12.18	14.26	17.12	22.46	31.1

in different MPCE classes

[illegible]

	0 – 335	335 – 395	395 – 485	485 – 580	580 – 675	675 – 790	790 – 930	930 – 1100	1100 – 1380	1380 – 1880	1880 – 2540	2540 & above
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
cereals	72.87	85.96	90.75	99.71	105.8	107.8	114.1	117.7	124.6	131.5	142.3	151.1
gram	0.42	0.47	0.56	0.74	0.94	1.02	1.40	1.73	2.02	2.44	2.55	3.16
cereal substitutes	0.06	0.09	0.20	0.34	0.26	0.44	0.44	0.46	0.52	0.60	0.75	1.00
pulses and their products	12.12	15.17	17.13	20.62	22.74	25.13	27.37	29.24	32.13	36.60	40.93	47.10
milk and milk products	11.25	20.39	25.29	33.76	46.68	57.50	69.83	89.31	107.1	138.0	161.8	233.2
edible oil	14.12	18.39	20.81	23.42	27.76	30.42	33.38	36.21	42.06	46.33	52.12	59.10
egg, fish and meat	6.93	10.97	15.13	19.44	24.33	25.20	29.93	30.71	37.40	41.02	51.46	67.10
vegetables	20.84	27.36	30.75	37.88	39.80	43.50	50.49	54.18	62.46	70.31	77.18	98.10
fruits: fresh	2.63	3.59	4.62	7.01	8.63	10.16	13.03	15.39	21.44	29.66	40.18	71.10
fruits: dry	0.44	0.87	1.31	1.35	1.73	2.54	2.78	3.62	4.81	7.18	13.28	23.10

sugar	7.14	8.67	10.65	11.01	13.41	14.71	16.05	17.94	19.17	20.20	22.76	25
salt	0.88	0.96	1.10	1.21	1.37	1.47	1.57	1.68	1.82	1.88	2.03	2.
spices	7.70	10.20	12.02	13.98	14.97	16.37	17.37	19.08	20.40	21.50	23.75	28
beverages, etc.	13.00	16.89	18.39	25.11	29.26	35.05	41.58	50.99	66.57	91.22	126.2	27
											7	3
total: food	170.4	219.9	248.7	295.5	337.7	371.3	419.4	468.3	542.5	638.4	757.5	10
	2	8	0	9	3	7	2	1	8	9	1	28
pan	0.72	1.30	1.88	2.66	2.21	2.62	2.78	3.02	3.82	3.66	4.41	4.
tobacco	3.81	4.36	5.90	8.08	6.78	8.22	8.81	9.26	8.85	10.00	9.92	17
intoxicants	1.50	1.69	3.44	4.38	5.16	4.28	5.40	4.49	6.31	7.21	6.73	16
fuel and light	38.42	47.01	56.77	64.68	73.68	85.05	92.24	107.3	123.7	143.5	171.3	25
								2	5	4	6	1
clothing	19.05	22.96	28.70	31.85	37.90	43.39	49.12	59.90	67.98	85.86	114.2	18
											1	0
footwear	2.59	3.12	4.21	4.67	5.95	7.22	8.53	10.36	12.49	16.94	23.06	38

Here, we are dealing with a case in which the deceased had 8 dependents including four sons and one daughter. The question which arises for our consideration is whether in 1992 a person having an income of less than Rs.3,000/- and a family of 9 could think of spending 1/3rd of his income on himself. On a conservative estimate, it is possible to say, he would have spent at least 50% of the income on the purchase of foodgrains, milk, etc., and for payment of water, electricity and other bills. 25% of the income would have been spent on the education of children which would have included school/college fee, cost of books, etc. 15% of the income would have been used for meeting other family necessities, like, clothes, medical expenses, etc. He would have then been left with 10% of his income, a portion of which could be used to meet unforeseen contingencies and on the occasion of festivals. In this scenario, any deduction towards personal expenses would be unrealistic. In any case, where the family of the deceased comprised of 5 persons or more having an income of Rs.3,000/- to Rs.5,000/-, it is virtually impossible for him to spend more than 1/10th of the total income upon himself.

What we have observed hereinabove may not apply to rich people living in urban areas who can afford to spend a substantial amount of their income in clubs, hotels and on drinks parties. In those cases, there may be a semblance of justification in applying the rule of 1/3rd deduction but it would be wholly unrealistic to universally apply that rule in all cases.

On the basis of the above discussion, we hold that the learned Single Judge of the High Court did not commit any error by not following the rule of 1/3rd deduction towards the personal expenses of the deceased.

We are also of the view that the High Court was justified in determining the amount of compensation by granting 100% increase in the income of the deceased. In the normal course, the deceased would have served for 22 years and during that period his salary would have certainly doubled because the employer was paying 20% of his salary as bonus per year.

The issue which remains to be considered is whether the Tribunal and the High Court committed an error by applying the multiplier of 10.

In Sarla Verma v. Delhi Transport Corporation (supra), this Court considered the question relating to selection of multiplier, referred to the judgments in Kerala State Road Transport Corporation v. Susamma Thomas (supra), U.P.SRTC v. Trilok Chandra (supra) and the Second Schedule appended to the Act and held :

"We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

It is not in dispute that at the time of accident, the age of the deceased was 36 years. Therefore, the Tribunal and the High Court were not right in applying the multiplier of 10. They should have adopted the multiplier of 15 for the purpose of determining the amount of compensation.

In the result, the appeal is dismissed. However, with a view to do complete justice to the claimants, we suo motu re-determine the amount of compensation in the following terms by applying the multiplier of 15 and hold that the claimants are entitled to a total amount of Rs.10,63,040/- :

Amount of compensation with 12 months

salary and 15 as multiplier : Rs. 5378 x 12 x 15 =
Rs.9,68,040

[Rs.2,689 pm x 2= Rs. 5,378/-

pm]

Compensation to Family members

for loss of love &

affection, deprivation of

protection, social security, etc. : Rs.70,000/-

Compensation to the widow of
the deceased for loss of love &
affection, pains and sufferings,
loss of consortium, deprivation of
protection, social security, etc. : Rs.25,000/-

Total Compensation : Rs.10,63,040
[Rs.9,68,040 + Rs. 70,000 + Rs. 25,000]

The claimants shall also get interest on the enhanced compensation at the rate of 12% per annum from the date of filing the claim petition.

The appellant is directed to pay the enhanced / additional compensation and interest to the claimants within a period of six weeks by getting a demand draft prepared in the name of respondent No.2, that is, the widow of the deceased. The latter shall invest 50% of the amount in a fixed deposit of three years term in a nationalized bank.

Since the appellant had enjoyed the ex-parte interim order passed by this Court for a period of five years, it is directed to pay cost of Rs.5 lakhs to the claimants.

The appellant shall submit compliance report in the Registry of the Rajasthan High Court, Jaipur Bench. The Registry shall list the matter before an appropriate Bench for perusal of the report. If the Bench finds that the appellant has failed to comply with the directions contained in this order, it shall initiate proceedings against the officers of the appellant under the Contempt of Courts Act, 1971 and also order recovery of the amount as arrears of land revenue.

.....J
[G.S. SINGHVI]

.....J
[SUDHANSU JYOTI MUKHOPADHAYA]

NEW DELHI
JULY 05, 2012.

|Table 5U (contd.): Break-up of total monthly per capita consumer expenditure (MPCE) by groups |
|of items for households in different MPCE | |classes | |All India | | | | | | | | | |Urban | | | | | |
| | | | | | | | | |no. of hhs | | | | | | | | | |reporting | | | | | | | | | |consumption| | |

monthly per capita expenditure (Rs.) on item group for																households in MPCE class (Rs.)																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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no. of sample	1539	2101	4983	6902	7623	9220	1100	1181	1702	2309	1637	1515	1268			
persons						9	0	2	6	2	1	28				