

## **Oriental Insurance Company Ltd vs Jashuben & Ors on 14 February, 2008**

**Equivalent citations: AIR 2008 SUPREME COURT 1734, 2008 (4) SCC 162, 2008 AIR SCW 2393, 2008 (2) SCALE 474, 2008 (2) SCC(CRI) 752, 2008 (2) SRJ 512, (2008) 70 ALLINDCAS 240 (SC), 2008 (70) ALLINDCAS 240, (2008) 2 ALLMR 74 (SC), 2008 (73) ALL LR 45 SOC, 2008 (2) ALL MR 74 NOC, (2008) 1 WLC(SC)CVL 642, (2008) 2 GUJ LR 1705, (2008) 2 ACJ 1097, (2008) 3 MAD LJ 33, (2008) 3 MAD LW 40, (2008) 4 MAH LJ 569, (2008) 4 MPLJ 1, (2008) 3 PUN LR 465, (2008) 2 TAC 12, (2008) 2 RECCIVR 91, (2008) 2 SCALE 474, (2009) 3 ACC 699, (2008) 2 ALL WC 1144**

**Author: S.B. Sinha**

**Bench: S.B. Sinha, V.S. Sirpurkar**

CASE NO.:

Appeal (civil) 1272 of 2008

PETITIONER:

Oriental Insurance Company Ltd.

RESPONDENT:

Jashuben & Ors.

DATE OF JUDGMENT: 14/02/2008

BENCH:

S.B. Sinha & V.S. Sirpurkar

JUDGMENT:

**J U D G M E N T** (Arising out of SLP (C) No.7304 of 2007) S.B. Sinha, J.

Leave granted.

1. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 22.11.2006 passed by the Division Bench of the High Court of Gujarat at Ahmedabad in First Appeal No.4586 of 2006 dismissing the appeal preferred by him.

2. Claimants-Respondents herein are heirs and legal representatives of Davjibhai Kushalbhai Rathod. He, while travelling in a mini luxury bus as a passenger from Surat to Mehsana, met with a road accident which took place on 23.6.1994. The accident occurred due to rash and negligent driving on the part of the driver of the said mini bus is not question.

3. The deceased, Devjibhai, at that time, was aged about 35 years. He was working as an Assistant in the Oil and Natural Gas Commission. A sum of Rs.12,00,000/- was initially claimed by way of compensation which was subsequently raised to 25,00,000/-. The Tribunal, as per the certificate issued by the Senior Personnel and Administrative Officer, ONGC, noticed that the deceased had been receiving the following salaries and perks in the month of June 1994 :

- . Basic Pay Rs.3295/-
- 2. DA @ 18.5% Rs. 610/-
- 3. DSCA 20% of basic Rs. 650/-
- 4. HRA @ 18% of basic Pay Rs. 593/-
- 5. Productivity allowance Rs. 450/-
- 6. Washing allowance Rs. 45/-
- 7. Conveyance Allowance Rs. 375/-
- 8. Child Education Allowance (for two children) Rs. 240/-
- 9. Child Bus fare (for children) Rs. 160/-

Total : Rs.6418/-

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4. However, the Tribunal also took into consideration the salary which might have been payable to the said deceased as in August, 2002; had he continued in service which was stated to be as under :

- . Basic Pay Rs.10698.00
- 2. DA @ 35.5% Rs. 3892.00
- 3. DSCA 20% of basic (maximum Rs.3100) Rs. 2193.00
- 4. HRA @ 22.5% of basic Pay Rs. 2406.00
- 5. Productivity allowance Rs. 500.00
- 6. Tribal allowance Rs. 200.00
- 7. Conveyance Allowance Rs. 740.00

8. Child Education Allowance (for two children) Rs. 500.00

9. Child Bus fare (for children) Rs. 250.00

10. Canteen Sub. Rs. 164.80 Total : Rs.21803.80 \_\_\_\_\_

5. The Tribunal, clubbed the income of the deceased which he might have got at the time of his retirement, i.e., Rs.3,295/- + Rs.17453/-, totaling a sum of Rs.20,748/- and divided the same by figure two to arrive the figure of at Rs.10,374/- per month. Adopting a multiplier of 16, the amount of compensation was determined at Rs.13,27,872/-. Besides the compensation amount, amount of gratuity, conventional amount and funeral expenses were calculated as follows :

Rs.13,27,872/- towards dependency loss Rs. 10,000/- towards conventional amount  
Rs. 3,000/- towards funeral expenses Rs. 3,02,468/- towards gratuity Rs.  
16,43,340/-

6. Interest on the said amount sum at the rate of 12 per cent was also awarded.

7. On an appeal preferred by the appellant thereagainst, a Division Bench of the High Court opined that as a revision of pay had been effected by ONGC from 1.1.1997 and in August 2002, the employees in the same cadre would have received a sum of Rs.10,693/- per month with Dearness Allowance at the rate of 35.5% amounting to Rs.3892/- and other allowances. The net income of the deceased was found to be at least a sum of Rs.16,000/- so as to enable the Tribunal to come to the conclusion that the loss of dependency benefit would come to Rs.16,000/- from January 1997 onwards. The High Court stated :

In view of the above settled legal position, we do not find any difficulty in accepting the submission of Mr. Nanavati for the original claimants that the Tribunal was justified in looking at the pay revision of employees of the ONGC for the purpose of assessing prospective income of the deceased. The accident in question took place in September 1994. The basic pay of the deceased at that time was Rs.3295/- and with dearness allowance and other allowances, his total pay- packet was Rs.6,418/-. Even proceeding on the basis that the deductions made by the employer may be taken into account, basic pay, dearness allowance, drill site compensation allowance and house rent allowance granted to the deceased would almost come to Rs.5,000/- per month. Within less than three years from the date of the accident, pay revision was made by the ONGC with effect from 1.1.97 and in August 2002, basic pay of the employees in the same cadre in which the deceased was working was Rs.10,693/- per month with dearness allowance at the rate of 35.5% being Rs.3892/-; drill site compensatory allowance and HRA were also substantially revised and they were 20% and 22.5% of the basic pay in August 2002. These four items aggregated to Rs.19,184/- per month. Over and above these heads, there were also other allowances like productivity allowance, conveyance allowance, child education allowance, child bus welfare allowance, etc. making it a total figure of Rs.21,808/-. Even after taking into account

all deductions including the income tax liability, the net income available to the deceased and his family would have been at least Rs.16000/- from January 1997 onwards.

8. The High Court, however, not only adopted the multiplier of 13 instead of 16 to arrive at the conclusion that the loss of dependency would be about Rs.16,000/-, but also interfered with the rate of interest to hold that reasonable interest payable would be 8% per annum. Appellant was directed to deposit the said amount with proportionate costs and interest at the rate of 8% per annum from the date of filing of the claim petition till its realization.

9. Mr. Pankaj Seth, learned counsel appearing on behalf of the appellant, would submit that the Tribunal as also the High Court committed a serious error in passing the impugned judgment in so far as they failed to take into consideration that computation for loss of income should have, in a situation of this nature, been determined only by doubling the amount of the salary received by the deceased at the relevant time. Future prospects, according to the learned counsel, could not have been taken into consideration.

10. Mr. Karia, learned counsel appearing for the respondent, on the other hand, urged that future prospect including the revision in the scale of pay should be taken into consideration for the purpose of determination of the amount of compensation.

11. The amount of compensation payable to the heirs and legal representatives of a deceased victim of an accident must be a fair and reasonable one. The estimate of the amount of loss of dependency may be arrived at by adopting various methods, application of structured formula being one of them. Such a formula has also been provided for in Schedule II appended to the Motor Vehicles Act, 1988. While determining the amount of compensation, certain well known principles must be kept in mind.

12. It is not a case where, as on the date of death, the salary of the deceased was revised with retrospective effect from 1994. Salary would be revised or not was not known at that part of time. Only because such salary was revised at a later point of time, the same by itself would not have been a factor which could have been taken into consideration for determining the amount of compensation. The Tribunal, therefore, committed a serious illegality in taking into consideration the latter aspect.

13. The amount of compensation indisputably should be determined having regard to the pecuniary loss caused to the dependents by reason of the death of the victim. It was necessary to consider the earnings of the deceased at the time of the accident. Of course, further prospect is not out of bound for such consideration. But the same should be founded on some legal principle.

14. In General Manager, Kerala State Road Transport Corporation, Trivendrum v. Susamma Thomas [(1994) 2 SCC 176], this Court held :

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.

15. The legal principle in this behalf has been laid down in the following terms :

9. In the present case the deceased was 39 years of age. His income was Rs. 1032/- per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is 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 is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs. 1032/- per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs. 2000/- as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalise with the appropriate multiplier. In the present case we can take about Rs. 1,400/- per month or Rs. 17,000/- per year as the loss of dependency and if capitalized on a multiplier of 12 which is appropriate to the age of the deceased, the compensation would work out to (Rs. 17,000/- x 12 = 2,04,000/- rupees) to which is added the usual award for loss of consortium and loss of the estate each in the conventional sum of Rs. 15,000/-. This Court in *Sarla Dixit & Anr. v. Balwant Yadav & Ors.* [(1996) 3 SCC 179] opined :

The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely, Rs.1,500/- per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs.3,000/- per month and dividing that figure by two. Thus, the average gross monthly income spread over his entire future career, had it been available, would

work out to Rs.4,500/- divided by 2, i.e., Rs.2,200/-. Rs.2,200/- per month would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner.

16. In *Rathi Menon v. Union of India* [(2001) 3 SCC 714], this Court, upon considering the dictionary meaning of compensation held :

In this context a reference to Section 129 of the Act appears useful. The Central Government is empowered by the said provision to make rules by notification "to carry out the purposes of this Chapter". It is evident that one of the purposes of this chapter is that the injured victims in railway accidents and untoward incidents must get compensation. Though the word "compensation" is not defined in the Act or in the Rules it is the giving of an equivalent or substitute of equivalent value. In Black's Law Dictionary , "compensation" is shown as equivalent in money for a loss sustained; or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for some loss, injury or service especially when it is given by statute. It means when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value.

17. In *N. Sivammal and Ors. v. Managing Director, Pandian Roadways Corporation and Ors.* [(1985) 1 SCC 18], this Court took into consideration the pay packet of the deceased.

18. We may also notice that in *T.N. State Transport Corporation Ltd. v. S. Rajapriya and Ors.* [(2005) 6 SCC 236], this Court held :

8. 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.

9. 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 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 years' purchase.

10. 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.

19. The same view was reiterated in *New India Assurance Co. Ltd. v. Charlie and Anr.* [(2005) 10 SCC 720]. However, therein although the words 'net income' has been used but the same would ordinarily mean gross income minus the statutory deductions. We must also notice that the said decision has been followed in *New India Assurance Co. Ltd. v. Kalpana (Smt.) and Ors.* [(2007) 3 SCC 538].

20. In *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors.* [(2006) 3 SCC 242], this Court, in a case where the salary of the deceased was found to be Rs.3600/- after deduction and wherein multiplier of 12 was applied where the age of the parents of the deceased was between 45 and 50 years, held that no further enhancement was warranted.

21. In *U.P. State Road Transport Corporation v. Krishna Bala & Ors.* [(2006) 6 SCC 249], it was held :

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 over the period for which the dependency is expected to last.

22. Therein a multiplier of 13 was adopted in a case where the age of the deceased was around 36.

23. Almost to the same effect is the decision of this Court in *The Managing Director, TNSTC v. Sripriya & Ors.* [2007 (4) SCALE 222]. In that case, a multiplier of 12 was applied in a case where the age of the deceased was 37 years.

24. Even certain allowances payable to the deceased could have been taken into consideration in the changing social scenario. In *National Insurance Company Ltd. v. Indira Srivastava & Ors.* [2007 (14) SCALE 461], it is useful to notice, this Court observed :

7. 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. Noticing the dictionary meaning of income , it was held :

9. 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.

25. We, therefore, are of the opinion that what would have been the income of the deceased on the date of retirement was not a relevant factor in the light of peculiar facts of this case and, thus, the approach of the Tribunal and the High Court must be held to be incorrect. It is impermissible in law to take into consideration the effect of revision in scale of pay w.e.f. 1.1.1997 or what would have been the scale of pay in 2002.

26. The loss of dependency, in our opinion, should be calculated on the basis as if the basic pay of the deceased been Rs. 3295/- X 2 = Rs. 6,590/-, thereto should be added 18.5% dearness allowance which comes to Rs.1219/-, child education allowance for two children @ Rs.240/- X 2 = Rs.480 and child bus fair Rs.160 X 2 = Rs.320/- should have been added which comes to Rs.8,609/-.

27. From the aforementioned figure 1/3rd should be deducted. After deduction, the amount of income comes to Rs.5,738/- per month [Rs.8609/- Rs.2871/-] and the amount of compensation should be determined by adopting the multiplier of 13, which comes to Rs.8,95,128/-

28. In the present case, the High Court itself has applied the multiplier of

13. We are of the opinion that no interference therewith is warranted. We furthermore do not intend to interfere with the rate of interest in the facts and circumstance of the case.

29. The appeal is allowed in part and to the extent mentioned hereinbefore. In the facts and circumstances of the case, there shall be no order as to costs.