Amrit Bhanu Shali & Ors vs National Insurance Co. Ltd. & Ors on 4 April, 2012

Equivalent citations: 2012 AIR SCW 3901, 2012 (11) SCC 738, 2012 AAC 2279 (SC), AIR 2012 SC (CIVIL) 1954, (2012) 4 ALL WC 4163, (2012) 3 RAJ LW 2748, (2012) 4 TAC 775, (2012) 3 ACJ 2002, (2013) 2 KER LJ 816, (2012) 52 OCR 730, (2012) 6 ANDHLD 2, (2012) 5 ALLMR 890 (SC), (2012) 6 SCALE 1, (2012) 4 JCR 116 (SC), (2012) 93 ALL LR 650, (2013) 2 MAD LW 337, (2012) 4 PUN LR 208, (2012) 4 RECCIVR 343, (2012) 116 ALLINDCAS 129 (SC), (2012) 4 ACJ 248, 2013 (1) SCC (CRI) 1126

Bench: Sudhansu Jyoti Mukhopadhaya, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3397 OF 2012
(ARISING OUT OF SLP(C) NO.27751 OF 2011)

AMRIT BHANU SHALI & ORS. … APPELLANTS

VERUS

NATIONAL INSURANCE CO.LTD. & ORS. … RESPONDENTS

O R D E R

Delay condoned

2. Leave granted.

3. Feeling dissatisfied with the reduction of compensation determined by Motor Accident Claims Tribunal, Raipur, Chhattisgarh (for short, 'the Tribunal') in Motor Accident Claim No.80/2008 and being aggrieved for not enhancing the amount as was claimed, the appellants preferred this appeal.

4. The deceased-Ritesh Bhanu Shali, son of the Ist and 2nd appellants, was going to Thanod on 20th July, 2008 by Swift Car bearing Registration No.CG-04-HA/6905 from Naharpara, Raipur, Chhattisgarh. While he was coming back at about 4.30 p.m. near Thanod, one Scorpio Car bearing Registration No.CG-04-HA/5372 coming rashly and negligently from Abhanpur dashed the Maruti

Swift Car. Due to that accident, Ritesh Bhanu Shali and one Sardar Jaspreet died on the spot and another Shivam received injuries. The Ist appellant-Amrit Bhanu Shali is the father, the 2nd appellant-Smt. Sarlaben is the mother and 3rd appellant-Mamta Bhanu Shali is the sister of the deceased. Claiming to be the dependent on the deceased they filed Motor Accident Claim Case No.80/2008 before the Tribunal u/S 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for award of compensation to the tune of Rs.25,50,000/-.

5. The non-applicants, owner of the car, driver and National Insurance Company Ltd. (hereinafter referred to as the "Insurance Company") appeared and defended their case. On the pleadings of the parties the Tribunal framed the following issues:

"SL.NO. ISSUE

1. Whether on 20.07.2001 at about 4.30 P.M. near Village Thanod more, the non applicant No.1 had hit the Swift Car by driving rashly and negligently the vehicle Scorpio bearing No.CG 04 HA/5372 under the ownership of non applicant No.2 and insured with the non applicant No.3 due to which Ritesh Bhanushali died after receiving the injuries ?

2. Whether applicants have the right to get the compensation separately and jointly from the non applicants ? If yes then how much ?

3. Whether at the time of accident the non applicant No.1 was having valid driving license ?

4. Whether the non applicant was driving the vehicle in violation of terms and agreement of policy ?

5. Relief and cost."

6. In support of the claim petition, the Ist appellant-Amirt Bhanu Shali examined himself (AW-1) and one Shivam Mahobe (AW-2), who was also travelling in the same Maruti Swift Car. The appellants have produced Exhibits P-1 to P-10 series including a report to the Police Station, Abhanpur. The Ist Appellant-Amirt Bhanu Shali (AW-1) in his statement stated that at the time of accident his son-Ritesh Bhanu Shali was 26 years old, as his date of birth is 24.08.1982 and he was doing business of real estate and used to sale handset mobile and also took tuitions and used to earn Rs. 10,000/- per month. The deceased-Ritesh Bhanu Shali also used to file Income Tax Returns. The Income Tax Returns filed by his son-Ritesh was produced in the Court as Exhibit P-10 and the photocopies of which is Exhibit.P-10-C. No separate document was placed pertaining to the sale and purchase of land. The Ist Appellant-Amrit Bhanu Shali (AW-1) stated that both the appellants-father and the mother were not earning and 3rd appellant was unmarried at the time of accident and was dependent on the deceased. It is stated that Mamta Bhanu Shali has also got married.

7. The non-applicant No.1-Mukesh Agrawal stated that he is the owner of the Scorpio Car bearing Registration No. CG-04-HA/5372 and at the time of accident the licence holder driver was Bakar Khan. At the time of accident the original licence was with the driver. During that accident licence was not seized. After the accident he took out the details of the licence of Bakar Khan from Regional

Transport Officer, Raipur. He denied that Bakar Khan does not know driving. He further stated that he has presented the original policy of the vehicle before the Insurance Company. At the time of accident the surveyor of the Insurance Company came for examination and a sum of Rs.3,20,000/- was paid by the Insurance Company towards damage.

8. The Tribunal on appreciation of oral evidence and analysis of documentary evidence set the Issue No.1 in the affirmative and held that the accident was caused due to rash and negligent driving by the driver of the Scorpio Car.

9. While dealing with issue No. 2, the Tribunal adverted to the statement made by the appellant No.1 in his cross examination and held that the appellant No.3 Mamta Bhanu Shali cannot be treated as dependant upon the deceased because she was aged about 29 years and was married by that time. The rest of the appellant Nos. 1 and 2, the parents, were accepted as dependents. The Tribunal taking into consideration the fact that the deceased was unmarried and 26 years old young man at the time of accident and his salary was Rs.99,000/- per annum, deducted 50% of the income and applying the multiplier of 17 as per the decision of this Court in "Sarla Verma v. Delhi Transport Corporation" (2009) 6 SCC 121 held that the appellants are entitled to get compensation of Rs.8,66,000/-. Rest of the issues were decided in favour of the appellants.

10. The appellants challenged the award of the Tribunal by filing Miscellaneous Appeal (C) No. 765 of 2010 before the Chhattisgarh High Court for enhancement of compensation. The National Insurance Company also challenged the same award by filing Miscellaneous Appeal (C) No. 515 of 2010 before the Chhattisgarh High Court. Therefore, the appellants withdrew their Miscellaneous Appeal (C) No. 765 of 2010 on 2.8.2010 with a liberty to file cross-objection for enhancement of compensation in Miscellaneous Appeal (C) No. 515 of 2010. The permission was so granted. The appellants filed cross objection in Miscellaneous Appeal (C) No. 515 of 2010 for enhancement of compensation.

11. The High Court by impugned order dated 12.11.2010 reduced the compensation to Rs.6,68,000/- by applying the multiplier of 13 and observed as follows:-

> "The impugned award of the Tribunal is liable to be modified as we feel that looking to the age of the deceased as 26 years, the multiplier of 13 was to be applied according to the decision of Hon'ble the Apex Court in the case of Sarla Verma (Smt) and others vs. Delhi Transport Corporation and Another, reported in (2009) 6 SCC 121, but the learned Tribunal has applied the multiplier of 17. Therefore, without changing the annual income and other amounts as awarded by the Tribunal on other heads, in our opinion, the multiplier of 13 would be appropriate in the instant case. Thus the compensation towards dependency would come to Rs.6,43,500/- (Rs.49,500 X 13 =6,43,500/-). Besides this amount, the claimants (father & mother of deceased) are entitled to get Rs.10,000/- (each) (i.e. Rs.20,000/-) on account of loss of love & affection, Rs. 2,000/- on account of funeral expenses and Rs.2500/- on account of loss of estate as awarded by the Tribunal. Therefore, the Total amount comes to Rs.6,68,000/- (Rs.6,43,500/- +20,000/-+2,000/-+2500/-=Rs.6,68,000/-).

> Therefore, the claimants are entitled to get the said amount of compensation instad of the amount as awarded by the Tribunal. The claimants would be entitled to get interest @6% per annum from the date of filing of the claim petition. Rest of the conditions mentioned in the impugned award shall remain intact."

12. Learned counsel appearing on behalf the appellants submitted that 50% deduction towards 'personal and living expenses' of the deceased is totally disproportionate to the size of the his family and as the family of the deceased bachelor was large and there are three dependent-non-earning members, the 'personal and living expenses' ought to have been restricted to one-third and contribution to the family should have been taken as two- third. He further submitted that the High Court committed serious error by applying multiplier of 13 which was against the law laid down by this Court in the case of Sarla Verma (supra).

13. Learned Counsel appearing on behalf of the respondents-Insurance Company submitted that the deceased-Ritesh Bhanu Shali was unmarried boy aged about 26 years and the High Court rightly applied the multiplier of 13 as per the age of the claimants, i.e. parents. According to the respondents, the multiplier is to be applied as per the age of the deceased or as per the age of the claimant, whichever is higher but aforesaid submission cannot be accepted in view of the finding of this Court in the case of Sarla Verma (supra).

14. We have considered the respective arguments and perused the record. The questions which arise for consideration are :

> (i) What should be the deduction for the 'personal and living expenses of the deceased- Ritesh Bhanu Shali to decide the question of the contribution of the dependent members of the family; and
>
> (ii) What is the proper selection of multiplier for deciding the claim.

15. The question relating to deduction for 'personal and living expenses' and selection of multiplier fell for consideration before this Court in the case of Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. In the said case this Court taking into consideration the decisions in Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176; U.P. SRTC v. Trilok Chand, (1996)4 SCC 362; New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 and Fakeerappa v. Karnataka Cement Pipe Factory, (2004) 2 SCC 473, held as follows:

> "(i)Re Question – Deduction for personal and living expenses:
>
> 30. 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 living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th)

where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

(ii)Re Question - Selection of multiplier

42. 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."

16. Admittedly both the parents, Ist appellant- Amrit Bhanu Shali (father) and 2nd appellant- Smt. Sarlaben (mother) have been held to be dependents of deceased- Ritesh Bhanu Shali and, therefore, the Tribunal held that the Ist appellant and 2nd appellant have the right to get the compensation. On the date of the accident the 3rd appellant- Mamta was not married but by the time the case was heard by the Tribunal the 3rd appellant-Mamta had already been married. In these circumstances, she is not found to be dependent upon the deceased. Thus, both the parents being dependents, i.e., father and the mother, the Tribunal rightly restricted the 'personal and living expenses' of the deceased to 50% and contribution to the family was required to be taken as 50% as per the decision of this Court in the case of Sarla Verma (supra).

17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

18. In the case of Sarla Verma (supra) this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and brining it down to the multiplier of 13.

19. The appellants produced Income Tax Returns of deceased-Ritesh Bhanu Shali for the years 2002 to 2008 which have been marked as Ext.P-10-C. The Income Tax Return for the year 2007-2008 filed on 12.03.2008 at Raipur, four months prior to the accident, shows the income of Rs.99,000/- per annum. The Tribunal has rightly taken into consideration the aforesaid income of Rs.99,000/- for computing the compensation. If the 50% of the income of Rs.99,000/- is deducted towards 'personal and living expenses' of the deceased the contribution to the family will be 50%, i.e., Rs.49,500/- per annum. At the time of the accident, the deceased-Ritesh Bhanu Shali was 26 years old, hence on the basis of decision in Sarla Verma (supra) applying the multiplier of 17, the amount will come to Rs.49,500/- x 17 =Rs.8,41,500/-. Besides this amount the claimants are entitled to get Rs.50,000/- each towards the affection of the son, i.e., Rs.1,00,000/- and Rs.10,000/- on account of funeral and ritual expenses and Rs.2,500/- on account of loss of sight as awarded by the Tribunal. Therefore, the total amount comes to Rs.9,54,000/- (Rs.8,41,500/- + Rs.1,00,000/- + Rs.10,000/- + Rs.2,500/-) and the claimants are entitled to get the said amount of compensation instead of the amount awarded by the Tribunal and the High Court. They would also be entitled to get interest at the rate of 6% per annum from the date of the filing of the claim petition leaving rest of the conditions mentioned in the award intact. Accordingly, the appeal is allowed. The impugned judgment dated 12.11.2010 passed by the High Court of Chhattisgarh at Bilaspur in Misc. Appeal No.(C) No.515 of 2010 is set aside and the award passed by the Tribunal is modified to the extent above. The amount which has already been received by the claimants-appellants shall be adjusted and rest of the amount be paid at an early date. No order as to costs.

……J. (G.S. SINGHVI) ……J. (SUDHANSU JYOTI MUKHOPADHAYA) NEW DELHI, APRIL 04, 2012
