

National Insurance Company Ltd vs Indira Srivastava & Ors on 12 December, 2007

Equivalent citations: AIR 2008 SUPREME COURT 845, 2008 AIR SCW 143, 2008 (1) ALL LJ 746, (2008) 4 ALLMR 10 (SC), 2008 (1) SRJ 495, (2008) 62 ALLINDCAS 129 (SC), 2007 (14) SCALE 461, 2008 (1) SCC(CRI) 550, 2008 (2) SCC 763, 2008 (4) ALL MR 10 NOC, (2007) 14 SCALE 461, (2008) 1 ACC 162, (2008) 2 MAD LW 457, (2008) 1 ACJ 614, (2008) 1 KER LT 62, (2008) 2 MAD LJ 495, (2008) 3 MAH LJ 550, (2008) 2 MPLJ 498, (2008) 1 PUN LR 786, (2008) 1 RAJ LW 214, (2008) 1 TAC 424, (2008) 1 RECCIVR 359, (2008) 70 ALL LR 323, (2008) 1 ALL WC 593, (2008) 1 CPJ 24

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Bench: S.B. Sinha, Harjit Singh Bedi

CASE NO.:

Appeal (civil) 5830 of 2007

PETITIONER:

National Insurance Company Ltd

RESPONDENT:

Indira Srivastava & Ors

DATE OF JUDGMENT: 12/12/2007

BENCH:

S.B. Sinha & Harjit Singh Bedi

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 5830 OF 2007 (Arising out of SLP (C) No.14452 of 2007) S.B. Sinha, J.

1. Leave granted.

2. Connotation of the term 'income' for the purpose of determination of 'just compensation' envisaged under Section 168 of the Motor Vehicles Act, 1988 (the Act) calls for question in this appeal which arises out of a judgment and order dated 6.4.2007 passed by the High Court of Judicature at Allahabad, Lucknow Bench at Lucknow in FAFO No.171 of 2001. Respondent's husband R.K. Srivastava was employed in a company named Gabriel India Ltd. While he was travelling in an auto rickshaw from Charbagh Railway Station, Lucknow to his residence situated at Ashok Marg, the same met with an accident with a 'Mahindra Commander Jeep' driven rashly and

negligently. He sustained injuries and ultimately succumbed thereto. Respondents herein filed a claim petition before the learned Tribunal. A salary certificate was produced in the said proceedings which is in the following terms :

Earnings Amount Deductions Amount Basic 3420.00 CPF(S) 488.00 Special Pay
70.00 CPF (Add) FDA 350.00 GIS

3.75 VDA 1040.00 LIC/GIS 509.10 CCA 100.00 HRR HRA 1047.00 MSPI 60.00 Washing All.

75.00 Society 576.00 Conv.

225.00 Union 3.00 Cant.sub.

265.00 HBA 340.00 C.E.A. 2040.00 B.Fund 10.00 Total 8632.00 Total 1989.85

3. The learned Tribunal opined that in computing his income, the element of conveyance allowance only would fall outside the purview of income. On the aforementioned basis, the monthly income of the deceased was assessed at Rs.20364/-. Applying the multiplier of 13, as the age of the deceased was 45 years, it was held :

"As such, on using multiple of 13 to the annual income of deceased at Rs.2,32,372/-, the amount works out to Rs.30,20,836/-. The deceased would have spent 1/3rd of this amount on himself, hence on deducting 1/3rd from this amount, 2/3rd compensation amount comes to Rs.20,13,890/-."

It was concluded:

"Considering all these facts, I reach to this finding that the petitioners are entitled to get 2/3rd of the total income of deceased worked out by using multiple of 13 i.e. about Rs.20,00,000/-. Issue No.5 is decided accordingly. It is the liability of opposite party No.3 Insurance Company. On behalf of opposite party No.3, the ruling of Hon'ble High Court Smt. Lalta Devi Vs. Suresh & Ors., T.A.C. 8, 1999 (1) page 847 has been filed before me, but this ruling does not extend any specific benefit to opposite party No.3. Hence, while deciding this issue No.5, I come to this conclusion that the petitioners are entitled to get Rs.20,00,000/- (Rs. Twenty Lakhs) as compensation."

4. The High Court, on an appeal having been preferred both by the appellant as also the respondents, partly allowed the same by a common judgment holding that claimants were entitled to compensation calculated in case of the deceased at Rs.19,53,224/- along with interest @ 9% from the date of presentation of the claim petition till its realization, holding that travelling reimbursement could not be taken into consideration for computation of net income of the deceased.

5. Appellant is, thus, before us.

Keeping in view the importance of the question involved and furthermore in view of the fact that the first respondent was appearing-in- person, we had requested Mr. L.N. Rao, learned senior counsel, to assist us in the matter.

6. Submission of Mr. Satija, learned counsel appearing on behalf of the appellant, is that for the purpose of computation of the amount of compensation what was material is the basic pay and not other allowances and, in that view of the matter, the High Court has committed a serious error in opining otherwise. The learned counsel contended that emphasis by this Court are being laid on computation of damages based on net income and not gross income. It was also contended that in any event the amount of compensation awarded by the High Court is on higher side.

7. Mr. Rao, however, submitted that apart from the basic salary, contributions made by the employee should also be taken into consideration for calculation of the amount of compensation, inter alia, on the premise that the same would have become payable to him at a future date as, for example, voluntary retirement, superannuation etc. which would be beneficial to the entire family. It was pointed out that the contributions towards Provident Fund, Life Insurance Corporation, gratuity etc. are includable in the definition of income.

8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

9. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased :

"BASIC : 63,400.00 CONVEYANCE ALLOWANCE : 12,000.00 RENT CO LEASE : 49,200.00 BONUS (35% OF BASIC) : 21,840.00 TOTAL : 1,45,440.00 In addition to above, his other entitlements were :

Con. to PF 10% Basic Rs. 6,240/- (p.a.) LTA reimbursement Rs. 7,000/- (p.a.)
Medical reimbursement Rs. 6,000/- (p.a.) Superannuation 15% of Basic Rs. 9,360/-

(p.a.) Gratuity Cont.5.34% of Basic Rs. 3,332/- (p.a.) Medical Policy-self & Family @ Rs.55,000/- (p.a.) Education Scholarship @ Rs.500 Rs.12,000/- (p.a.) Payable to his two children Directly"

10. There are three basic features in the aforementioned statement which require our consideration :

1. Reimbursement of rent would be equivalent to HRA;
2. Bonus is payable as a part of salary; and
3. Contribution to the Provident Fund.

11. We may furthermore notice that apart therefrom, superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family.

12. We have, however, no doubt in mind that medical reimbursement which provides for a slab and which keeping in view the terminology used, would mean reimbursement for medical expenses on production of medical bills and, thus, the same would not come within the purview of the aforementioned category.

13. The question came for consideration before a learned Single Judge of the Madras High Court in *The Manager, National Insurance Co. Ltd. v. Padmavathy & Ors.* [CMA No.114 of 2006 decided on 29.1.2007], wherein it was held :

"Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lumpsum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependancy compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependancy compensation. Any contribution made by the employee during his life

time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation."

14. Similar view was expressed by a learned Single Judge of Andhra Pradesh High Court in S. Narayanamma & Ors. V. Secretary to Government of India, Ministry of Telecommunications and Ors. [2002 ACC 582], holding :

"In this background, now we will examine the present deductions made by the tribunal from the salary of the deceased in fixing the monthly contribution of the deceased to his family. The tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the tribunal from the salary such as recovery of housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of his salary. So far as House Rent Allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances, like Travelling Allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance etc., by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. The finding of the tribunal that the deceased was getting Rs.1,401/- as net income every month is unsustainable as the deductions made towards vehicle loan and other deductions were also taken into consideration while fixing the monthly income of the deceased. The above finding of the tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the judgment in Helen's case (1 supra). The Supreme Court in Concord of India Insurance Co. v. Nirmaladevi and Ors., 1980 ACJ 55 (SC) held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'."

15. We may, however, notice that a Division Bench of this Court in Asha & Ors. v. United Indian Insurance Co. Ltd. & Anr. [2004 ACC 533], whereupon reliance has been placed by Mr. Satija, was considering a case where, like the present one, several perks were included in salary. We may reproduce the salary certificate hereto below :

"This is to certify that Shri A.M. Raikar was working as AG 111 in this organisation has been paid the following Pay & Allowances for the month of May, 1995:

Earnings	Amount	Deductions	Amount
Basic	3420.00	CPF (S)	488.00
Special Pay	70.00	CPF (Add)	
FDA	350.00	GIS	3.75
VDA	1040.00	LIC/GIS	509.10
CCA	100.00	HRA	

HRA	1047.00	MSPI	60.00	
Washing All.	75.00	Society		576.00
Conv.	225.00	Union		3.00
Cant.Sub.	265.00	HBA	340.00	
C.E.A.	2040.00	B.Fund	10.00	
Total	8632.00	Total	1989.85	

Net Payable Rs. 6642.00 (Rupees six thousand six hundred forty two only)."

In that case, this Court held :

"Lastly it was submitted that the salary certificate shows that the salary of the deceased was Rs.8,632/-. It was submitted that the High Court was wrong in taking the salary to be Rs.6,642/-. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards LIC, Society charges and HBA etc. We are unable to accept this submission also. The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was therefore right in so holding."

This Court in Asha (supra) did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term 'just compensation' was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.

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.

25. In this context we may look at Section 128(1) also. It says that the right of any person to claim compensation before the Claims Tribunal as indicated in Section 124 or 124-A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an interdict that no person shall be entitled to claim compensation for more than once in respect of the same accident. This means that the party has two alternatives, one is to avail himself of his civil remedy to claim compensation based on common law or any other statutory provision, and the other is to apply before the Claims Tribunal under Section 124 or 124-A of the Act. As he cannot avail himself of both the remedies he has to choose one between the two. The provisions in Chapter XIII of the Act are intended to provide a speedier remedy to the victims of accidents and untoward incidents. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the legislature that the Central Government is saddled with the task of prescribing fair and just compensation in the Rules from time to time. The provisions are not intended to give a gain to the Railway Administration but they are meant to afford just and reasonable compensation to the victims as a speedier measure. If a person files a suit the amount of compensation will depend upon what the court considers just and reasonable on the date of determination. Hence when he goes before the Claims Tribunal claiming compensation the determination of the amount should be as on the date of such determination."

17. 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.

18. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Ed.) has been defined as under :

"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated :

'INCOME' signifies 'what comes in' (per Selborne, C., *Jones v. Ogle*, 42 LJ Ch.336). 'It is as large a word as can be used' to denote a person's receipts '(per Jessel, M.R. *Re Huggins*, 51 LJ Ch.938.) income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. AIR 1921 Mad 427 (SB). Ref. 124 IC 511 : 1930 MWN 29 : 31 MLW 438 AIR 1930 Mad 626 : 58 MLJ

337."

19. 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.

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

21. We may notice that in *T.N. State Transport Corporation Ltd. v. S. Rajapriya & Ors.* [(2005) 6 SCC 336], 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."

22. Yet again in *New India Assurance Co. Ltd. v. Charlie & Anr* [(2005) 10 SCC 720], the same view was reiterated. However, therein although the words 'net income' has been used but the same itself 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.) & Ors.* [(2007) 3 SCC 538].

23. The expression 'just' must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

24. In view of our finding abovementioned, the appeal is to be allowed in part in so far as the High Court had directed deduction of medical reimbursement and tax elements on the entire sum which according to the statute constitute income. But we decline to do so for two reasons. Firstly, the accident had taken place as far back as on 1st September, 1997 and secondly the Tribunal as also the High Court failed to take into consideration rise in income of the deceased by way of promotion or otherwise.

27. For the aforementioned reasons, we are not inclined to interfere with the impugned judgment. This appeal is, therefore, dismissed. In the facts and circumstances of the case, there shall be no order as to costs.