The New India Assurance Company Limited vs Smt. Kalpana & Others on 17 January, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1243, 2007 (3) SCC 538, 2007 AIR SCW 1316, 2007 (2) ALL LJ 766, (2007) 51 ALLINDCAS 742 (SC), (2007) 1 CTC 523 (SC), (2007) 1 JCC 532 (SC), (2007) 2 JCR 41 (SC), 2007 (1) JCC 532, 2007 (2) SCC(CRI) 94, 2007 (1) CTC 523, 2007 (2) SCALE 227, (2007) 1 TAC 795, (2007) 1 SUPREME 514, (2007) 1 MPHT 423, (2007) 1 ACC 356, (2007) 2 ACJ 825, (2007) 1 CURCC 182, (2007) 2 MAD LJ 1173, (2007) 1 PUN LR 652, (2007) 2 ANDHLD 122, (2007) 1 RECCIVR 772, (2007) 2 SCALE 227, (2007) 1 WLC(SC)CVL 631, (2007) 67 ALL LR 488, (2007) 2 CIVLJ 441, (2007) 2 MAD LW 696, (2007) 4 MAH LJ 411

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

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            CASE NO.:
Appeal (civil)  255 of 2007

PETITIONER:
The New India Assurance Company Limited

RESPONDENT:
Smt. Kalpana & Others

DATE OF JUDGMENT: 17/01/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No. 7450 of 2005) Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by a Division Bench of the Uttaranchal High Court holding that the respondents were entitled to compensation of Rs.8,16,000/- with interest @ 6% p.a. from the date of filing of the claim petition till the date of actual payment. Before the High Court the claimants had questioned the judgment passed by the Motor Accident Claims Tribunal/Addl. District Judge, Haldwani, District Nainital (in short 'MACT').

Factual scenario in a nutshell is as follows:

> On 7.6.1999 at about 9.50 p.m. Vijay Singh Dogra (hereinafter referred to as the 'deceased') was coming from Nandpur to Haldwani on his vehicle No. UP 01-3962. He was driving the said vehicle. When the vehicle reached near the Block Office, Haldwani, it dashed with a Truck No.URN 9417 which was parked on the road in violation of the traffic rules. In the accident the deceased sustained grievous injuries and he was taken to the Base Hospital, Haldwani from where he was referred to Bareilly for better treatment. But he died on 9.6.1999. He was about 33 years of age at the time of accident. Claimants i.e. respondents 1 to 4 filed claim petition claiming compensation under Section 173 of the Motor Vehicles Act, 1988 (in short the 'Act'). It was indicated in the claim petition that the deceased was earning Rs.8,000/- per month by driving a taxi and also had agricultural income. On that basis a sum of Rs.14,88,000/- was claimed as compensation. The opposite party in the claim petition i.e. the present appellant (hereinafter referred to as the 'Insurer') disputed the claim. The MACT on consideration of the evidence brought on record dismissed the claim petition on the ground that the accident took place on account of negligence of the deceased. An appeal was filed before the High Court by the claimants. It was stated that the vehicle was loaded with logs of Eucalyptus trees and these logs were protruding outside the truck. There was no indicator on the truck to indicate that the truck was parked so that any person coming from behind could be cautious. It was, therefore, contended that there was negligence on the part of the driver of the vehicle. With reference to Section 81 of the Act, it was indicated that the necessary care and caution was not taken.

The High Court found that the vehicle was the subject matter of insurance with the insurer. It was not a case where the vehicle was stationary. On the contrary it was parked on a running condition without any indicator. The High Court, therefore, held that the insurer is liable to pay compensation. So far as the income of the deceased is concerned, taking into account the fact that there was no definite material to throw light on the actual income of the deceased, it was taken at Rs.4,000/- per month and multiplier of 17 was applied and accordingly the compensation was fixed.

In support of the appeal, learned counsel for the appellant submitted that the High Court has erroneously fixed compensation by applying multiplier of 17. It was pointed out that the MACT itself noted that no evidence was led to show as to what was the actual income of the deceased. In any event, the multiplier is high. Learned counsel for the respondents on the other hand supported the order of the High Court.

Certain principles were highlighted by this Court in the case of Municipal Corporation of Delhi v. Subhagwanti (1966 (3) SCR 649) in the matter of fixing the appropriate multiplier and computation of compensation. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death.

> "How much has the widow and family lost by the father's death?" The answer to this lies in the oft quoted passage from the opinion of Lord Wright in Davies v. Powell Duffryn Associated Collieries Ltd. (All ER p.665 A-B) which says:

> "The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt."

There were two methods adopted to determine and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in Davies case (supra) and the second in Nance v. British Columbia Electric Railway Co. Ltd. (1951 (2) All ER 448) .

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.

The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in Mallett v. Mc Mongle (1969 (2) All ER 178) where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

> "The starting point in any estimate of the amount of the 'dependency' is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But....there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4- 1/2% the present value of an annuity for 20 years of which the first ten years are at $ 100 per annum and the second ten years at $ 200 per annum, is about 12 years' purchase of the arithmetical average annuity of $ 150 per annum, whereas if the first ten years are at $200 per annum and the second ten years at $ 100 per annum the present value is about 14 years' purchase of the arithmetical mean of $

> 150 per annum. If therefore the chances of variations in the 'dependency' are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the 'dependency' used for the purpose of assessing the damages."

In regard to the choice of the multiplicand the Halsbury's Laws of England in vol. 34, para 98 states the principle thus:

> "98. Assessment of damages under the Fatal Accident Act, 1976 The courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.
>
> The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death."

As to the multiplier, Halsbury states:

> "However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependants can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependants will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the courts do not encourage such evidence. The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure."

In both G.M., Kerala SRTC v. Susamma Thomas (1994 (2) SCC 176) and U.P. State Road Transport Corpn. v. Trilok Chandra (1996 (4) SCC 362) the multiplier appears to have been adopted taking note of the prevalent banking rate of interest.

In Susamma Thomas's case (supra) it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore, instead of 16 the multiplier of 18 as was adopted in Trilok Chandra's case (supra) appears to be appropriate. In fact in Trilok Chand's case (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, as the former is the normal retirement age. (See: New India Assurance Co. Ltd. v. Charlie and Another [2005 (10) SCC 720].

Considering the age of the deceased it would be appropriate to fix the multiplier at 13. The MACT itself found that the income was not established. At some point of time it was stated that the income of the deceased was Rs.6,000/- per month. In the absence of any definite material about the income, monthly contribution to the family, after deduction for personal expenses is fixed at Rs.3,000/- per month i.e. annually Rs.36,000/-. Applying the multiplier of 13, the compensation works out to Rs.4,68,000/. The same shall carry interest @ 6% p.a. from the date of claim till the date of actual payment. It is stated that a sum of rupees four lakhs has been deposited pursuant to the order dated 4.4.2005. Balance shall be deposited along with interest within two months from today. Out of the total amount, 80% shall be kept in fixed deposit in a nationalised bank initially for a period of five years. But no withdrawal shall be permitted before the expiry of period. However, monthly interest shall be paid to the claimants.

The minor respondents shall be represented by their mother. Separate fixed deposits shall be made for respondent no.1, respondents 2 and 3 represented by the mother (respondent no.1) and the respondent no.4. The percentage of fixed deposit shall be as follows:-

> Respondent No.1 - 20% Respondent Nos. 2 & 3 - 35% (each) Respondent No.4 - 10%
> The appeal is allowed to the aforesaid extent. There will be no order as to costs.