Supreme Court of India
New India Assurance Co. Ltd vs Charlie And Anr on 29 March, 2005
Author: A Pasayat
Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (civil)  1862 of 2005

PETITIONER:
New India Assurance Co. Ltd.

RESPONDENT:
Charlie and Anr.

DATE OF JUDGMENT: 29/03/2005

BENCH:
Arijit Pasayat & S.H. Kapadia

JUDGMENT:
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JUDGMENT ARIJIT PASAYAT, J.

Leave granted.

New India Assurance Co. Ltd. (hereinafter referred to as the `Insurer') calls in question legality of the judgment rendered by a Division Bench of the Kerala High Court holding that the appellant was liable to pay compensation to the respondent No. 1 for the injuries sustained by him in an automobile accident. The accident took place on 14.12.1997 at about 3.10 A.M. It was claimed by the claimant that he sustained injuries because of the rash and negligent driving of the vehicle (Motor Cycle bearing Registration No. KL- 7Q/9101) driven by the respondent No. 2. The claimant's stand was that he was travelling as a pillion rider. Total compensation of Rs. 9,00,000 was claimed. After considering the evidence on record, the Motor Accidents Claims Tribunal, Perumbavoor (in short the `MACT') awarded Rs. 4, 68, 825 with 9% interest from the date of application till payment. The figure was arrived at in the following manner : -

1. Rs. 2,88, 000 for loss of earning;

2. Rs. 2,600 towards transport to hospital;

3. Rs. 4,000 for extra nourishment expenses;

4. Rs. 250 for damage to clothing;

5. Rs. 1,18,975 for medical expenses;

6. Rs. 15,000 for pain and suffering;

7. Rs. 40,000 towards compensation for continuing or permanent disability.

Total Rs. 4,68,825 In appeal filed by the insurer-appellant the amount granted for permanent disability was deleted.

In support of the appeal, learned counsel for the appellant submitted that the age of the injured was about 37 years and a multiplier of 16 was adopted on the ground that there was permanent disability and, therefore, deprivation of contribution is on the higher side. Strong reliance is placed on the decisions of this Court in General Manager, Kerala State Road Transport Coporation Trivandrum v. Susamma Thomas Mrs. and Ors., [1994] 2 SCC 176 and U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors., [1996] 4 SCC 362 to contend that the multiplier is on the higher side. It is also submitted that whatever be the earning, a portion of it is spent for personal expenditure and normally 1/3rd deduction is made therefrom. But in the instant case after taking into account the fact that the income of the injured was Rs. 18,000 per year, the multiplier of 16 has been applied without making any deduction.

In response, learned counsel for the respondent submitted that the injured has totally crippled and has been almost rendered immobile by the 100% disability. Even at the time of discharge he was not in a conscious condition. Taking into account this factor the quantum as awarded cannot be said to be on the higher side.

What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case. In the instant case the claimant was nearly 37 years of age and was married. Therefore, as rightly contended by learned counsel for the appellant, 1/3rd deduction has to be made for personal expenditure.

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 ssociated Collieries Ltd. 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.'' The rule in common law in Baker v. Bolton, [1979] 1 All ER 774 enunciated by Lord Ellenborough was that ``in a Civil Court, the death of a human being could not be complained of as a injury, ''. Indeed, the maxim action personalis moritur cum persona, had the effect that all actions in tort, with very few exceptions, also became extinguished with that person. Great changes were brought about by the Fatal Accidents

Act, 1846 (now Fatal Accidents Act, 1976) and the Law Reforms (Miscellaneous Provisions) Act, 1934. Under the statute, as indeed under the Indian Statute as well, there are two separate and distinct cause of action, which are maintainable in consequence of a person's death. There were the dependant's claim for the financial loss suffered and acclaim for injury, loss or damage, which the deceased would have had, had he lived, and which survives for the benefit of his estate.

The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus ``except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages.'' Lord Wright in the Davies's case (supra) said, ``The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever sources comes to him by reason of the death.'' These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v. R.M.K. Veluswami, [1962] 1 SCR 929 where this Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimant of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

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.

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 capitalized by multiplying it by a figure representing the proper number of year's purchase.

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.

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 case, where the injured has suffered 100% the logic applicable to a deceased can, in appropriate cases, taking note of all relevant factors be reasonably applied.

The claimant was deriving income from agriculture.

Normal rule about the deprivation of income is directly not applicable to cases where agricultural income is the source of deceased's or injured's income. In that case other circumstances have to be considered.

In both Susamma Thomas and Trilok Chand's cases (supra) 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, which is the normal retirement age.

Taking the totality of the circumstances, on the basis of the various factors indicated above, the quantum of compensation is fixed at Rs. 3,50,000. The amount shall carry interest @7.5% per annum from the date of filing of the claim application up to the date of payment. If any amount has already been paid the same shall be adjusted from the amount to be worked out on the above said basis.

Appeal is allowed to the aforesaid extent. No costs.