NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9858 OF 2013
(Arising out of SLP(C) No. 1056 of 2008)

Radhakrishna and another ....Appellants

versus

Gokul and others ....Respondents

J U D G M E N T

G.S. SINGHVI, J.

1. Leave granted.

2. Feeling dissatisfied with the meagre enhancement of Rs.8,000 granted by the Division Bench of the Madhya Pradesh High Court in the amount of compensation determined by Additional Motor Accident Claims Tribunal, Barwaha (West), Ni-mar (for short, 'the Tribunal'), the appellants have filed this appeal.

3. Nilesh (son of the appellants) was killed in a road accident, which occurred on 20.1.2003, when the motorcycle on which he was going along with his friend Rohit was hit by the truck belonging to respondent No.1.

4. The appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for award of compensation to the tune of Rs.50,60,000. Their claim was founded on the following assertions:

(i) The accident was caused due to rash and negligent driving of the truck owned by respondent No.1, which was insured with respondent No.3 – United India Insurance Co.

(ii) At the time of accident, the deceased was 19 years old and he was a student of degree course in Engineering.

(iii) After completion of study, the deceased was expected to get a good job as an Engineer and earn substantial salary.

5. In the written statement filed by them, the owner and the driver (respondent Nos. 1 and 2) claimed that the truck was duly insured with respondent No.3 and the compensation, if any, was payable by respondent No.3. In a separate statement, respondent No.3 denied its liability by asserting that the driver of the truck and the motorcyclist did not have valid driving licences. It was further pleaded that the appellants are not entitled to compensation because the deceased was travelling as a pillion rider.

6. On the pleadings of the parties, the Tribunal framed the following issues:

"1. Whether the Resp-2 by driving the truck No. MP-11A/2453 in rash & negligent manner caused the accident with the motor cycle No. MP 10 D 42/4 driven by Resp-4 coming from opposite direction?

2. Whether the pillion rider on the motor cycle, i.e., the son of applicants Nilesh died due to physical injuries received in the said accident?

3. Whether the truck No. MP/11A/2454 was being driven in violation of Insurance policy & provision of the M.V. Act at the time of accident, If yes its effect?

4. Whether the motor cycle No. MP 10 D 4214 was being driven in violation of Insurance policy & provision of M.V. Act? If Yes, its effect?

5. Whether the applicant is entitled to get compensation. If yes, what amount and from whom?

6. Relief and Cost."

7. After analyzing the evidence produced by the parties, the Tribunal answered issues No.1 to 4 in favour of the appellants. While dealing with the issue relating to the quantum of compensation, the Tribunal referred to the statement of appellant No.1 Radhakrishna Soni and the documents produced by him and observed:

> "The age of Nilesh is stated to be 19 years by the applicant at the time of accident which is supported by school record. As the deceased was studying at the time of death, his probable income can be determined at Rs.15,000/- p.a. from which 1/3 is deducted for the annual dependency of the applicants. It is proper to apply 17 multiplier keeping in view the age of the deceased. Accordingly the total dependency amount is Rs.10,000x17=Rs.1,70,000. Due to the untimely death of son the applicant are deprived from love & affection of son. So each applicant is entitled to Rs.10,000 is the annual dependency of the applicants. It is proper to apply 17 multiplier keeping in view the age of the deceased Rs.1,70,000. Apart from this Rs.2000/- is awarded for funeral expenses. Thus the grand total compensation of the applicants is Rs.1,92,000/- entitled to get from Res 1-3 jointly or separately."

8. The appellants challenged the award of the Tribunal by filing an appeal under Section 173 of the Act but could not persuade the High Court to grant

substantial enhancement in the amount of compensation and the appeal was disposed of with a direction to respondent Nos. 1 to 3 to pay additional compensation of Rs.8,000 with interest at the rate of 6% per annum.

9. We have heard learned counsel for the parties and perused the record. For deciding the question whether the appellants are entitled to higher compensation, it will be useful to notice some of the precedents. In Sarla Verma v. D.T.C. (2009) 6 SCC 121, a two-Judge Bench of this Court took cognizance of the lack of uniformity and consistency in awarding compensation to the victims of accidents caused by motor vehicles, referred to the judgments in U.P.S.R.T.C. v. Trilok Chandra (1996) 4 SCC 362, G.M., Kerala SRTC v. Susamma Thomas (1994) 2 SCC 176 and made the following observations:

> "Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In Susamma Thomas (1994) 2 SCC 176, this Court stated:
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> > "16. … The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation."
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> Basically only three facts need to be established by the claimants

for assessing compensation in the case of death:

(a) age of the deceased;

(b) income of the deceased; and

(c) the number of dependants.

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

(i) additions/deductions to be made for arriving at the income;

(ii) the deduction to be made towards the personal living expenses of the deceased; and

(iii) the multiplier to be applied with reference to the age of the deceased.

If these determinants are standardised, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

> The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.
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> Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.
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> The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added."

The Bench then considered the question whether there should be addition to the income for future prospects and observed:

> "In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

The next issue considered by the Bench was whether there should be deduction for personal and living expenses. After noticing some precedents, the

Bench observed:

> "..... 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.
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> 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.
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> 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."

Finally, the complex issue relating to application of multiplier was examined and decided in the following words:

> "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 (1994) 2 SCC 176, Trilok Chandra (1996) 4 SCC 362 and Charlie (2005) 10 SCC 720), 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."

10. However, the issue relating to award of compensation to the parents of the deceased, who was a student was neither dealt with nor decided in Sarla Verma's case. In Lata Wadhwa v. State of Bihar (2001) 8 SCC 197, a three-Judge Bench of this Court entertained a writ petition filed under Article 32 of the Constitution for ordering prosecution of the officers of the Tata Iron and Steel Company and their agents and servants for the alleged negligence in organizing a function at Jamshedpur in which 60 people were killed due to fire accident and for issue of a direction to the State Government as well as the company to pay compensation to the victims. For assessing the compensation payable to the victims, this Court requested the former Chief Justice Shri Y.V. Chandrachud to examine the matter and submit a report. The first part of the report submitted by Shri Justice Y.V. Chandrachud dealt with the cases of death and the second part dealt with the cases of burn injury. After taking cognizance of three judgments of the Andhra Pradesh High Court in Chairman, A.P. SRTC v. Shafiya Khatoon 1985 ACJ 212, Bhagwan Das v. Mohd. Arif 1987 ACJ 1052 and A.P. SRTC v. G. Ramanaiah 1988 ACJ 223 and the views of the British Law Commission wherein adoption of the

multiplier method was advocated and approved, Justice Chandrachud took the contribution of children above 10 years of age at Rs.12,000 per annum, applied multiplier of 11 and suggested award of conventional amount of Rs.25,000. After considering the arguments of Ms. Rani Jethmalani and Shri F.S. Nariman, learned counsel for the parties, this Court directed payment of higher compensation. While dealing with the cases of children, the Court observed as under:

> "So far as the award of compensation in case of children is concerned, Shri Justice Chandrachud has divided them into two groups, the first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs 50,000 has been held to be payable by way of compensation, to which the conventional figure of Rs 25,000 has been added and as such to the heirs of the 14 children, a consolidated sum of Rs 75,000 each, has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children who died on the fateful day and having found their contribution to the family at Rs 12,000 per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs 25,000 has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs 1,57,000 each. In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of Taff Vale Rly. v. Jenkins and Lord Atkinson said thus:
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> > "… all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact — there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition

> that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can, I think, be drawn from circumstances other than and different from them."

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any materials on the reasonable expectation of pecuniary benefits, which the parents expected. In case of a bright and healthy boy, his performances in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student, but as has been stated earlier, not an iota of material was produced before Shri Justice Chandrachud to enable him to arrive at a just compensation in such cases and, therefore, he has determined the same on an approximation. Mr Nariman, appearing for TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is irrecoupable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well-placed officials of Tata Iron and Steel Company, and on considering the submission of Mr Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs 1.5 lakhs, to which the conventional figure of Rs 50,000 should be added and thus the total amount in each case would be Rs 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. TISCO itself has a tradition that every employee can get one of his children employed in the Company. Having regard to these facts, in their case, the contribution of Rs 12,000 per annum appears to us to be on the lower side and in our considered opinion, the contribution should be Rs 24,000 and instead of 11

multiplier, the appropriate multiplier would be 15. Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs 3.60 lakhs, to which an additional sum of Rs 50,000 has to be added, thus making the total amount payable at Rs 4.10 lakhs for each of the claimants of the aforesaid deceased children."

11. In M.S. Grewal v. Deep Chand Sood (2001) 8 SCC 151, a two-Judge Bench considered issues of negligence resulting in death of 14 students of Dalhausie Public School. The students died due to drowning in River Beas. After holding that the teachers of the school were negligent, the Court referred to the judgment in Lata Wadha's case as also the judgment in G.M., Kerala SRTC v. Susamma Thomas (supra) and proceeded to observe:

> "In Lata Wadhwa case however, this Court came to a conclusion that upon acceptability of the multiplier method and depending upon the fact situation, namely, the involvement of TISCO in its tradition that every employee can get one of his children employed in the Company and having regard to the multiplier 15 the compensation was calculated at Rs 3.60 lakhs with an additional sum of Rs 50,000 as a conventional figure making the total amount payable at Rs 4.10 lakhs for each of the claimants of the deceased children.
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> The decision in Lata Wadhwa thus, is definitely a guiding factor in the matter of award of compensation wherein children died due to an unfortunate incident as noticed more fully hereinbefore in this judgment.
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> Having considered the matter in its proper perspective and the applicability of the multiplier method and without even any further material on record, we do feel it expedient to note that though Mr Bahuguna attributed the quantum granted by the High Court as strangely absurd, we, however, are not in a position to lend our concurrence therewith. It is not that the award of compensation at Rs 5 lakhs can be attributed to be the resultant effect of either emotions or sentiments or the High Court's anguish over the incident. The High Court obviously considered

> the overall situation as regards social placement of the students. As stated hereinafter the School presently is one of the affluent schools in the country and the fee structure and other incidentals are so high that it would be a well-nigh impossibility to think of admission in the School at even the upper middle class level. Obviously the School caters to the need of the upper strata of the society and if the Second Schedule of the Motor Vehicles Act can be termed to be any guide, the compensation could have been a much larger sum. Thus in the factual situation, award of compensation at Rs 5 lakhs cannot by any stretch be termed to be excessive. Another redeeming feature of Mr Bahuguna's submissions pertains to the theory of ability to pay: audited accounts have been produced for the year 1995 depicting a situation, though not of having stringency but the situation truly cannot but be ascribed to be otherwise comfortable to pay as directed by the High Court. The matter, however, was prolonged in the law courts in the usual manner and it took nearly six years for its final disposal before this Court — these six years, however, had rendered the financial stability of the School concerned in a much more stronger situation than what it was in the year 1995. The School as of date stands out to be one of the most affluent schools in the country, as such ability to pay cannot be termed to be an issue in the matter and in the wake thereto we are not inclined to deal with the same in any further detail."

12. At this stage, we may usefully notice the judgment in Arvind Kumar Mishra v. New India Assurance Company Limited (2010) 10 SCC 254. In that case, a two-Judge Bench considered the issue relating to award of compensation to the appellant who had suffered grievous injuries in a road accident. At the time of the accident, the appellant's age was 25 years and he was a student of Bachelor of Engineering (Mechanical). The Tribunal had awarded compensation of Rs.2,50,000. The High Court enhanced it to Rs.3,50,000. After noticing the judgments in G.M., Kerala SRTC v. Susamma Thomas (supra) and Sarla Verma v. DTC (supra), the Bench enhanced the amount of compensation to Rs.9,06,000.

The reasons for this approach are discernible from paragraphs 13 to 15 of the judgment, which are extracted below:

> "13. The appellant at the time of accident was a final year Engineering (Mechanical) student in a reputed college. He was a remarkably brilliant student having passed all his semester examinations in distinction. Due to the said accident he suffered grievous injuries and remained in coma for about two months. His studies got interrupted as he was moved to different hospitals for surgeries and other treatments. For many months his condition remained serious; his right hand was amputated and vision seriously affected. These multiple injuries ultimately led to 70% permanent disablement. He has been rendered incapacitated and a career ahead of him in his chosen line of Mechanical Engineering got dashed for ever. He is now in a physical condition that he requires domestic help throughout his life. He has been deprived of pecuniary benefits which he could have reasonably acquired had he not suffered permanent disablement to the extent of 70% in the accident.
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> 14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs. 3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000 per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis. Since he suffered 70% permanent disability, the future earnings may be discounted by 30% and, accordingly, we estimate upon the facts that the multiplicand should be Rs. 42,000 per annum.
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> 15. The appellant at the time of accident was about 25 years.

> As per the decision of this Court in Sarla Verma v. DTC the operative multiplier would be 18. The loss of future earnings by multiplying the multiplicand of Rs. 42,000 by a multiplier of 18 comes to Rs. 7,56,000. The damages to compensate the appellant towards loss of future earnings, in our considered judgment, must be Rs. 7,56,000. The Tribunal awarded him Rs. 1,50,000 towards treatment including the medical expenses. The same is maintained as it is and, accordingly, the total amount of compensation to which the appellant is entitled is Rs. 9,06,000."

13. In Lata Wadhwa's case, the accident had occurred on 03.03.1989 and this Court awarded compensation of Rs.4,10,000 to the parents of the deceased children who were students of Classes VI to X. In M.S. Grewal's case, the accident had occurred on 28.5.1995. This Court awarded compensation of Rs.5,00,000 to the parents of the children who were students of IV, V and VI classes. In Anil Kumar Mishra's case, the accident had occurred on 23.6.1993 and the victim of accident, who was a student of final year Engineering was awarded compensation of Rs.9,06,000.

14. In the present case, the accident occurred on 20.1.2003. The deceased was 19 years old and was a student of Engineering course. The Tribunal determined the compensation by taking his annual income to be Rs.15,000 and deducted 1/3rd towards personal expenses. In Arvind Kumar Mishra's case, the Bench proceeded on the assumption that after completion of the Engineering course, the appellant could have been appointed as Assistant Engineer and earn Rs.60,000 per annum. However, keeping in view the degree of disability, his estimated earning was taken as Rs.42,000 per annum and accordingly the amount of compensation was awarded. By applying the same yardstick and having regard to the age of the

parents of the deceased, i.e., 45 and 42 respectively, we feel that ends of justice will be served by awarding a lump sum compensation of Rs.7,00,000 to the appellants.

15. In the result, the appeal is partly allowed. The impugned judgment is modified and it is declared that the appellants shall be entitled to compensation of Rs.7,00,000 with interest at the rate of 6% per annum on the enhanced amount with effect from the date of filing petition under Section 166 of the Act.

16. Respondent No.3 is directed to pay the amount of enhanced compensation and interest within a period of three months by getting prepared two demand drafts of equal amount in the names of appellant Nos.1 and 2. It will be open to respondent No.3 to recover from respondent Nos.1 and 2 their respective shares of the compensation.

.....……..….J.
[G.S. SINGHVI]

New Delhi, ...……..…..……..J.
October 31, 2013. **[GYAN SUDHA MISRA]**