2020 INSC 17

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.79 OF 2020
(arising out of Special Leave Petition (C) No.9618 of 2018)

MOHAMMED SIDDIQUE & ANR. ... APPELLANTS

Versus

NATIONAL INSURANCE COMPANY LTD. & ORS. ... RESPONDENTS

J U D G M E N T

V. Ramasubramanian, J.

1. Leave granted.

2. Aggrieved by the order of the High Court reducing the compensation awarded by the Motor Accident Claims Tribunal from the sum of Rs.11,66,800/- to Rs.4,14,000/-, the parents of the deceased-accident victim have come up with the above appeal.

3. We have heard the learned counsel for the appellants and the learned counsel for the Insurance Company.

4. Admittedly, the son of the appellants who was aged about 23 years, died on 7.09.2008 as a result of the injuries sustained in a road traffic accident that took place on 5.09.2008. It appears that the victim was one of the 2 pillion riders on a motor cycle and he was thrown off the vehicle when a car hit the motor cycle from behind. The Motor Accident Claims Tribunal found that the accident was caused due to the rash and negligent driving of the car. This finding was confirmed by the High Court, though with a rider that the victim was also guilty of contributory negligence, in as much as there were 3 persons on the motor cycle at the time of the accident, requiring a reduction of 10% of the compensation awarded.

5. On the question of quantum of compensation, the appellants claimed that their son was aged 23 years at the time of the accident and that he was employed in a proprietary concern on a monthly salary of Rs.9600/-. The employer was examined as PW-2 and the certificate issued by him was marked as *Ex.P-1/8*. Finding no reason to disbelieve the testimony of PW-2, the Tribunal applied a multiplier of 18 and arrived at a sum of Rs.10,36,800/- towards loss of dependency, after deducting 50% of the salary towards personal expenses, as the deceased victim was a bachelor. In addition, the

Tribunal also allowed a sum of Rs.1,00,000/- for loss of love and affection; Rs.20,000/- for the performance of last rites and Rs.10,000/- towards loss of Estate. Accordingly, the Tribunal arrived at an amount of Rs.11,66,800/- as the total compensation payable.

6. As against the said award, the Insurance Company filed a statutory appeal under Section 173 of the Motor Vehicles Act, 1988. The appeal was primarily on two grounds *namely* (i) that the deceased was guilty of contributory negligence inasmuch as he was riding on the pillion of the motor cycle with two other persons and (ii) that the employment and income of the deceased were not satisfactorily established.

7. On the first ground, the High Court held that though the motor cycle in which the deceased victim was riding was hit by the speeding car from behind, the deceased was also guilty of contributory negligence, as he was riding a motor cycle with two other persons. Therefore, the High Court came to the conclusion that an amount equivalent to 10% has to be deducted towards contributory negligence.

8. On the second issue, the High Court held that the employer did not produce any records to substantiate the quantum of salary paid to

the deceased and that therefore the income of the deceased may have to be assessed only on the basis of minimum wages, payable to unskilled workers at the relevant point of time. Accordingly the High Court fixed the income of the deceased at the time of the accident as Rs.3683/- per month, which was the minimum wages for unskilled workers at that time.

9. Insofar as the issue of multiplier is concerned, the High Court applied the multiplier of 14 instead of the multiplier of 18, on the basis of the ratio laid down by this Court in ***UPSRTC Vs. Trilok Chandra***[1], to the effect that the choice of the multiplier should go by the age of the deceased or that of the claimants, whichever is higher. As a result, the High Court took Rs.3,683/- as the monthly income, allowed a deduction of 50% on the same towards personal expenses, applied a multiplier of 14 and arrived at an amount of Rs.3,10,000/-. The award of Rs.1,00,000/- towards loss of love and affection granted by the Tribunal was confirmed by the High Court but the amount of Rs.10,000/- each awarded towards funeral expenses and loss of Estate were enhanced to Rs.25,000/- each.

1 *(1996) 4 SCC 362*

10. Thus, the High Court arrived at a total amount of Rs.4,60,000/- (Rs.3,10,000/- towards loss of dependency; Rs.1,00,000/- towards loss of love and affection; Rs.25000/- towards funeral expenses and Rs.25,000/- towards loss of Estate). Out of the said amount, the High Court deducted 10% towards contributory negligence and fixed the compensation payable at Rs.4,14,000/- (Rs.4,60,000/- minus Rs.46,000/-). Aggrieved by this drastic reduction in the quantum of compensation, the claimants are before us.

11. As could be seen from the above narration, the High Court interfered with the award of the Tribunal, on 3 counts, namely (i) contributory negligence; (ii) monthly income of the deceased and (iii) the multiplier to be applied. Therefore, let us see whether the High Court was right in respect of each of these counts.

12. It is seen from the material on record that the accident occurred at about 2:00 a.m. on 5.09.2008. Therefore, there was no possibility of heavy traffic on the road. The finding of fact by the Tribunal, as confirmed by the High Court, was that the motor cycle in which the deceased was travelling, was hit by the car from behind and that therefore it was clear that the accident was caused by the rash and negligent driving of the car. In fact, the High Court confirms in

paragraph 4 of the impugned order that the motor cycle was hit by the car from behind. But it nevertheless holds that 3 persons on a motor cycle could have added to the imbalance. The relevant portion of paragraph 4 of the order of the High Court reads as follows:

> *"On careful assessment of the evidence led, this Court finds substance in the plea of the insurance company. While it is correct that the offending car had no business to strike from behind against the motor-cycle moving ahead of it, even if the motor cycle was changing lane to allow another vehicle to overtake, the fact that a motor vehicle meant for only two persons to ride was carrying, besides the driver, two persons on the pillion would undoubtedly have added to the imbalance."*

13. But the above reason, in our view, is flawed. ***The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence***. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more

person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. ***There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim***. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. ***It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked***. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from

behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance.

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside.

15. The second issue on which the High Court reversed the finding of the tribunal, related to the employment of the deceased and the monthly income earned by him. According to the claimants, the deceased was aged 23 years at the time of the accident and he was not even a matriculate. But he was stated to have been employed in a proprietary concern named M/s Chandra Apparels on a monthly

salary of Rs.9600/-. The sole proprietor of the concern was examined as PW-2 and the salary certificate was marked as Ex.PW-1/8. The Tribunal which had the benefit of recording the evidence and which consequently had the benefit of observing the demeanour of the witness, specifically recorded a finding that there was no reason to discard the testimony of PW-2.

16. But unfortunately the High Court thought that the employer should have produced salary vouchers and other records including income tax returns, to substantiate the nature of the employment and the monthly income. On the ground that in the absence of other records, the salary certificate and the oral testimony of the employer could not be accepted, the High Court proceeded to take the minimum wages paid for the unskilled workers at the relevant point of time as the benchmark.

17. But we do not think that the approach adopted by the High court could be approved. To a specific question in cross-examination, calling upon PW-2 to produce the salary vouchers, he seems to have replied that his business establishment had been wound up and that the records are not available. This cannot be a ground for the High Court to hold that the testimony of PW-2 is unacceptable.

18. The High Court ought to have appreciated that the Court of first instance was in a better position to appreciate the oral testimony. So long as the oral testimony of PW-2 remained unshaken and hence believed by the Court of first instance, the High Court ought not to have rejected his evidence. After all, there was no allegation that PW-2 was set up for the purposes of this case. There were also no contradictions in his testimony. As against the testimony of an employer supported by a certificate issued by him, the High Court ought not to have chosen a theoretical presumption relating to the minimum wages fixed for unskilled employment. Therefore, the interference made by the High Court with the findings of the Tribunal with regard to the monthly income of the deceased, was uncalled for.

19. Coming to the last issue relating to the multiplier, the Tribunal applied the multiplier of 18, on the basis of the age of the deceased at the time of the accident. But the High Court applied a multiplier of 14 on the ground that the choice of the multiplier should depend either upon the age of the victim or upon the age of the claimants, whichever is higher. According to the High court, this was the ratio laid down in ***General Manager, Kerala SRTC Vs Susamma Thomas***[2] , and that

2 ***(1994) 2 SCC 176,***

the same was also approved by a three Member Bench of this Court in ***UPSRTC Vs. Trilok Chandra* (supra).**

20. The High Court also noted that the choice of the multiplier with reference to the age of the deceased alone, approved in ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.***[3], was found acceptance in two subsequent decisions namely *(1)* ***Reshmi Kumari & Ors. Vs. Madan Mohan & Anr***.[4] and (2) ***Munna Lal Jain Vs. Vipin Kumar Sharma***[5]. But the High court thought that the decisions in *Susamma Thomas and Trilok Chandra* were directly on the point in relation to the choice of the multiplier and that the issue as envisaged in those 2 decisions was neither raised nor considered nor adjudicated upon in *Sarla Verma.* According to the High court, the impact of the age of the claimants, in cases where it is found to be higher than that of the deceased, did not come up for consideration in *Reshma Kumari* and *Munnal Lal Jain.* Therefore, the High court thought that it was obliged to follow the ratio laid down in *Trilok Chandra.*

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3 ***(2009) 6 SCC 121***
4 ***(2013) 9 SCC 65***
5 ***JT 2015 (5) SC 1***

21. But unfortunately the High Court failed to note that the decision in *Susamma Thomas* was delivered on 06-01-1993, before the insertion of the Second Schedule under Act 54 of 1994. Moreover what the Court was concerned in *Susamma Thomas* was whether the multiplier method involving the ascertainment of the loss of dependency propounded in *Davies v. Powell (1942) AC 601* or the alternative method evolved in *Nance v. British Columbia Electric Supply Co. ltd (1951) AC 601* should be followed.

22. *Trilok Chandra* merely affirmed the principle laid down in *Susamma Thomas* that the multiplier method is the sound method of assessing compensation and that there should be no departure from the multiplier method on the basis of section 110B of the 1939 Act. *Trilok Chandra* also noted that the Act stood amended in 1994 with the introduction of section 163A and the second schedule. Though it was indicated in *Trilok Chandra* (in the penultimate paragraph) that the selection of the multiplier cannot in all cases be solely dependent on the age of the deceased, the question of choice between the age of the deceased and the age of the claimant was not the issue that arose directly for consideration in that case.

23. But *Sarla Verma*, though of a two member Bench, took note of *Susamma* as well as *Trilok Chandra* and thereafter held in paragraphs 41 and 42 as follows:

> *"41. Tribunals/ courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas [set out in Column (2) of the table above]; some follow the multiplier with reference to Trilok Chandra, [set out in Column (3) of the above]; some follow the multiplier with reference to Charlie [set out in Column (4) of the table above]; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act [extracted in column (5) of the table above]; and some follow the multiplier actually adopted in the Second schedule while calculating the quantum of compensation [set out in column (6) of the table above]. For example, if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in Column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second schedule to the MV Act. some Tribunals as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under section 166 and not under section 163A of the MV Act. in cases falling under section 166 of the MV Act Davies methods is applicable.*
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> *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 5 years, that is M-17 for 26 to 30 years, M-16 to 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 2 units for every 5*

years, i.e., M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years, M-5 for 66 to 70 years."

24. What was ultimately recommended in *Sarla Verma*, as seen from para 40 of the judgment, was a multiplier, arrived at by juxtaposing *Susamma Thomas*, *Trilok Chandra* and ***Charlie***[6] with the multiplier mentioned in the Second Schedule.

25. However when *Reshma Kumari v. Madan Mohan* came up for hearing before a two member Bench, the Bench thought that the question whether the multiplier specified in the second schedule should be taken to be a guide for calculation of the amount of compensation in a case falling under section 166, needed to be decided by a larger bench, especially in the light of the defects pointed out in *Trilok Chandra* in the Second Schedule. The three member Bench extensively considered *Trilok Chandra* and the subsequent decisions and approved the Table provided in *Sarla Verma*. It was held in para 37 of the report in *Reshma Kumari* that the wide variations in the selection of multiplier in fatal accident cases can be avoided if *Sarla Verma* is followed.

6 (2005) 10 SCC 720

26. In *Munna Lal Jain*, which is also by a bench of three Hon'ble judges, the Court observed in para 11 as follows:

> *" **Whether the multiplier should depend on the age of the dependents or that of the deceased has been hanging fire for sometime: but that has been given a quietus by another three judge bench in Reshma Kumari.** It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased, but as far as that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average etc is to be taken."*

27. In the light of the above observations, there was no room for any confusion and the High Court appears to have imagined a conflict between *Trilok Chandra* on the one hand and the subsequent decisions on the other hand.

28. It may be true that an accident victim may leave a 90 year old mother as the only dependent. It is in such cases that one may possibly attempt to resurrect the principle raised in *Trilok Chandra*. But as on date, *Munna Lal Jain*, which is of a larger Bench, binds us especially in a case of this nature.

29. Thus, we find that the High Court committed a serious error *(i)* in holding the victim guilty of contributory negligence *(ii)* in rejecting

the evidence of PW-2 with regard to the employment and monthly income of the deceased and *(iii)* in applying the multiplier of 14 instead of 18. Therefore, the appeal is allowed and the impugned order of the High Court is set aside. The award of the Tribunal shall stand restored. There shall be no order as to costs.

.....J
(N.V. Ramana)

.....J
(V. Ramasubramanian)

New Delhi
January 08, 2020.