REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5843 OF 2010
(Arising out of SLP(C) No.19655 of 2004)

Arun Kumar Agrawal and another ... ... Appellants

Versus

National Insurance Company and others ... ... Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.

2. What should be the criteria for determination of the compensation payable to the dependents of a woman who dies in a road accident and who does not have regular source of income is the question which arises for determination in this appeal filed against the judgment of the Division Bench of Allahabad High Court which declined to enhance the compensation awarded to the appellants by Motor Accident Claims Tribunal, Shahjahanpur (for short, 'the Tribunal').

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3. Smt. Renu Agrawal (wife of appellant No.1 – Arun Kumar Agrawal and mother of appellant No.2 – Suwarna Agrawal) died in a road accident when the car driven by appellant No.1 was hit by truck bearing No.UGK-489 in village Pachkora, District Hardoi, U.P. The appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for award of compensation of Rs.19,20,000/- by asserting that the accident was caused due to rash and negligent driving of the truck which was owned by respondent No.2, Mohd. Farooq and was insured with respondent No.1. They pleaded that the deceased was 39 years of age at the time of accident and due to her death, life of appellant No.1 had become miserable inasmuch as being a government servant he was unable to look after his minor child. They further pleaded that the deceased used to look after domestic affairs of the family and both the appellants have been deprived of the care, love and affection of the deceased and the comfort of her company.

4. The owner of the truck (respondent No.2), its driver (respondent No.4) and the insurance company (respondent No.1) contested the claim. All of them denied that the accident was caused due to rash and negligent driving of the truck by respondent No.4. According to them, appellant No.1 was responsible for the accident. They disputed the dependency of the appellants and the quantum specified in the claim petition. Respondent No.1

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women are concerned and is also clearly indicative of a strong gender bias against women.

8. It is thus clear that in independent India also the process of categorizing is dominated by concepts which were prevalent in colonial India and no attempt has been made to restructure those categories with a gender sensitivity which is the hallmark in our Constitution.

9. Work is very vital to the system of gender reconstruction in societies and in this context masculine and feminine work is clearly demarcated. The question which obviously arises is whether Census definition of work reflects the underlying process of gender discrimination.

10. Women are generally engaged in home making, bringing up children and also in production of goods and services which are not sold in the market but are consumed at the household level.

further pleaded that it was not liable to pay compensation because driving licence of respondent No.4 was not valid; that the owner had not complied with Section 64 VB of the Insurance Act and that the owner and the insurer of Tata Sumo UP-65/4559, which was also involved in the accident were not made parties.

5. After considering the pleadings and evidence of the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the truck by respondent No.4 and being legal heirs of the deceased, the appellants are entitled to compensation. While dealing with the issue relating to the quantum of compensation, the Tribunal extensively referred to the statement of appellant No.1, who stated that the deceased was earning Rs.50,000/- by engaging herself in paintings and handicrafts. The Tribunal held that the deceased was deeply involved in the family affairs and after her death, the entire family was broken and as a result of that, working capacity of appellant No.1 was decreased. The Tribunal noted that at the time of accident monthly income of appellant No.1 was Rs.15,416/- and held that in view of clause 6 of Second Schedule of the Act, the income of the deceased could be assessed at Rs.5,000/- per month (Rs.60,000/- per annum) and after making deduction of Rs.20,000/- towards personal expenses of the deceased and applying the multiplier of 15, the total loss of dependency

contribution made in the capacity of a homemaker or parent".

28. For the reasons aforesaid, while agreeing with the views of brother Singhvi, J., I would humbly add, that time has come for the Parliament to have a rethinking for properly assessing the value of homemakers and householders work and suitably amending the provisions of Motor Vehicles Act and other related laws for giving compensation when the victim is a woman and a homemaker. Amendments in matrimonial laws may also be made in order to give effect to the mandate of Article 15(1) in the Constitution.

.....J.
(ASOK KUMAR GANGULY)

New Delhi
July 22, 2010

comes to Rs.6 lacs. However, instead of awarding that amount as compensation, the Tribunal reduced the same to Rs.2,50,000/- by making the following observations:

"The claimants are entitled to this amount of compensation but keeping in mind that the deceased was actually not an earning member and this is only based on notional income. The amount of compensation is too much and as such a lesser multiplier could be adopted in the present case. In the circumstances of this case, the claimants are entitled to Rs.2,50,000/- as compensation from the insurance company. This issue is accordingly decided with the above observation."

6. The High Court dismissed the appeal preferred by the appellants by making the following observations:

"At the time of accident claimant No.1 Arun Kumar Agrawal was getting monthly salary of Rs.15,416/- and at time of filing the appeal Rs.24,042/- per month. Claimant Arun Kumar Agarwal and his son aged about seven years are the only legal representatives of the deceased. Neither of the claimants were dependents upon the deceased. The services rendered by Renu Agrawal, the deceased as house wife may be estimated at Rs.1250.00 per month and thus the annual contribution by rendering services comes to Rs.15,000/- and applying the multiplier of 15 it comes to Rs.2,25,000/- and adding the amount of Rs.3000.00 as funeral expenses, Rs.7,000.00 due to loss of love and affection to the son and Rs.15,000.00 due to loss of comfort consortium, the compensation comes to Rs.2,50,000.00. Thus, considering all the facts and circumstances, the compensation awarded is just and fair."

7. Shri Sanjay Singh, learned counsel for the appellant relied upon the judgment of this Court in Lata Wadha and others v. State of Bihar and

Thus, the work of women mostly goes unrecognized and they are never valued.

11. Therefore, in the categorization by the Census what is ignored is the well known fact that women make significant contribution at various levels including agricultural production by sowing, harvesting, transplanting and also tending cattles and by cooking and delivering the food to those persons who are on the field during the agriculture season.

12. Though, Census operation does not call for consideration in this case but reference to the same has been made to show the strong bias shown against women and their work. We hope and trust that in the on-going Census operation this will be corrected.

13. The same gender bias has been reflected in the judgment of the High Court whereby the High Court

others (2001) 8 SCC 197 and argued that the Tribunal and the High Court committed serious error by not awarding just and fair compensation to the appellants ignoring that the family was not only deprived of the money which the deceased used to earn from paintings and handicrafts but also of her services as housewife/mother apart from the care, love, affection and comfort of her company. Learned counsel submitted that the award of the Tribunal is liable to be modified because it did not assign any reason for reducing the amount of compensation payable to the appellants in terms of the loss of dependency i.e. Rs.6 lacs. Learned counsel then argued that both the Tribunal and the High Court erred in refusing to recognize the immense importance of the invaluable services rendered by a housewife/mother to the family throughout her life. Learned counsel finally submitted that even if a housewife/mother does not earn a single penny in material terms, the criteria laid down by the legislature in clause 6 of the Second Schedule appended to the Act should be applied for awarding compensation in petitions filed under Section 166 of the Act.

8. Learned counsel appearing for the respondents supported the award of the Tribunal and the judgment of the High Court and argued that criteria laid down in Section 163A of the Act cannot be invoked for awarding higher compensation to the appellants because they had filed petition under Section

increasingly delegated by women and performed through paid contracts."

25. Alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.

26. Household work performed by women throughout India is more than US $ 612.8 billion per year (Evangelical Social Action Forum and Health Bridge, page 17). We often forget that the time

166 of the Act. Learned counsel then submitted that no tangible evidence was produced before the Tribunal to show that the deceased used to earn Rs.50,000/- per annum from paintings and handicrafts and argued that the said amount was rightly not taken into consideration for the purpose of determination of the compensation payable to the appellants.

9. We have considered the respective submissions. At the outset, we may notice some of the precedents in which guiding principles have been laid down for determination of the compensation payable to the victim(s) of the accident or their legal representatives.

10. In General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others (1994) 2 SCC 176, this Court considered the legitimacy of multiplier method evolved and applied by the British Courts and approved the same. The relevant paragraphs of that judgment are extracted below:

"9. 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

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.

32. 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."

13. At this stage, it will be useful to notice Section 163A which was inserted by Amendment Act No.54 of 1994. That section and clause (6) of the Second Schedule read as under:-

"163A. **Special provisions as to payment of compensation on structured formula basis**.– (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.– For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

that the deceased might have got better employment or income

or might have lost his employment or income altogether.
10. 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 year's purchase.
13. 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.
16. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years — virtually adopting a multiplier of 45 — and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly

impermissible. We are, aware that some decisions of the High

spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accident and quantifying the amount in the name of fixing 'just compensation'.

27. In this context the Australian Family Property Law has adopted a very gender sensitive approach. It provides that while distributing properties in matrimonial matters, for instance, one has to factor in "the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any

Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. 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. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be 'just', the statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases."
(emphasis supplied)

11. In U.P. S.R.T.C. v. Trilok Chandra (1996) 4 SCC 362, a three-Judge Bench referred to the principles evolved by British Courts for award of damages and reiterated the multiplier method spelt out in General Manager Kerala State Road Transport Corporation v. Susamma Thomas (supra). The Court then took note of the stark inconsistencies in the approach adopted by the motor accident claims tribunals and courts in awarding compensation, referred to the amendment made in the Act in 1994, pointed out the defects in the Second Schedule and observed:

1. While agreeing with the judgment delivered by my learned brother Singhvi, J., I wish to add my perception of the problem which has been raised in this case.

2. Despite the clear constitutional mandate to eschew discrimination on grounds of sex in Article 15(1) of the Constitution, in its implementation there is a distinct gender bias against women and various social welfare legislations and also in judicial pronouncements.

3. In the Motor Vehicles Act, 1988 (hereinafter, 'the said Act'), Section 163A provides for special provision for payment of compensation on structured formula basis. The said Section has been quoted in the earlier part of the judgment by brother Singhvi, J. Therefore, I refrain from quoting the same. The Second Schedule which is referred to in the said Section has several clauses. Clause 6 of the said Schedule provides

"15. We thought it necessary to reiterate the method of

working out ‘just’ compensation because, of late, we have noticed from the awards made by tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in *Davies* , the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier. Let us illustrate: X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs.3500. First, deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make 2+2=4 units and each minor one unit i.e. 3 units in all, totalling 7 units. Thus the share per unit works out to Rs.3500¸7= Rs.500 per month. It can thus be assumed that Rs.1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs.250. Thus the amount spent on the deceased X works out to Rs.1250 per month leaving a balance of Rs.3500-1250=Rs.2250 per month. This amount can be taken as the monthly loss to X’s dependants. The annual dependency comes to Rs.2250x12=Rs.27,000. This

annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependants. Take the appropriate multiplier to be 15. The compensation comes to Rs.27,000x15=Rs.4,05,000. To this may be added a

> do with the statutory compensation payable under the provisions of the Motor Vehicles Act."

31. In **Amar Singh Thukral v. Sandeep Chhatwal** (supra), the learned Single Judge of Delhi High Court adopted the yardstick of minimum rates of wages for the purpose of award of compensation in the case of death of a housewife and then proceeded to observe 'since there is no scientific method of assessing the contribution of a housewife to her household, in cases such as the present, resort should be had to the wages of a skilled worker as per the minimum rates of wages in Delhi. Although, this may sound uncharitable, if not demeaning to a housewife, there is hardly any option available in the absence of statutory guidelines'.

32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the

conventional amount by way of loss of expectation of life.

Earlier this conventional amount was pegged down to Rs.3000 but now having regard to the fall in the value of the rupee, it can be raised to a figure of not more than Rs.10,000. Thus the total comes to Rs.4,05,000+10,000= Rs.4,15,000.

17. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163-A and 163-B in Chapter XI entitled "Insurance of Motor Vehicles against Third Party Risks". Section 165-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in *Susamma Thomas case*.

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs.3000. The total should be 3000x15=45,000 but the same is worked out at Rs.60,000. Similarly, in the second item the multiplier is 16 and the annual income is Rs.9000; the total should have been Rs.1,44,000 but is shown to be Rs.1,71,000. To put it briefly, the table abounds in such mistakes. Neither the tribunals nor the courts can go by

the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependant