

State of H.P. and ors. Vs. Laldei and ors.

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Court : Himachal Pradesh

Decided On : Oct-15-2009

Judge : Deepak Gupta, J.

Appellant : State of H.P. and ors.

Respondent : Laldei and ors.

Judgement :

Deepak Gupta, J.

1. The aforesaid appeal and cross-objection are being disposed of by this judgement.

2. Briefly stated, the facts of the case are that one Shri Khem Singh died in an accident on 29.03.2003 while he was travelling in Jeep No. HP-48-9601. This Jeep belongs to the State of Himachal Pradesh and was registered in the name of Project Officer, DRDA. Admittedly, the jeep went off the road and rolled into Sal river and the deceased died on the spot. F.I.R. in respect of the accident was lodged with the police on 29.3.2003. The claimants are the widow and three minor sons of deceased Khem Singh. They filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs. 15 lakhs. This claim petition was resisted by the State. Defences raised were that the deceased who was employed as Junior Assistant had misused his position and had boarded the vehicle despite protest by respondent No. 2 who is the driver of the vehicle. The accident was not

denied but it was stated that the vehicle was going for test after being repaired.

3. The learned Tribunal came to the conclusion that the accident had occurred due to the negligence of the driver of the vehicle. The pay of the deceased was proved to be Rs. 7,384/- and after deductions he was drawing a sum of Rs. 4,874/-. The learned trial Court assessed the loss of dependency at Rs. 5,000/per month and after applying multiplier of 14 assessed the loss of compensation on this account at Rs. 8,40,000/-. In addition, Rs. 50,000/- has been awarded for loss of living being of the family, Rs. 15,000/- for expenses on post death ceremony and Rs. 2,000/- as litigation costs. Another sum of Rs. 10,000/- has been awarded as consortium. A total amount of Rs. 9,17,000/- has been awarded as compensation.

4. Shri Rajesh Mandhotra, learned Deputy Advocate General for the State contends that the award is liable to be set-aside since the deceased had boarded the vehicle despite protest of the driver. He also submits that the vehicle after repair was going for trial and the deceased forcibly boarded the vehicle. He also submits that the amount of compensation awarded is on the higher side. On the other hand Shri Raj Negi, learned Counsel appearing for the claimants submits that the amount of compensation awarded is very low and should be suitably enhanced.

5. As far as the issue of negligence is concerned, it would be appropriate to mention that no defence what-so-ever was raised in the written statement as to what was the cause of the accident. Admittedly, the vehicle went off the road and into the river, therefore, the principle of *res ipsa loquitur* is squarely applicable to the facts of the case. Though no such defence was raised in the written statement, during the course of evidence it was sought to be proved that the accident occurred due to a sudden mechanical defect. The appellants cannot be permitted to raise this plea since this was not a ground raised in the written statement. Even otherwise, other than the mere statement of the driver there is no other material to show that the vehicle was being properly maintained and that the defect if any could not be discovered despite due care and diligence.

6. The main defence appears to be that the deceased boarded the vehicle forcibly. This contention has been raised only to be rejected. According to the driver, who

appeared as RW-1, after he had got the vehicle repaired, he was taking it for trial. The deceased alongwith Baldev and Rakesh signaled to him to stop the vehicle. Though this witness was reluctant they forcibly sit in the vehicle. This version of the respondent cannot be believed. Even assuming that the deceased had forcibly boarded the vehicle the driver could not have been forced to drive the same. The story is apparently a lame excuse to get out of payment of compensation.

7. The next issue is with regard to the compensation to which the claimants are entitled. In this case the deceased was in organized government employment and his last pay certificate has been proved as Ext.PW-1/A, which shows that the total emoluments of the deceased was Rs. 7,384/- per month. It is apparent that the deceased was in a job where increments were being paid. The age of the deceased is proved to be 28 years. The claimants are his widow and three minor children. Though the tribunal has followed the multiplier system but it has given no reason for fixing the multiplicand or the multiplier.

8. Under the Motor Vehicles Act, the court has to award just compensation. What is 'Just compensation' has been the subject matter of a number of decisions. In England two methods were being followed. One method was laid down in *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) A.C. 601. Under this method, first the balance life expectancy of the deceased was to be estimated, then his income for the remaining years of his life was to be calculated. However, while calculating this income, deductions had to be made for other uncertainties of life such as premature determination of the life etc. In *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 A.C. 601, a new method was adopted. According to this method after assessing the net income of the deceased the expenditure incurred by him on himself was to be deducted. The balance was termed to be the dependency of the family and included the accretion to the estate. This was to be multiplied by a suitable multiplier.

9. A Division Bench of this Court in *H.P. Road Trans. Corp. v. Pandit Jai Ram* 1980 A.C.J. 1, after discussing the entire law came to the conclusion that the method laid down in *Davies* case is the best method. The Division Bench laid down the following principles for determining the annual dependency which is also

termed as the multiplicand. It would be relevant to refer to para 17 of the judgment which reads as follows:

17. So far as the first factor of annual dependency is concerned, there is not much difficulty in fixing the same. The best evidence to fix the figure of this factor is supplied by the net income derived by the deceased at the time of his death. If the amount expended by the deceased for his personal expenditure is deducted from this amount of his net income, the remainder would represent the amount spent by him for his dependents plus the amount saved for future. If there is satisfactory evidence regarding the amount spent by him for his dependents, the figure of the amount so spent should be taken as the basic figure for calculating loss of dependency. But if no such satisfactory evidence is available it would be reasonable to fix the units of family expenditure and deduct the units consumed by the deceased for his personal expenditure. Normally, an adult member of the family would consume double the units consumed by minors, except those minors who are taking education in college for whom, in an appropriate case, two units of expenditure may legitimately be taken into account. Hence, if a minor is consuming one unit, an adult member of that family should be taken to consume two units. For instance, a family consisting of two adults and three minors would, on this basis, consume seven units for expenditure as under:

Two adults 4 units (two each)
Three minors 3 units (one each)
If, therefore, the total expenditure of such a family is Rs. 700/- per month, the personal expenditure of the deceased who is found to be the earning adult, should be taken as at Rs. 200/- per month (two units). The total value of dependency would, therefore, be Rs. 500/- per month. This would be the datum figure which should be further worked out by applying a suitable multiplier. This was the method adopted by the High Court of Gujarat in *Bai Nanda v. Shivabhai Shankerbhai Patel* (vide paragraph 40). We find this to be safe method to find out the basic value of dependency where clear and reliable evidence is lacking.

10. The Apex Court in *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas* : 1994 (2) SCC 176, also approved the method laid down in *Davies* case. It held as follows:

In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death. 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 altogether.

The matter of arriving at the damages is to ascertain the net income of the deceased and his dependants, and to deduct there from 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.

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.

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 there from towards

uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 year 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 there from 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.

11. Thereafter in UP State Road Transport Corporation v. Trilok Chandra : 1996(4) SCC 362, the Apex Court, while reiterating the preference to Davies method followed in Susamma Thomas, stated thus:

In the method adopted by Viscount Simon in the case of Nance also, first the annual dependency is worked out and then multiplied by the estimated useful life of the deceased. This is generally determined on the basis of longevity. But then, proper discounting on various factors having a bearing on the uncertainties of life, such as, premature death of the deceased or the dependent remarriage, accelerated payment and increased earning by wise and prudent investments, etc., would become necessary. It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the life-span taken. That is the reason why courts in India as well as England preferred the Davies' formula as being simple and more realistic. However, as observed earlier and as pointed out in Susamma Thomas' case, usually English Courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when Tribunals/Courts began to use a hybrid method of using Nance's method without making deduction for imponderables.... 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 there from the amount spent on the deceased, and thus assessing the loss to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier.

12. Despite the law laid down in the aforesaid two cases, there was lack of uniformity and consistency in awarding compensation under the Motor Vehicles Act. In an extremely exhaustive judgment dealing with the issue of assessment of just compensation, the Apex Court in *Sarla Verma v. DTC* : 2009(6) SCALE 129 has laid down the principles and guidelines for assessing and awarding just compensation under the Motor Vehicles Act. It held that 'just compensation' is adequate compensation which is fair and equitable. The same is not intended to be a bonanza or a source of profit but should be reasonable. The apex Court held that the awards of the Tribunals should be consistent. Justice Raveendran speaking for the Court laid down the following principles:

9. 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 the (c) the number of dependents. 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 of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will 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, 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 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.

Thereafter, a conventional amount in the range of Rs. 5,000/- 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 5,000/- 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.

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 added.

Question (i)-addition to income for future prospects

10. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In *Susamma Thomas*, this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death xxxxxx.

11.xxxxxxx. In view of imponderables and uncertainties, we are in favor 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 deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations 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 there from should be made only in rare and exceptional cases involving special circumstances.

Re: Question (ii)- deduction for personal and living expenses

12. We have already noticed that the personal and living expenses of the deceased should be deducted from the income to arrive at the contribution to the dependents. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. Claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardize the deductions to be made under the head of personal and living expenses of the deceased. This led to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was a married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction, got statutory recognition under Second Schedule to the Act, in respect of claims under Section 163A of the Motor Vehicles Act, 1988 ('MV Act' for short).

13. But, such percentage of deduction is not an inflexible rule and offers merely a guideline. In *Susamma Thomas*, it was observed that in the absence of evidence, it is not unusual to deduct one-third of the gross income towards the personal living expenses of the deceased and treat the balance as the amount likely to have been spent on the members of the family/dependants. In *UPSRTC v. Trilok Chandra* : 1996 (4) SCC 362, this Court held that if the number of dependents in the family of the deceased was large, in the absence of specific evidence in regard to contribution to the family, the Court may adopt the unit method for arriving at the contribution of the deceased to his family. By this method, two units is allotted to each adult and one unit is allotted to each minor, and total number of units are determined. Then the income is divided by the total number of units. The quotient is multiplied by two to arrive at the personal living expenses of the deceased
XXXXXX.

14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*, the general practice is to apply standardized deductions. 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 ($\frac{1}{3}$ rd) where the number of dependent family members is 2 to 3, one-fourth ($\frac{1}{4}$ th) where the number of dependant family members is 4 to 6, and one-fifth ($\frac{1}{5}$ th) where the number of dependant family members exceed six.

15. 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 dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or

be dependant on the father. 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 family of the bachelor is large and dependant 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. In respect of the appropriate multiplier to be applied after considering the entire law, the Apex Court summarized the various multipliers prescribed in different judgments and in the second schedule in the following table:

Age of the deceased

Multiplierscale as envisaged in Susamma Thomas

Multiplierscale as adopted by Trilok Chandra

Multiplierscale inTrilok Chandra as clarified in Charlie

Multiplierspecified in secondcolumn in the Table in II Schedule to MV Act

Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)

(1)

(2)

(3)

(4)

(5)

(6)

Upto 15yrs.

-

-

15

20

15 to 20yrs.

16

18

18

16

19

21 to 25

15

17

18

17

18

26 to 30yrs.

14

16

17

18

17

31 to 35yrs.

13

15

16

17

16

36 to 40yrs.

12

14

15

16

15

41 to 45yrs.

11

13

14

15

14

46 to 50 yrs

10

12

13

13

12

51 to 55yrs.

9

11

11

11

10

56 to 60yrs.

8

10

09

8

8

61 to 65 yrs

6

08

07

5

6

Above 65yrs

5

05

05

5

5

14. Thereafter the Court went on to hold as follows:

20. 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 table above); some follow the multiplier with reference to Charlie (set out in column(4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of 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) xxxxxx.

15. It is thus apparent that the Apex Court has now approved the multiplier in column 4 of the aforesaid table. I would, however, like to add a caveat on the basis of the law laid down in Susamma Thomas & Trilok Chandra and approved in Sarla Verma. The choice of multiplier has to be based on the age of the deceased or the

claimants which ever is higher. Therefore, if the parents are the claimants, it is age of the parents which will have to be taken into consideration while fixing the multiplier. This table is also not to be blindly followed and the Tribunal may well be within its jurisdiction to make departure from this table in particular cases. For example if the deceased was aged between 41 to 45 years as per this judgment multiplier of 14 is to be used. However, the deceased if he had married late, may have left behind a very young widow and two small children. The Tribunal in such a case may be justified in increasing the multiplier to 15. On the other hand there may be a case where the deceased who was aged between 41 to 45 years has not left behind a widow and the claimants are sons who are majors and are not dependents. The multiplier may be suitably reduced in such cases. This has to depend on the facts of each case. However, it is obvious that as per the law laid down by the Apex Court normally the deduction for the personal expenses of the deceased is to be $\frac{1}{3}$ rd where the dependent family is 2 to 3 and $\frac{1}{4}$ th where the number of dependent family members is 4 to 6 and $\frac{1}{5}$ th where the number of dependent family members exceeds 6. In case the deceased was a bachelor and the claimants are parents normally deduction of 50% should be made for the personal expenses of the deceased. However, this can be reduced to $\frac{1}{3}$ rd if the dependents are many.

16. Coming to the facts of the present case the deceased was in an organized Government employment and he was only 28 years old. Therefore, keeping in view the judgement rendered in Sarla Verma's case (Supra) 50% of the actual salary should be added to the income of the deceased towards his future prospect. Since the salary of the deceased was Rs. 7,384/- if fifty percent is added, the total income comes to Rs. 11,076/-, which is rounded off to Rs. 11,000/-. I feel that $\frac{1}{3}$ rd should be reduced in the present case for the personal expenses of the deceased and the balance works out to Rs. 7350/- per month.

17. Keeping in view all the facts and circumstances of the case multiplier of 16 would be reasonable and the compensation works out to Rs. 14,11,200/-. In addition thereto, the widow is entitled to Rs. 10,000/- for loss of consortium and the claimants are also entitled to conventional amount of Rs. 8,800/-.

18. In view of the above discussion, the appeal filed by the State is dismissed. The Cross-objection filed by the appellants are allowed and the award is enhanced from Rs. 9,17,000/- to Rs. 14,30,000/-. The claimants shall be entitled to interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition i.e. 18.5.2005 till the date of deposit of the said amount. The State is directed to deposit the enhanced amount in the Registry of this Court within three months. The amount of compensation is apportioned as follows:

Smt. Laldei (widow) Rs. 5,30,000/-Mr. Zani (minor son) Rs. 3,00,000/-Mr. Ravi Kumar (minor son) Rs. 3,00,000/-Mr. Brijesh Kumar (minor son) Rs. 3,00,000/-

19. Out of the amount of Rs. 5,30,000/- falling to the share of the widow, Rs. 1,30,000/-shall be released in her favour and the balance amount alongwith interest accrued thereupon shall be kept in a fixed deposit for a period of five years at the first instance. The amount falling to the share of the minors shall be retained in fixed deposits till they attain majority. The interest accruing in all the fixed deposits shall be remitted to the mother which she shall use for her own up keep and for the maintenance and education of the minor children.

20. The appeal and cross-objection are disposed of accordingly. In view of the judgement passed in the main appeal no orders are required to pass in the CMPs.