

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

RFA. No. 2 of 2015

Divisional Manager,
Oriental Insurance Co. Ltd
Pulin Bhavan, Keating Road, Shillong-1
East Khasi Hills District, Meghalaya.

..... **Appellant**

-Versus-

1. Smti Kashmira Kaur
W/o (L) Virsa Singh
Harijan Colony, Bara Bazar, Shillong.
[Claimant Mother of the deceased (L) Banti Singh]

2. Shri Bhoj Raj Chetri,
Haju Bari, P.O. Chandrapur, Guwahati.
[Owner of Truck No. AS-01K/1745]

3. Shri Suresh Rai,
Bangshai Sualkuchi, Kamrup, Assam.
[Driver of Truck No. AS-01K/1745]

..... **Respondents**

**BEFORE
THE HON'BLE MR JUSTICE SR SEN**

For the Appellant : Mr. I. Ahmed, Adv.

For the Respondents : Mr. M.F. Qureshi, Adv.

Date of hearing : **30.10.2015**

Date of Judgment & Order : **10.11.2015**

JUDGMENT AND ORDER

The appellant's case in a nutshell is that:

"This is an appeal against the impugned Judgment and Order dated 27.03.2015 passed by the Learned Member, Motor Accident Claims Tribunal, Shillong in MAC Case No. 5 of 2008. That the

related claim case has been filed by the claimant seeking compensation for the death of her son (L) Banti Singh. The brief facts of the case is that on 06.01.2008, the son of the claimant (L) Banti Singh while proceeding towards Guwahati to distribute wedding cards for the wedding of his eldest sister with his friend Shri Veeru Singh who was riding the motor cycle bearing Registration No. ML-05F/2962 in which (L) Banti Singh was a pillion rider an accident had occurred at 13th Mile Byrnihat, Ri-Bhoi District between the said motor cycle and the Truck bearing Registration No. AS-01K/1745 in which the son of the claimant expired and the rider also had sustained severe injuries.

That being highly aggrieved and dissatisfied with the Judgment and Order dated 27.03.2015 passed by the Learned Member, Motor Accident Claims Tribunal at Shillong in MAC Case No. 5 of 2008 towards awarding by applying improper Multiplier, the appellant files the instant Appeal”.

2. Mr. I. Ahmed, learned counsel appearing for the appellant submits that, while passing the impugned award dated 27.03.2015 in MAC Case No. 5 of 2008 the learned Member, Motor Accident Claims Tribunal, Shillong wrongly choose the multiplier method. The learned counsel also submits that, the learned Tribunal should have taken the age of the claimant into consideration instead of the deceased.

3. Mr. V.K. Jindal, learned Amicus Curiae supported the submission placed by the learned counsel for the appellant and relied on: ***Uttaranchal Transport Corpn. Ltd. v. Vimal Devi & Others: AIR 2009 SC 2146 Para 8*** and ***Bangalore Metropolitan Transport Corporation v. Sarojamma & Anr: (2008) 5 SCC 142 Para 12 & 13***. The learned Amicus Curiae also pointed out that, the

learned Tribunal in this case deducted 50% towards the personal expenses which is supposed to be one-third.

4. Mr. I. Ahmed, learned counsel for the appellant also further submits that, it is an admitted fact that the deceased at the time of his death was 22(twenty two) years of age and the claimant/mother of the deceased was 52(fifty two) years of age. As such, in this case, multiplier method can be used only on 16 not 18.

5. Mr. M.F. Qureshi, learned counsel appearing for the respondents agreed with the submission advanced by Mr. I. Ahmed, learned counsel for the appellant.

6. The Division Bench of the Hon'ble Supreme Court in the case of ***Uttaranchal Transport Corpn. Ltd. v. Vimal Devi & Others: AIR 2009 SC 2146 Para 8*** was pleased to observe that:

“8. 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”.

7. On perusal of Para 8 of the said judgment referred above, it is understood and clear that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is higher.

8. The Division Bench of the Hon'ble Supreme Court in the case of ***Bangalore Metropolitan Transport Corporation v. Sarojamma & Anr: (2008) 5 SCC 142*** was pleased to observe at ***Para 12 & 13*** which is reproduced herein below:

"12. What should be the legal principle on which the principle of just compensation should be worked out had been the subject matter of various decisions of this Court. This court in cases after cases noticed that the principles on which the multiplier method was developed has been given a go-by. In many cases, a hybrid method based on the subjectivity of the Tribunal has been noticed. Guidelines provided for by the statutes as also the Superior Court have not been applied. The courts have also noticed several defects in the schedule. It was opined that ordinarily the multiplier should not exceed 16.

13. Our attention has also been drawn to a decision of this Court in Fakeerappa v. Karnataka Cement Pipe Factory (2004) 2 SCC 473: 2004 SCC (Cri) 577 wherein it was held: (SCC p. 475, paras 7-8)

"7. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction.

8. It has to be noted that the ages of the parents as disclosed in the Claim Petition were totally unbelievable. If the deceased was aged about 27 years as found at the time of post mortem and about which there is no dispute, the

father and mother could not have been aged 38 years and 35 years respectively as claimed by them in the Claim Petition. Be that as it may, taking into account special features of the case we feel it would be appropriate to restrict the deduction for personal expenses to one-third of the monthly income. Though the multiplier adopted appears to be slightly on the higher side, the plea taken by the insurer cannot be accepted as there was no challenge by the insurer to the fixation of the multiplier before the High Court and even in the appeal filed by the appellants before the High Court, the plea was not taken”.

9. On perusal of Para 12 and 13 of the said judgment referred above, it is understood that, ordinarily the multiplier should not exceed 16 and the deduction towards personal expenses should be one-third of the monthly income. So, from the submissions advanced by the learned counsel for the parties and after going through the judgments pronounced by Hon'ble the Apex Court referred above, it is clear to me that, while choosing the multiplier method either the age of the deceased or the claimant should be taken into consideration whichever is in higher side and the maximum multiplier should be used as 16 and monthly personal expenses towards the deceased should limit at one-third, but in this case, it is found that, the multiplier has been used as 18. The personal expenditure towards the deceased was 50% though; he was a bachelor and the learned Tribunal also consider the age of the deceased instead of the claimant, which in my view is not the correct proposition of law. Hence, the impugned order dated 27.03.2015 passed in MAC Case No. 5 of 2008 is hereby set aside and the matter is remand back to the learned Tribunal with a direction to hear the parties and then to pass the judgment in the light of the observation made above within 15(fifteen) days.

10. The Registry is directed to forward a copy of this judgment and order to the learned Tribunal for immediate disposal.

11. With these observations and directions, this instant appeal is allowed to that extent and stands disposed of.

JUDGE

D. Nary