

Oriental Insurance Co. Ltd. Vs Mukesh Kumar and Others

Court: Delhi High Court

Date of Decision: Jan. 21, 2015

Acts Referred: Constitution of India, 1950 - Article 15(1)
Motor Vehicles Act, 1988 - Section 163A, 163-A, 168

Hon'ble Judges: G.P. Mittal, J.

Bench: Single Bench

Advocate: A.K. Soni, for the Appellant

Final Decision: Dismissed

Judgement

G.P. Mittal, J.

The Appellant Oriental Insurance Co. Ltd. impugns the judgment dated 01.06.2013 passed by the Motor Accidents

Claims Tribunal (the Claims Tribunal) whereby compensation of Rs. 10,96,979/- was awarded in favour of Respondents no. 1 to 4 for the death

of Smt. Shakuntala Devi, who was the mother of the claimants.

2. While computing the compensation for loss of gratuitous services rendered by her (as home maker) , the Claims Tribunal relied upon the

judgment of this Court in Royal Sundaram Alliance Insurance Co. Ltd. and Vs. Master Manmeet Singh and Others etc. etc., .

3. It is urged by the learned counsel for the Appellant that no deduction was made towards personal and living expenses.

4. The learned counsel states that the judgment in Master Manmeet (supra) has been challenged in United India Insurance Co. Ltd. v. Surat Singh

Mehta and Ors. in Civil Appeal No. 10586/2013 decided on 19.11.2013 which case was decided by way of compromise. It is urged that another

appeal arising out of the said judgment in United India Insurance Company Limited v. Devinder @ Devinder Singh and Ors. has been challenged

by way of Special Leave to Appeal (Civil) No. 39376/2012 which is pending consideration before the Supreme Court.

5. Various appeals have been filed against the judgment in Master Manmeet (supra) but there is no order which has been brought to my notice

wherein the proposition of law as laid down has not been approved. Rather an appeal being SLP (C) No. 19711/2012, ICICI Lombard General

Insurance Company Limited v. Shiv Kumar and Ors. filed against the above-referred judgment was dismissed by the Supreme Court by an order

dated 24.07.2012.

6. Although Respondents no. 1 to 4 claimed compensation claiming the potential income of deceased Shakuntala Devi to the tune of Rs. 8,000/-

per month as she was working in a Beauty Parlour under the name "style and Smile" at Punjabi Bagh, but in absence of any proof of income from

the side of deceased's employer, the Claims Tribunal awarded compensation on the basis of minimum wages of a non-matriculate i.e. Rs. 7,358/-

per month.

7. It may also be seen that no addition towards future prospects was made.

8. It may be noted that in Master Manmeet (supra) , no addition towards future prospects was made but it was laid down that the value of

gratuitous services in the initial years by the housewife will be more and the same will go on decreasing by every passing year. Thus, with increasing

age, the value of gratuitous services decreases.

9. In paras 4 to 34 in Master Manmeet (supra) , this Court held as under:-

4. To assess the value of services rendered by a homemaker so as to calculate the loss of dependency in case of her death in a road accident is an

uphill task. Sometimes the Claims Tribunals have taken the salary of a skilled worker and sometimes have taken 50% wages of a skilled worker.

Clause 6 (b) of the Second Schedule to Section 163-A of the Motor Vehicles Act, 1988 (M. V. Act) lays down that the income of a non-earning

spouse shall be considered to be one-third of the income of the surviving spouse. There seems to be no logic behind this. If I may say so, it is

totally arbitrary and, therefore, can only be restricted to the grant of compensation as per the structured formula in petitions filed under Section

163-A of the M.V. Act.

5. The Claims Tribunal (in MAC APP. 590/2011) referred to the judgment of Lata Wadhwa and Others Vs. State of Bihar and Others, ; M.S.

Grewal and Another Vs. Deep Chand Sood and Others, ; some English decisions and it heavily relied upon the judgment in Arun Kumar Agrawal

and Another Vs. National Insurance Company and Others, to hold that it is difficult to value the services rendered by a wife and a mother. It did

not follow Clause 6 (b) of the second Schedule to the M. V. Act to take one-third of the surviving spouse's income as taken in Arun Kumar

Agrawal (supra) as the Hon"ble Supreme Court in the aforesaid decision had lamented that taking one-third of the surviving spouse's income was

not based on any sound principle.

6. The Tribunal relied on Lata Wadhwa whereby value of the services rendered by a housewife aged upto 59 years was taken as Rs. 3,000/-. The

Tribunal doubled it to Rs. 6,000/- on account of inflation as Lata Wadhwa (supra) was decided in the year 2001 selected a multiplier of "15" and

after deduction of one- third towards the personal living expenses, computed the loss of dependency as Rs. 7,20,000/-. The Tribunal further

awarded a sum of Rs. 1,00,000/- towards loss of love and affection, Rs. 25,000/- towards funeral charges and Rs. 5,000/- towards loss to estate

to compute the overall compensation as Rs. 8,50,000/-. There is no Appeal by the Claimants.

7. Section 168 of the Act enjoins the Claims Tribunal to hold an inquiry into the claim to make an award determining the amount of compensation

which appears to it to be just and reasonable. It has to be borne in mind that the compensation is not expected to be a windfall or a bonanza nor it

should be niggardly. In Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , the Supreme Court held

that ""the Court and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would

be ""just"" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb.

Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and

attending peculiar or special features, if any.

8. First of all, I would deal with Clause 6 (b) of the second Schedule to the M. V. Act (under Section 163A) which provides that the income of a

non-earning spouse, who has died, may be taken as one-third of the income of the surviving spouse. It goes without saying that similar kind of

services is rendered by a home maker whether in the middle or in the low income group. Is there any justification to relate the income of the

housewife to that of her husband?

9. To give an example there is a senior Clerk "A", a Junior level Officer "B" and a middle level Officer "C" working with the Govt.; A, B and C

draw a salary of Rs. 15,000/-, Rs. 30,000/- and Rs. 60,000/- respectively. The wives of all the three are looking after their respective homes and

caring for the children. All of them are Graduates. If we apply the criterion as laid down in the second Schedule, the value of services rendered in

case of "A", "B" and "C" would be Rs. 5,000/-, Rs. 10,000/- and Rs. 20,000/- per month respectively. The husband and the children would be

entitled to compensation on the assumed loss of dependency as mentioned above. There would be wide disparity in the award of compensation.

10. In the three examples quoted above, although the deceased's spouse might be rendering the same services for the husband and the children,

i.e. to cook food, to buy clothes, wash and iron them, to work as a tutor for the children, to give necessary instructions to the children as to their

upbringing, and so on. The compensation awarded in the case of "A" would be X amount; in case of "B" would be 2X amount and in case of "C"

would be 4X amount.

11. Similarly, take an example of X, Y and Z who are in their respective enterprises and earning Rs. 5 lacs, Rs. 10 lacs and Rs. 15 lacs per annum

respectively. Not only there would be wide disparity in the grant of compensation in respect of the death of their spouse, the compensation

awarded for loss of services rendered by a housewife of a husband in a very high bracket based on this principle may be unjust enrichment. Again

there may be cases where if the husband is having a very high income his wife really might not be contributing so much towards the home making.

Thus, I am of the view that a readymade formula given in Clause 6 (b) of the second Schedule cannot be adopted to award just and fair

compensation which is the very basis of an award passed under Section 168 of the M. V. Act.

12. In the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , it was held

as under:-

5...The determination of the quantum must answer what contemporary society ""would deem to be a fair sum such as would allow the wrongdoer

to hold up his head among his neighbours and say with their approval that he has done the fair thing"". The amount awarded must not be niggardly

since the law values life and limb in a free society in generous scales". All this means that the sum awarded must be fair and reasonable by

accepted legal standards.

13. In Arun Kumar Agrawal, the Supreme Court referred to Kemp and Kemp on Quantum of Damages, (Special Edn., 1986) , Berry v. Humm

and Co., (1915) 1 KB 627 and Mehmet v. Perry, (1977) 2 All ER 529 (DC) . Paras 22, 23, 25 and 26 of the report are extracted hereunder:-

22. We may now deal with the question formulated in the opening paragraph of this judgment. In Kemp and Kemp on Quantum of Damages,

(Special Edition - 1986) , the authors have identified various heads under which the husband can claim compensation on the death of his wife.

These include loss of the wife's contribution to the household from her earnings, the additional expenses incurred or likely to be incurred by having

the household run by a house-keeper or servant, instead of the wife, the expenses incurred in buying clothes for the children instead of having them

made by the wife, and similarly having his own clothes mended or stitched elsewhere than by his wife, and the loss of that element of security

provided to the husband where his employment was insecure or his health was bad and where the wife could go out and work for a living.

23. In England the courts used to award damages solely on the basis of pecuniary loss to family due to the demise of the wife. A departure from

this rule came to be made in *Berry v. Humm and Co.* (1915) 1 K.B. 627 where the plaintiff claimed damages for the death of his wife caused due

to the negligence of the defendant's servants. After taking cognizance of some precedents, the learned Judge observed:

I can see no reason in principle why such pecuniary loss should be limited to the value of money lost, or the money value of things lost, as

contributions of food or clothing, and why I should be bound to exclude the monetary loss incurred by replacing services rendered gratuitously by

a relative, if there was a reasonable prospect of their being rendered freely in the future but for the death.

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25. In *Mehmet v. Perry*, the pecuniary value of a wife's services were assessed and granted under the following heads:

(a) Loss to the family of the wife's housekeeping services.

(b) Loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her.

(c) Loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.

26. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of

money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs

cannot be equated with the services rendered by others. A wife/ mother does not work by the clock. She is in the constant attendance of the family

throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the

requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable

guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and

utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

14. The Supreme Court observed that in view of the multifarious services rendered by the housewife, it is difficult to value those services in terms

of money. But then some estimate has to be made in terms of money to award compensation. In Para 27 of the report, the Supreme Court said as

under:-

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However,

for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that

context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and

attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the

loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close

relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

15. The Supreme Court referred to the judgment passed by the Madras High Court in National Insurance Co. Ltd. Vs. Deepika rep. by her

guardian and next friend, Ranganathan, Ranganathan, Rajeswari and S. John Antony, . Para 54 to 57 of the judgment in Arun Kumar Agrawal are

extracted hereunder:-

54. India is a signatory to the said Convention and ratified the CEDAW Convention on 9.7.1993. But even then no law has been made for proper

evaluation of the household work by women as homemakers.

55. The Madras High Court in Deepika (supra) has observed very pertinently:

9. The UNICEF in 2000, noted that "unpaid care work is the foundation of human experience". The care work is that which is done by a woman

as a mother and definitely in India, the woman herself will be the last person to give this role an economic value, given the social concept of the role

of a mother. But when we are evaluating the loss suffered by the child because her mother died in an accident, we think we must give a monetary

value to the work of a caregiver, for after all, the home is the basic unit on which our civilised society rests.

56. The Madras High Court in its very illuminating judgment in Deepika (supra) has further referred to various methods by which the assessment of

work of a homemaker can be made and the relevant portion from para 10 of the said judgment is extracted below:

10...that there have been efforts to understand the value of a homemaker's unpaid labour by different methods. One is, the opportunity cost which

evaluates her wages by assessing what she would have earned had she not remained at home, viz., the opportunity lost. The second is, the

partnership method which assumes that a marriage is an equal economic partnership and in this method, the homemaker's salary is valued at half

her husband's salary. Yet another method is to evaluate homemaking by determining how much it would cost to replace the homemaker with paid

workers. This is called the Replacement Method.

57. Various aspects of the nature of homemaker's job have been described in para 11 which are very relevant and are extracted below:-

11. The role of a housewife includes managing budgets, co-ordinating activities, balancing accounts, helping children with education, managing

help at home, nursing care etc. One formula that has been arrived at determines the value of the housewife as, Value of housewife " husband"s

income - wife"s income + value of husband"s household services, which means the wife"s value will increase inversely proportionate to the extent

of participation by the husband in the household duties. The Australian Family Property Law 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 contribution made in the capacity of a homemaker or parent".

In para 13, the Division Bench of the High Court has observed and, in my view very rightly, that time has come to scientifically assess the value of

the unpaid homemaker both in accident claims and in matters of division of matrimonial properties.

16. In Deepika the value of the services rendered by the housewife was again related to that of the husband. In that case the husband"s income

was found to be Rs. 5,500/- per month, its 50% i.e. Rs. 2750/- was taken towards domestic services in addition to Rs. 750/- as income from the

work carried out by the wife.

17. Earlier in some cases the High Courts took 50% wages of the unskilled/ skilled workers and in some cases the entire wages of a skilled

worker was taken to make an attempt to arrive at a figure to compute the dependency. The Delhi High Court in Amar Singh Thukral, Sushma,

Jyotsana, Archana, Daughters of Shri Amar Singh Thukral and Ravi Kumar Vs. Sandeep Chhatwal, A.P. Verma and National Insurance Co. Ltd.,

, very reluctantly took the salary of a skilled worker as per the minimum wages applied in Delhi, while observing as under:-

.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 other option available in the absence of any statutory guidelines.

18. The Supreme Court in Arun Kumar Agrawal did not approve the adoption of the salary of a skilled worker to compute the loss of

dependency. In this case, Hon"ble Mr. Justice A.K. Ganguly while penning a separate concurrent judgment expressed hope that the legislature

would come with some better method to arrive at the value of the services of the housewife. In para 65 of the report it was observed:-

65. 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.

19. In *Lata Wadhwa (supra)* a number of persons including women and children died; the Supreme Court assessed the compensation while taking

the value of the services rendered by a housewife between the age group of 22-59 as Rs. 3,000/- per month and in the case of women aged 62

years and above at Rs. 21,00/- per annum.

20. The minimum wages of a Graduate at the time of the fire accident in *Lata Wadhwa (supra)* as notified in the State of Delhi were just Rs. 898/-.

The compensation was awarded in the year 2001 when the minimum wages of a Graduate were Rs. 3339/-, of a matriculate were Rs. 3027/- and

that of a skilled worker were Rs. 3003/-. It is important to note that no interest on the compensation was awarded from the date of the accident till

the date of the payment in *Lata Wadhwa (supra)*. Many Tribunals and High Courts have adopted the compensation granted in case of *Lata*

Wadhwa (supra) to be just and fair in motor accident cases, where the deceased was a house wife. But, the compensation in *Lata Wadhwa* was

awarded because there was loss of life of so many women and children when a fire broke out while they were participating in a function organized

by Tata Iron and Steel Company. It was not a statutory compensation under the Motor Vehicles Act. Moreover, difficulty also arises as on

account of inflation, the wages and salaries have increased manifold. In this case, the Tribunal held that the compensation in *Lata Wadhwa* was

awarded in the year 2001 and doubled it to Rs. 6,000/- to compute the loss of dependency. The Tribunal further deducted one-third of the

assumed income towards the personal living expenses and computed the loss of dependency on the income of Rs. 4,000/- per month which

according to the Appellant is exorbitant and excessive. No deduction was made by the Supreme Court in the assumed value of services rendered

at Rs. 3,000/- per month while computing the loss of dependency.

21. The services rendered by a housewife cannot be counted; cooking, washing, ironing clothes and stitching clothes (in some cases) for the

husband and children, teaching and guiding children, working as a nurse whenever the husband or the child/children are sick, are some of the major

activities of a housewife. She has no fixed hours of work; she is always in attendance to take care of each and every need of the whole family at

the cost of her personal comfort and health. The services rendered by a housewife may differ from case to case considering her qualification,

financial strata and the social status of the family to which she belongs.

22. The Claimants, therefore, must lead evidence to prove the services rendered by a non working female. In the absence of any evidence to the

contrary, the value of the services, if I may say so, has to have some relation to the educational qualification of the deceased.

23. Thus, the value of services rendered by a home maker should be taken as the minimum salary of a non-matriculate, matriculate or a Graduate,

(in the absence of any evidence to the contrary) . In case of a young mother and a wife there should be an addition of 25% of the minimum salary/

wages as per the educational qualification i.e. Graduate, matriculate or non- matriculate. There should be addition of 15% in the case of a middle

aged mother and a wife and "NIL" in case of a wife and a mother beyond the age of 50 years as the children become independent by that time.

The value of gratuitous services rendered should be gradually reduced after the age of 55 years, even though mothers take care of their children

(irrespective of their ages) and even when they (the children) are married.

24. The next question that falls for consideration is whether there should be any deduction towards the personal living expenses of the deceased

(Home maker) . While awarding damages there is balancing of the loss to the Claimants of the pecuniary benefits with the gain of the pecuniary

advantages which comes to them by reason of death. In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , it was

observed as under:-

... The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that

any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a

dependant by the death must be ascertained, the position of each dependant being considered separately.

25. In A. Rajam Vs. M. Manikya Reddy and Another--> the Hon"ble Mr. Justice M.J. Rao (as he then was) referred to a number of English

decisions.

26. In Morris v. Rigby (1966) 110 Sol Jo 834, the husband who was a medical officer, earning ₹ 2,820 a year, claimed damages for the death

of his wife. He had five children aged two to fifteen years. He got his wife's sister to come and take care of them and do the domestic duties,

paying her a gross wage of £20 a week. The judge awarded £8,000 and the award was confirmed.

27. The Learned Judge further referred to *Regan v. Williamson* 1977 ACJ 331 (QBD England) where the housekeeper employed was a relative.

There, the wife was 37 years when she died and she left behind her husband and four sons aged 13, 10, 7 and 2 years respectively. A relative

came daily (except weekends) to provide meals and to look after the boys. She was paid £16 per week and it cost the Plaintiff further £6.50

per week for her food, journeys to and from her home and for national insurance stamp. The Plaintiff estimated that his wife's loss had cost him

£10 per week to cloth and feed his children and himself. Watkins, J. held that though, according to precedents, £22.50 (£16+£6.50) per

week minus £10 per week, would be sufficient as justice required that the term "services" should be widely construed. Watkins, J. observed:-

I am, with due respect to the other Judges to whom I have been referred, of the view that the word "services" has been too narrowly construed. It

should, at least, include an acknowledgement that a wife and mother does not work to set hours and, still less, to rule. She is in constant

attendance, save for those hours when she is, if that is a fact, at work. During some of those hours she may well give the children instructions on

essential matters to do with their upbringing and, possibly, with such things as their home work. This sort of attention seems to be as much a

service, and probably more valuable to them, than the other kinds of service conventionally so regarded.

.. and hastened to add:- "I am aware that there are good mothers and bad mothers. It so happens that I am concerned in the present case with a

woman who was a good wife and mother". On the basis, the figure for dependency was raised from £12.50 (£22.50 -10.0) per week to

£20 per week and a further sum of £1.50 was added for the deceased's financial contribution to the home, had she eventually gone out to

work again. A multiplier of 11 was applied as the Plaintiff was 43 years. The award under the Fatal Accidents Act, was £1238.

28. Learned Judge further referred to *Mehmet v. Perry* 1978 ACJ 112 (QBD, England) , wherein the husband had to look after five children aged

14, 11, 7, 6 and 3 years respectively. The two youngest children suffered from a serious hereditary blood disease requiring medication and

frequent visits to the hospital. Consequently, the husband had to give up his employment after his wife's death and devoted his full time to care for

the family. Between September, 1973 when his wife was killed and the trial that was conducted in October, 1976, his net average loss of earnings

were $\text{£}1,500$ a year. His future net loss would be at the rate of $\text{£}2,000$ a year. It was held by Brain Neill, QC (sitting as a deputy Judge)

that, in view of the medical evidence concerning the health of the children his giving up of his job was proper and that damages should be assessed

not at the cost of employing a housekeeper but by reference to the Plaintiff's loss of wages, since the loss of wages represented the cost of

providing the services of a full time housekeeper in substitution for his wife. In addition, the children were entitled, on the basis of *Regan v.*

Williamson 1977 ACJ 331 (QBD, England) , to get $\text{£}1,500$ as part of their damages, a sum of $\text{£}1,000$ for the loss of "personal attention" to

them by a "mother" which is distinct from her services as a housekeeper but, that sum must be kept within modest limits as the Plaintiff was at

home all the time. The Plaintiff as a husband was also held to be entitled to some damages for his loss of the "personal care and attention of the

wife" but that sum should be quite small to avoid any overlap with the damages awarded for housekeeping services. The last two children require

to support for 12 years, as per medical advice. A multiplier of 8 was adopted for the family as a unit and 12 for the Plaintiff and a sum of $\text{£}19,000$

was arrived at.

29. While awarding compensation for loss of gratuitous services rendered by a homemaker the Claims Tribunals or the Court simply value the

services. It goes without saying that the husband looks after the wife and some amount is definitely spent on her maintenance. But, whether that

amount is liable to be deducted from the value of the gratuitous services rendered by her?

30. As held in *Gobald Motor Service Ltd. and Helen C. Rebello* that while estimating damages, the pecuniary loss has to be arrived at by

balancing on the one hand the loss to the Claimants of the future pecuniary benefits that would have accrued to him with the gain of the pecuniary

advantages which comes to him from whatever sources by reason of the death.

31. In, *Regan v. Williamson*, the learned Judge found that the expenditure on the deceased housewife was $\text{£}10$ per week. While the value of

gratuitous services rendered by her was $\text{£}22.50$ per week. The figure on dependency of $\text{£}12.50$ ($\text{£}22.50 - \text{£}10.0$) was taken as

$\text{£}21.50$ per week. Thus, the amount spent on personal living expenditure was not really deducted in *Regan v. Williamson*.

32. Even on the basis of *Gobald Motor Service Ltd. and Helen C. Rebello*, the pecuniary advantages which the Claimant gets on account of

accidental death is only liable to be deducted. The amount of money paid on account of death by the Life Insurance Corporation was held to be

not deductible in *Helen C. Rebello*.

33. Thus, if a deceased housewife who lost her life in a motor accident would have died a natural death, the pecuniary advantage on account of

savings made of the expenditure required for her maintenance would have otherwise also accrued to the benefit of the Claimants. Since this

pecuniary advantage does not become receivable only on account of accidental death, in my view, the portion of the husband's income (spent on

the deceased's maintenance) cannot be deducted.

34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-

(i) Minimum salary of a Graduate where she is a Graduate.

(ii) Minimum salary of a Matriculate where she is a Matriculate.

(iii) Minimum salary of a non-Matriculate in other cases.

(iv) There will be an addition of 25% in the assumed income in (i) , (ii) and (iii) where the age of the homemaker is upto 40 years; the increase will

be restricted to 15% where her age is above 40 years but less than 50 years; there will not be any addition in the assumed salary where the age is

more than 50 years.

(v) When the deceased home maker is above 55 years but less than 60 years; there will be deduction of 25%; and when the deceased home

maker is above 60 years there will be deduction of 50% in the assumed income as the services rendered decrease substantially. Normally, the

value of gratuitous services rendered will be NIL (unless there is evidence to the contrary) when the home maker is above 65 years.

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-

marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualification stated in (i) , (ii) and (iii) above and addition

and deduction thereon as per (iv) and (v) above.

(vii) There shall not be any deduction towards the personal and living expenses.

(viii) As an attempt has been made to compensate the loss of dependency, only a notional sum which may be upto Rs. 25,000/- (on present scale

of the money value) towards loss of love and affection and Rs. 10,000/- towards loss of consortium, if the husband is alive, may be awarded.

(ix) Since a homemaker is not working and thus not earning, no amount should be awarded towards loss of estate.

10. I do not find any ground to interfere with the impugned judgment.

11. The appeal is devoid of any merit, it is accordingly dismissed.

12. Pending applications stand disposed of.

13. Statutory amount of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company.