(2010) 03 DEL CK 0117

In the Delhi High Court

Case No : MAC. App. 150 of 2010

Bajaj Allianz Gen Insurance Co. Ltd. APPELLANT

Vs

Gouri and Others RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 168, 170

Citation : (2010) 03 DEL CK 0117

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Atul Nanda, Rameeza Hakeem, Gaurav Gupta, Sumeer Sodhi, Malika Gahlot, Sugandha and Sanjay Bhardwaj, for the Appellant; None, for the Respondent

Judgement

J.R. Midha, J.

CM No. 4625/2010

1. Allowed, subject to just exceptions.

2. The application stands disposed of.

CM No. 4624/2010

3. Allowed, subject to order u/s 170 of the Motor Vehicles Act being filed within two weeks.

4. The application stands disposed of.

MAC. APP. No. 150/2010 & CM No. 4623/2010

5. The appellants have challenged the award of the Claims Tribunal whereby compensation of Rs. 9,22,200/- has been awarded to the claimants/respondents No. 1 to 4.

6. The accident dated 8th April, 2008 resulted in the death of Shambhu. The

deceased was survived by his widow, one minor son and parents who filed the claim petition before the Claims Tribunal.

7. The deceased was working as a driver. His driving licence was proved as Ex.PW-3/E. According to the claimants/respondents No. 1 to 4, the deceased was earning Rs. 8,400/- per month. In the absence of any documentary proof of the salary of the deceased, the Claims Tribunal took minimum wages of Rs. 4107/- in respect of a skilled worker. Following the judgments of this Court in cases of Kanwar Devi and Others Vs. Bansal Roadways and Others, , Lekh Raj v. Suram Singh 2007 ACT 2165 , National Insurance Company Ltd. Vs. Renu Devi and Others, and UPSRTC v. Munni Devi MAC. APP. No. 310/2007 decided on 28.7.2008, the Claims Tribunal took the judicial notice of increase in minimum wages due to inflation and rise in price index and took the average of minimum wages and its double as income of the deceased [(Rs.4107 + Rs. 8214 / 2 = Rs. 6161/-)].

8. The deceased was aged 31 years at the time of the accident and was survived by four legal representatives. Following the judgment of the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Claims Tribunal deducted 1/4th towards the personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at Rs. 8,87,184/- (rounded off to Rs. 8,87,200/-). The Claims Tribunal awarded Rs. 10,000/- towards the loss of love and affection, Rs. 10,000/- towards loss of consortium, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses. Total compensation awarded is Rs. 9,22,200/- along with interest at the rate of 7.5% per annum.

9. The only ground urged by the learned Counsel for the appellant at the time of the hearing of the appeal is that the Claims Tribunal erred in taking the judicial notice of increase in minimum wages due to inflation and rise in price index. The learned Counsel for the appellant referred to and relied upon the judgment of House of Lords in the case of Mallett v. McMonagle 1967 2 W.L.R. 767 in which the House of Lords held as under at page 772:

In my view, the only practical course for courts to adopt in assessing damages awarded under the Fatal Accidents Acts is to leave out of account the risk of further inflation, on the one hand, and the high interest rates which reflect the fear of it and capital appreciation of property and equities which are the consequence of it, on the other hand. In estimating the amount of the annual dependency in the future, had the deceased not been killed, money should be treated as retaining its value at the date of the judgment, and in calculating the present value of annual payments which would have been received in future years, interest rates appropriate to times of stable currency such as 4 per cent to 5 per cent should be adopted.

10. The learned Counsel for the appellant also referred to the judgments of House of Lords in the case of Taylor v. O''Connor 1971 AC 115 and Lim Poh Choo

v. Camden and Islington Area Health Authority (1980) AC 193. According to the learned Counsel for the appellant, the actual income of the deceased at the time of the accident should be taken and no addition should be made for future inflation.

11. After considering the aforesaid judgments referred to and relied upon by the learned Counsel for the appellant, this Court is of the prima facie view that:

(i) Where the income of the deceased has been proved, the future prospects are added to the income of the deceased in terms of the judgment of the Hon''ble Supreme Court in the case of Sarla Verma (supra), where it was held as under:

Question (i) - addition to income for future prospects

20. 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.

21. 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. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs. 1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2000/- as gross income before deducting the personal living expenses.

22. The decision in Susamma Thomas was followed in Sarla Dixit v. Balwant Yadav where the deceased was getting a gross salary of Rs. 1543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs. 3000/-. This Court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the monthly income as Rs. 2200/-per month.

23. In Abati Bezbaruah v. Dy. Director General, Geological Survey of India, as against the actual salary income of Rs. 42,000/- per annum, (Rs. 3500/- per month) at the time of accident, this Court assumed the income as Rs. 45,000/- per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

24. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour 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 therefrom should be made only in rare and exceptional cases involving special circumstances.

(ii) In the case of R.K. Malik and Another Vs. Kiran Pal and Others, , the Hon''ble Supreme Court has awarded future prospects in respect of a minor child. The findings of the Hon''ble Supreme Court in paras 14 to 17, 31 and 32 are reproduced hereunder:

14. For calculating the yearly loss of dependency the starting point is the wages being earned by the deceased, less his personal and living expenses. This provides a basic figure. Thereafter, effect is given to the future prospects of the deceased, inflation and general price rise that erodes value and the purchasing power of money. To the multiplicand so calculated, multiplier is to be applied. The multiplier is decided and determined on the basis of length of dependency, which must be estimated. This has to be necessarily discounted for contingencies and uncertainties. Reference in this regard may be made to the judgments of this Court in the case of The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, ; Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, ; New India Assurance Co. Ltd. Vs. Charlie and Another, and United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., .

15. The real problem that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. However, under no stretch of imagination it can be said that the parents, who are appellants herein, have not suffered any pecuniary loss. In fact, Loss of dependency by its very nature is awarded for prospective or future loss. In this context, Lord Atkinson aptly observed in Taff Vale Rly. Co. v. Jenkins as follows:

In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child''s lifetime. But this will not necessarily bar the parents'' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.

16. Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grandparents etc. in the case of non-working student? Under the Second Schedule of the Act in case of a non

earning person, his income is notionally estimated at Rs. 15,000/- per annum. The Second Schedule is applicable to claim petitions filed u/s 163A of the Act. The Second Schedule provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable u/s 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases. see Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, ; United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., and U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, .

17. Reverting back to the factual position of the present case, the date of accident is 18.11.1997. Prior to this, the Second Schedule of the Act was already introduced w.e.f. 14.11.1994. Thus, the notional income mentioned in the Second Schedule and the multiplier specified therein can form the basis for the pecuniary compensation for the loss of dependency in the present cases. No fact and reason was highlighted during the arguments why the Second Schedule should not apply in the present cases. The Second Schedule also provides for deduction of 1/3rd consideration towards expenses; which the victim would have incurred on himself if he had lived. As compensation for loss of dependency is to be calculated on the basis of notional income because the deceased was a child. It by necessary implication takes into account future prospects, inflation, price rise etc.

31. A forceful submission has been made by the learned Counsels appearing for the claimants-appellants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the Courts below. On perusal of the evidence on record, we find merit in such submission that the Courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the Courts to consider the said aspect while awarding compensation. Reliance in this regard may be placed on the decisions rendered by this Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and Lata Wadhwa case (supra).

32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospect should have been be addressed by the courts below. While considering such claims, child''s performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and

bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of Lata Wadhwa (supra) and M.S. Grewal (supra), the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in Lata Wadhwa (supra) and M.S. Grewal (supra), we deem it appropriate to grant compensation of Rs. 75,000/-(which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

(iii) In the case of Baby Radhika Gupta v. Oriental Insurance Co. Ltd. Civil Appeal No. 7736/2009 decided on 24th November, 2009, the Hon''ble Supreme Court awarded Rs. 2 lakh towards future prospects in respect of death of a self-employed person.

(iv) Where the deceased was earning but the income of the deceased is not proved by documentary evidence, the income of the deceased was taken according to the minimum wages under the Minimum Wages Act. The minimum wages get doubled over a period of ten years and judicial notice is taken of the increase in minimum wages due to inflation and rise in price index and the income of the deceased is taken by taking the average of minimum wages and its double. The law in this regard is well-settled in the following judgments of this Court:

(a) Kanwar Devi and Others Vs. Bansal Roadways and Others,

This Court took judicial notice of the increase of minimum wages to meet the price index and inflation rate. The Court has taken the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects.

(b) National Insurance Company Ltd. Vs. Renu Devi and Others,

This Court took the judicial notice of the fact that the minimum wages get almost doubled over the period of 10 years.

(c) UPSRTC v. Munni Devi MAC. APP. No. 310/2007 decided on 28.07.2008

This Court followed the aforesaid judgments and observed that the wages under the Minimum Wages Act became almost more than double within a span of 10 years period.

(v). This Court as well as the Claims Tribunals are consistently following the principles laid down in the aforesaid judgments during the last more than a year and the insurance companies have been satisfying the awards passed on the above basis.

(vi). The three judgments of the House of Lords referred to and relied upon by the learned Counsel for the appellant do not deal with the minimum wages. In all the three cases, occupation as well as income of the deceased was not in dispute. Where the occupation and income of the deceased have been sufficiently proved, the future prospects have to be added in terms of the judgment of the Hon''ble Supreme Court in the case of Sarla Verma v. DTC (supra). Where the income of the deceased is not proved by sufficient evidence, the cases would be governed by the judgment of the Hon''ble Supreme Court in the case of R.K. Malik (supra) and of this Court in the cases of Kanwar Devi v. Bansal Roadways (supra), National Insurance Co. Limited v. Renu Devi (supra) and UPSRTC v. Munni Devi (supra). In either case, the judgments referred to and relied upon by the learned Counsel for the appellant would have no relevance or applicability to the present case.

12. The learned Counsel for the appellant submits that this case raises a substantial question of law as to the correctness of the judgment of the Hon''ble Supreme Court in the case of R.K. Malik (supra) and of this Court in the cases of Kanwar Devi v. Bansal Roadways (supra), Lekh Raj v. Suram Singh (supra), National Insurance Co. Limited v. Renu Devi (supra) and UPSRTC v. Munni Devi (supra).

13. This Court is of the prima facie view that in view of the clear precedents of the Hon''ble Supreme court and of this Court, the English judgments referred to by the learned Counsel for the appellant have no application. However, notice is being issued on insistence of the learned Counsel for the appellant that the English judgments are applicable and this question raised needs examination, but considering that the claimants would be compelled to contest this case, this Court feels that the cost of litigation of the claimants should be secured before issuing notice.

14. This Court is of the view that the appellant should deposit a sum of Rs. 10,000/- as costs with the Registrar General of this Court. The statutory amount deposited by the appellant along with this appeal as well as the amount now directed to be deposited be kept in fixed deposit till disposal of this appeal. If the appellant ultimately succeeds in this appeal, this amount would be refunded back to the appellant along with interest accrued thereon. However, in the event of this appeal being dismissed, this amount and the statutory amount deposited by the appellant along with this appeal would be paid to the claimants as litigation cost.

15. Subject to deposit of Rs. 10,000/- by the appellant with the Registrar General of this Court within two weeks, issue notice to the claimants/ respondents No. 1 to 4 by ordinary process, registered AD as well as Dasti, returnable on 23rd April, 2010. Notice be also issued to counsel for claimants/ respondents No. 1 to 4 who appeared before the Claims Tribunal. The names and

addresses of the counsel for claimants No. 1 to 4 be furnished on the process fee form.

16. In view of the observations made above, no case for grant of ex-parte stay is made out. It is noted that out of the award amount of Rs. 9,22,200/-, only Rs. 2,00,000/- is to be released to the claimants at this stage and the remaining amount of Rs. 7,22,200/- would remain in fixed deposit (Rs. 50,000/- is to be released to respondent No. 1, Rs. 50,000/- to respondent No. 2 and Rs. 1,00,000/- to respondent No. 3 at this stage. Rs. 50,000/- would remain in fixed deposit in the name of respondent No. 1 for a period of three years; Rs. 50,000/- in the name of respondent No. 2 for a period of three years; Rs. 4,22,000/- in the name of respondent No. 3 for a period of seven years and Rs. 2,00,000/- would remain in the name of respondent No. 4 till he attains majority). The aforesaid fixed deposits cannot be prematurely discharged and the claimants cannot avail any loan, advance or withdrawal against the said fixed deposits. In the event of appellant ultimately succeeding in this appeal, the amount in dispute is sufficiently secured and, therefore, the stay of the execution of the impugned award is not warranted.

17. It is clarified that aforesaid observations are prima facie and shall not be construed as expression on the merits of the case.

18. Ms. Manjusha Wadhwa, Advocate is appointed as amicus curiae to assist this Court in this matter.

19. Lower court record be requisitioned before the next date of hearing.

20. Copy of the order be given Dasti to learned Counsel for the appellant and the learned amicus curiae under the signature of the Court Master.