(2011) 07 KL CK 0079

In the High Court Of Kerala

Case No : M.A.C.A. No. 1019 of 2010

Bhahuleyan, Lalitha and Lenil — APPELLANT

Vs

Jamal A. Palliparambil, Joseph and Bajaj Allianz General Insurance Co. Ltd. — RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2011) 07 KL CK 0079

Hon'ble Judges : R. Basant, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : Jeena Joseph, for the Appellant; A.T. Anil kumar, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—The claimants are the Appellants. They are the father, mother and elder brother of a deceased person who suffered injuries in an accident which took place on 5/9/2006 and succumbed to the injuries on the same day. The claimants staked their claim for compensation u/s 163A of the Motor Vehicles Act. According to them, the deceased was employed as a hotel worker and was earning an income of Rs. 3,000/- per mensem.

2. The Tribunal considered the claim u/s 163A of the M.V. Act. The Tribunal found that the Appellants are entitled to a total amount of Rs. 1,88,200/- as compensation as per the details given below:

1. Loss of dependency (fatal accident)

(2000 x 2/3 x 12 x 11)

Rs. 1,76,000/-

2. Funeral expenses

Rs. 2,000/-

3. Loss of estate

Rs. 2,500/-

4. Medical bills

Rs. 7,700/-

Toal

Rs. 1,88,200/-

3. The quantum of compensation awarded is the only ground of challenge. Called upon to explain the grounds of challenge on which the Appellants want to assail the quantum of compensation, the learned Counsel for the Appellants, first of all, submits that the Tribunal grossly erred in not accepting the assertion of the claimants/Appellants that the deceased was a hotel worker earning a monthly income of Rs. .3,000/-. The assertion was modest and the Tribunal could not have omitted to draw a presumption of prudence that the deceased must have been drawing an income of Rs. .3,000/- per mensem, contends the learned Counsel.

4. The learned Counsel for the Appellants contends that the Tribunal grossly misconceived the claim u/s 163A of the M.V. Act. The Tribunal erred in attempting to ascertain the compensation by applying the multiplier multiplicand method. The Tribunal in a claim u/s 163A should have ascertained the quantum of compensation by resort to Clause 1 of the 2nd Schedule relating to fatal accidents. Amounts payable is given in "rupees in thousands" in the chart/table column available under Clause 1 of the 2nd Schedule. The Tribunal erred grievously and miserably in attempting to ascertain the quantum of compensation by resort to the multiplier-multiplicand method. Against vertical column No. 2 of the chart/table, multipliers are given which are applicable to the relevant horizontal entries in column No. 1. But that has no relevance when the compensation for fatal accident is computed under Clause 1 of the 2nd Schedule. That entry relating to multiplier is applicable only when compensation is calculated under Clause 5 for disability in non-fatal accidents. The Tribunal committed this cardinal error and consequently denied to the Appellants the amounts legally payable u/s 163A of the M.V. Act. The learned Counsel for the Appellants contends that the quantum of compensation awarded under the head of loss of dependency deserves to be enhanced.

5. We have heard both counsel. We find merit in the contention of the learned Counsel for the Appellants. We have adverted to this aspect already in some decisions. The decision in National Insurance Co. Ltd. Vs. Muneer, is already there on the question. In a claim for compensation in case of death, the Tribunal has to follow the 2nd Schedule strictly. When the 2nd Schedule is followed, Clause 1 relates to compensation payable for fatal accidents. Clause 1 gives a chart/table. The horizontal entries in the said chart/table relate to different age groups of the victim. The precise age need not be ascertained. Only the range of

age need be ascertained. The 12 horizontal entries against column No. 1 give the age of the victim in different age groups i.e., upto 15 years, above 15 years but not exceeding 20 years, above 20 years but not exceeding 25 years and so on. The last horizontal entry relates to persons aged above 65 years. For all persons belonging to the same age group the same amount of compensation is awarded depending upon their annual income. In the vertical columns the annual incomes are specified. We have taken the view that the first column relating to Rs. 3,000/- must be reckoned as that relating to persons of income group upto Rs. 3,000/-. The second vertical column relates to the victims whose annual income is above Rs. 3,000/- upto Rs. 4,200/-. Similarly, the last vertical column relates to persons whose annual income is above Rs. 36,000/- upto Rs. 40,000/-. To compute the compensation payable in case of death, the Tribunal has only got to identify the correct and appropriate horizontal entry and the correct and appropriate vertical entry. With reference to the horizontal and vertical entries, the compensation amount payable has to be ascertained. The relevant entry gives the compensation amount "in thousands". From such amount, 1/3rd has to be deducted as indicated in the note under the table/chart. This is all what the Tribunals are expected to do. In this case the Tribunal erroneously proceeded to ascertain the multiplier by making use of the second vertical column and then proceeded to resort to the multiplier-multiplicand method. This is impermissible. In the 2nd Schedule though multiplier is given, the same is irrelevant while attempting to ascertain the quantum of compensation payable in the case of death. If there be any doubt on this aspect, the last trace of such doubt is laid to rest by the Supreme Court in the decision in National Insurance Co. Ltd., v. Gurumallamma and Anr. (2009 ACJ 2660), paragraph-8 of which we extract below:

8. Multiplier stricto sensu is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from the serial No. 5 of the Second Schedule. Thus, even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs. 3,300/- per month, the amount of compensation payable would be somewhat between Rs. 6,84,000/- and Rs. 7,60,000/-. As the Second Schedule provides for a structured formula, the question of determination of payment of compensation by application of judicial mind which is otherwise necessary for a proceeding arising out of a claim petition filed u/s 166 would not arise. Tribunal in a proceeding u/s 163-A of the Act is required to determine the amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities.

6. We therefore agree completely with the learned Counsel for the Appellants that the quantum of compensation payable u/s 163A of the M.V. Act has got to be ascertained by ascertaining the relevant amount against the appropriate horizontal entry and the vertical entry.

7. The deceased was aged 27 years. The exact age is irrelevant. We can

straightaway include him in the horizontal entry relating to victims above 25 years but not exceeding 30 years.

8. The next question is about his annual income. Here again ascertainment of the precise annual income is not necessary for the purpose of awarding compensation u/s 163A of the M.V. Act in accordance with the 2nd Schedule. The range of income alone need be ascertained. The deceased, it is asserted, was a hotel worker. That is an establishment to which the Minimum Wages Act would apply. In any view of the matter, the assertion of the claimants that the deceased was getting Rs. 3,000/- per mensem does appear to us to be absolutely reasonable. The police records including the inquest report which have been shown to us give us the assurance that it is absolutely safe to conclude that he was a hotel worker. His income must certainly have been in the income group above Rs. 24,000/- below Rs. 36,000/-. Even in the absence of any better evidence this presumption of prudence can be drawn in respect of an hotel employee. For a Tribunal constituted to render rough and ready justice, it would be dereliction of duty not to draw such presumption of prudence and to throw its hand up only because no documentary evidence has been produced about the income. The Tribunal have to be realistic. Ritualistic insistence on production of documents and refusal to draw appropriate inferences of prudence would only prompt the parties to concoct false documents unnecessarily. It does not require the wisdom of Solomon to draw the presumption of prudence in this case that a hotel employee must necessarily have been earning income in the group above Rs. 24,000/- upto Rs. 36,000/- in the Kerala context. Even in the absence of any better evidence we are persuaded to draw that inference of prudence.

9. Against the relevant horizontal and vertical entry applicable to the deceased, the amounts payable as compensation is Rs. 6,12,000/-. 1/3rd has to be deducted therefrom. The amount payable hence is Rs. 4,08,000/- (612000 x 2/3). The Appellants are certainly entitled to that amount.

10. We are satisfied, in these circumstances, that the Appellants are entitled to receive a further amount of Rs. 2,32,000/-(Rupees two lakhs and thirty two thousand only) (Rs. 4,08,000/- minus Rs. 1,76,000/- under the head of loss of dependency under Clause 1 of the 2nd Schedule. The challenge in this appeal can succeed only to the above extent.

11. In the result:

(a) This appeal is allowed in part.

(b) The impugned award is upheld in all other aspects; but it is held that the Appellants are entitled to a further amount of Rs. 2,32,000/- (Rupees two lakhs and thirty two thousand only) in addition to the amount awarded by the Tribunal.