(2023) 01 JH CK 0026

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 583 Of 2015, Cross Objection No. 7 Of 2022

Branch Manager, M/s Oriental Insurance Company Ltd And Others — APPELLANT

Vs

Hadis Ansari And Others — RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Citation : (2023) 01 JH CK 0026

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Nalini Jha, Rajesh Lala

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. M.A. No.583 of 2015 has been filed by the insurance company and the Cross Objection has been filed by the claimants/ respondent nos.1 and 2 for enhancement of the compensation amount.

Heard Mrs. Nalini Jha, the leraned counsel appearing on behalf of the appellant-insurance company in M.A. No.583 of 2015 and for respondent no.1 in Cross Objection No.7 of 2022 and Mr. Rajesh Lala, the learned counsel appearing for the claimant/respondent nos.1 and 2 in the M.A. No.583 of 2015 and for the appellants/cross objectors in Cross Objection No.7 of 2022.

Inspite of valid notice upon the respondent nos.3 and 4, they have not appeared and that is why the appeal has been heard on merit.

Misc.Appeal No.583 of 2015 has been filed being dissatisfied and aggrieved with the judgment dated 20.04.2015 passed by the learned Principal District Judge cum Presiding Officer, Motor Vehicles Accident Claims Tribunal, Latehar in M.V. Case No.27 of 2012. The claimants' application was filed for grant of compensation on account of death of Sher Alam aged 19 years who died in Motor

Vehicle accident arising out of use of Tata Mini Truck bearing registration no.JH-01M-5002 and was proceeding from Karkat to Garhwa but on the way i.e. near village Karkat within P.S. and District Latehar due to rash and negligent driving of the driver O.P.No.2 aforesaid accident took place when the vehicle was dashed and collided with a tree and after that turn-turtle and Sher Alam was crushed in the aforesaid accident and died on the spot. The deceased Sher Alam was cousin of truck driver O.P.no.2 Md. Wasim Ansari and after that Latehar P.S.Case No.46 of 2011, corresponding to G.R.Case No.198 of 2011 was registered. The claimants being the parents and legal heirs and successors in interest of the deceased Sher Alam had filed the claim application for grant of compensation.

Mrs. Nalini Jha, the learned counsel appearing for the insurance company submits that the learned Tribunal has not assessed the income of the deceased correctly and notional income was also not taken care of and there is terms and conditions of policy which has not been rightly considered by the learned Tribunal and in that view of the matter the award is fit to be set aside.

The Court has perused the judgment of the learned Tribunal and finds that the contention of the learned counsel for the appellant has been dealt with by the learned Tribunal. Issue no.6 is with regard to terms and conditions of the insurance company and was decided considering the Exbt.8 insurance policy as well as the oral evidence and it was found that insurance company has not been able to prove about violation of terms and conditions of the insurance company and no document has been led by the insurance company to prove about the violation of the terms and conditions of the insurance policy and that is why the issue was negated against the insurance company. The learned Tribunal has rightly considered the monthly income of the deceased at Rs.3000/- per month in light of the judgment rendered by the Hon'ble Supreme Court in the case of New India Insurance Company v. Smt. Kalpana and Others reported in 2007 (2) JCR, SC, 41. There is no illegality in that point also. The contention of the learned counsel for the appellant has been dealt with by the learned Tribunal and as such there is no illegality in the award and, accordingly, M.A. No.583 of 2015 is dismissed.

So far as Cross Objection No.7 of 2022 is concerned; while deciding the issue nos. 8 and 9, the learned Tribunal has deducted 1/3 of the amount on the personal expenses head. On this point, Mr. Lala, the learned counsel appearing on behalf of the claimants/cross objectors submits that there are 8 members in the family and it has been held by the Hon'ble Supreme Court in the case of Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another, (2009) 6 SCC 121 and in the case of National Insurance Company Limited v. Pranay Sethi and Others, reported in 2017 (4) JBCJ 388[SC]. Paragraph no.39 of this judgment is quoted below:

"39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from Sarla Verma

[Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] , Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] and Munna Lal Jain [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] . Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paras 30, 31 and 32, Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] lays down : (SCC p. 136)

"30. 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 [UP SRTC v. Trilok Chandra, (1996) 4 SCC 362] , the general practice is to apply standardised 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 (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (¼th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. 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 dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. 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 the family of the bachelor is large and dependent 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."

He further submits that there is no compensation awarded on future prospects and conventional head is also absent in the award which is required to be provided under the conventional head which comes to Rs.77,000/- and under the future prospect head the claimants are entitled to 40% in view of the judgment rendered in the case of National Insurance Company Limited v. Pranay Sethi and

Others(supra). Looking to Issue nos.8 and 9, it transpires that the learned Tribunal has admitted deduction of 1/3 on the personal expenses head. So far as contention of Mr. Lala, the learned counsel for the claimants is concerned that ground has not been taken before the learned Tribunal that there are 8 family members and in that view of the matter it appears that the learned Tribunal has rightly directed to deduct 1/3rd amount under the personal expenses head. It further transpires that for future prospects and conventional heads the learned Tribunal has not awarded any amount and in view of the judgment rendered in the case of National Insurance Company Limited v. Pranay Sethi and Others(supra), the claimants are entitled for 40% for future prospects and for conventional head Rs.77,000/- and, accordingly, the award is hereby, modified to the above extent.

The learned Tribunal shall calculate the amount with regard to future prospect and conventional head and will add along with the amount already granted in favour of the claimants and, accordingly, Cross Objection No. 7 of 2022 is allowed in the above terms and stands disposed of.

The learned Tribunal shall take endeavour to provide the fruit of the award in favour of the claimants at the earliest.