

(2018) 02 BOM CK 0066
In the Bombay High Court
Case No : 1116 of 2015

Cholamandalam MS General Insurance Co. Ltd., Vs Sumitra wd/o Debu Vishwas

Date of Decision : 02-02-2018

Acts Referred:

Citation : (2018) 02 BOM CK 0066

Hon'ble Judges : Manish Pitale

Bench : Division Bench

Advocate : A.J. Pophaly, A.S. Ghatole

Final Decision : Disposed

Judgement

1. This appeal is finally heard in terms of order dated 20th December, 2017, whereby early hearing of the appeal was granted. By this appeal, the appellant/Insurance Company has challenged judgment and order dated 03.08.2015 passed by the Motor Accident Claims Tribunal - 3, Nagpur in Claim Petition No. 1111 of 2009.
2. The relevant facts of the present case are that on 15.10.2009, when the husband of respondent No.1 was travelling on his motor cycle from Nagpur to Katol Road, he met with an accident with a Bolero Jeep, which was being driven in a rash and negligent manner. Due to the injuries suffered by him in the accident, the husband of respondent No.1 died on the spot. An FIR was registered against the driver of the said Bolero Jeep.
3. The respondent Nos.1 to 5, being the widow, children and parents of the deceased, filed claim petition before the Tribunal, claiming

compensation of Rs.25,00,000/- (rupees twenty-five lakhs only). The said respondents claimed that the deceased, at the time of his death, was 32 years old and he was by profession a Shuttering/Centering Contractor and that he was earning Rs.25,000/- to Rs.29,000/- per month. In order to support their claim of income of the deceased, the said respondents placed on record Certificate of Contractorship (Exh.51), Statements of Accounts (Exh.52) and TDS Certificates (Exh.53) issued by one M/s Agni Infrastructures, who had taken the services of the deceased.

4. The respondent No.1, widow of the deceased, deposed in support of the claim petition. The Tribunal took into consideration the said material on record and it found that even as per the evidence of respondent No.1, it was only the said M/s Agni Infrastructures with which the deceased was found to be working. The Tribunal found that there was insufficient material on record to support the claims of respondents/claimants that the deceased was working as contractor for other parties also. The Tribunal found that although the Certificate of Contractorship (Exh51), Statements of Accounts and Ledgers (Exh.52) and TDS Certificates (Exh53) were on record, in absence of Income Tax Returns of the deceased, the said documents could not be relied upon to depict the income of the deceased at the time of his death.

5. The Tribunal found that at the earliest point of time in the claim petition, the respondent No.1 had claimed monthly income of the deceased to be Rs.20,000/- per month. On this basis, the Tribunal held that the monthly income of the deceased was Rs.20,000/- per month. The Tribunal then applied the deduction of 1/4th for personal expenses (as there were five dependents on the deceased) and applying the multiplier of 16, the Tribunal granted total compensation of Rs.29,73,000/-, including amounts towards loss of consortium, funeral expenses and loss of care and guidance to the minor children.

6. The aforesaid judgment and order of the Tribunal is subject

matter of challenge in this appeal. The appellant/Insurance Company, has disputed the quantum of compensation on the basis that the monthly income of the deceased was wrongly calculated by the Tribunal.

7. Shri A.J. Pophaly, learned Counsel appearing on behalf of the appellant, submitted that the spot panchnama on record did not show that there was any negligence on the part of the offending vehicle and that it could be said that the deceased himself was also equally negligent and hence responsible for the accident. It was further submitted that the Tribunal was not justified in taking the monthly income of the deceased as Rs.20,000/- per month, only on the basis of statement of respondent No.1, without any documentary evidence on record. The learned Counsel submitted that the documents at Exhs. 51 to 53, referred to by the Tribunal, were wholly unreliable documents and, therefore, there was no material to ascertain the monthly income of the deceased. On this basis, it was submitted that the income of the deceased ought to have been taken as notional income and that, therefore, the quantum of compensation ought to be reduced proportionately.

8. On the other hand, Shri A.S. Ghatole, learned Counsel appearing on behalf of respondent Nos.1 to 5 submitted that there was no substance in the contentions raised on behalf of the Insurance Company. It was further submitted that if the documents i.e. Exhs.51 to 53, referred to by the Tribunal in the impugned judgment and order, were appreciated in the correct perspective, the income of the deceased was certainly higher than Rs.20,000/- per month and that this was a case for granting further enhancement of compensation. Learned Counsel for the respondents relied upon judgment of the Hon''ble Supreme Court in the case of Andhra Pradesh State Road Transport Corporation and another .v. M. Ramadevi and others (reported in 2008 (64) AIC 209 (SC)) and the judgment of this Court in the case of National Insurance Company Limited .v. Vaishali Harish Devare and others (reported in 2013(1) Mh.L.J., 411) to contend

that even when there was no appeal or cross objection filed on behalf of the claimants, the Court could grant further enhancement of compensation, as under the provisions of Motor Vehicles Act, 1988, the Court was required to grant "just and reasonable" compensation to the claimants. On this basis, the learned Counsel for the respondents/claimants submitted that the documents on record were sufficient to demonstrate that the income of the deceased was higher than the amount determined by the Tribunal and that, therefore, further enhancement could be granted. Certain calculations were sought to be placed on record to show that the quantum could be increased substantially.

9. Having heard the learned Counsel appearing on behalf of the rival parties, I find that the point that arises for my determination in this appeal is whether the basis of calculation of quantum of compensation adopted by the Tribunal was justified. The entire controversy revolves around the finding rendered by the Tribunal in respect of monthly income of the deceased at the time of his death. The other question for determination is whether the respondents/claimants could be granted further compensation, in the absence of cross appeal or cross objection.

10. A perusal of the impugned judgment and order of the Tribunal shows that upon analysis of the documents placed on record on behalf of the claimants in respect of income of the deceased, the Tribunal has taken into account Exh.51 (Certificate of Contractorship), Exh.52 (Statements of Accounts and Ledger) and Exh.53 (TDS Certificates) issued by M/s Agni Infrastructures for whom the deceased was working as a contractor. The Tribunal has found that although the said documents referred to the amounts that were paid to the deceased by M/s Agni Infrastructures, in the absence of any income tax returns of the deceased, it was difficult to come to clear conclusion as regards the actual income of the deceased after deducting the expenses incurred by him for the work done for M/s Agni Infrastructures. Therefore, at paragraph 19 of the impugned judgment and

order, the Tribunal has taken into account only the pleading of respondent No.1/widow of the deceased, about the monthly income being Rs.20,000/- per month.

11. A perusal of the aforesaid exhibits shows that there was material on record indicating payments made by M/s Agni Infrastructures to the deceased over a period of time. The TDS Certificates also show that amounts were paid to the deceased and that TDS was deducted thereon. Although the said documents do indicate that the deceased was working as a Centering Contractor with M/s Agni Infrastructures, there is lack of material on record to show as to how much was the extent of expenses incurred by the deceased while getting the work done for M/s Agni Infrastructures. Although evidence of a labour (PW-2), said to have been working with the deceased, has been adduced to claim that he was being paid Rs.9,000/- per month by the deceased, there are no details to work out as to how much was the income of the deceased after deducting expenses for labour and material.

12. There were no income tax returns on record to arrive at any finding in this regard. In the absence of details as to the expenses that were incurred by the deceased, the Tribunal was justified in not relying upon Exhs.51, 52 and 53 to render a finding on the monthly income of the deceased. Nonetheless the aforesaid material was an indicator of the fact that the deceased was indeed working as a Centering Contractor, at least with M/s Agni Infrastructures, if not for other parties. In this situation, certain amount of guess work for arriving at the figure of income of the deceased would have to be undertaken and for that purpose no error can be found in the approach of the Tribunal in relying upon the claim of respondent No.1 that the deceased was earning Rs.20,000/- per month. This was the amount first stated by respondent No.1 in her claim petition and, taking into account the aforesaid exhibits regarding payments made to the deceased over a period of time by M/s Agni Infrastructures, it cannot

be said that the said amount was excessive or not believable.

13. As regards the contention of the Counsel for respondent Nos.1 to 5 that even in the absence of a separate appeal or a cross objection on behalf of the said respondents, this Court could enhance the compensation on the basis of material on record, the crucial aspect is that the Court and Tribunal are mandated to decide as to what shall be "just and reasonable" quantum of compensation in the facts and circumstances of the case. I find that the aforesaid material on record indicating payments made to the deceased do not conclusively demonstrate that the income of the deceased was much higher than the figure arrived at by the Tribunal. But, the Tribunal has not considered the question of loss of future prospects, which are required to be calculated on the basis of the figure of income arrived at, on the basis of material on record. This is perhaps because the deceased in this case was a self employed person and as per the prevailing position of law laid down in the case of Smt. Sarla Verma and others .v. Delhi Transport Corporation and another (reported in 2009 (6) SCC, 121), wherein the Hon"ble Supreme Court had held that in the case of self employed persons, compensation for the loss of future prospects could not be granted. But, as per the recent Constitution Bench judgment of the Hon"ble Supreme Court in the case of National Insurance Company Limited .v. Pranay Sethi and others (order dated 31.10.2017 passed in SLP (C) No. 25590 of 2014), even in the case of self employed person, 40 per cent of the income is to be added towards compensation under the head of loss of future prospects. Applying the said position of law, although the finding of the Tribunal in the instant case regarding the monthly income of the deceased is not being disturbed, it would be necessary to apply the said position of law enunciated in the aforesaid recent Constitution Bench judgment of the Hon"ble Supreme Court.

14. In this context, it is necessary to examine as to whether the compensation towards loss of future prospects can be granted in the

present case, in the absence of any cross appeal or cross objection on the part of the respondents/claimants. In a recent judgment of this Court in the case of State of Maharashtra .v. Smt. Kamaladevi Kailashchandra Kaushal and others (reported in 2017 (3) ABR 88), this Court has considered the said question. The relevant portion of the judgment reads as follows :

"7. In this appeal therefore, the following points for determination arise :

(A) Whether, from the material on record, it can be said that the accident, from which the claim arises, took place entirely on account of negligence of deceased Kailashchandra or at least on account of contributory negligence on the part of deceased Kailashchandra ?

(B) Whether the compensation awarded by the MACT constitutes "just compensation" in the facts and circumstances of the present case ?

(C) Whether in the absence of any cross appeal or cross-objections on the part of the claimants,

the appeal Court is entitled to award "just compensation" to the claimants, in the appeal instituted by the owner ?

...

...

25. In Managing Director, Metropolitan Transport v. Ramarao (2013) 5 MLJ 715, learned single Judge of the Madras High Court, after detailed consideration of the legal provisions as well as the precedents has held that it is the duty of the appeal Court to award just compensation irrespective of whether or not the same may have been claimed by the claimants or not. In Ningamma and Anr. v. United India Insurance Company Limited (2009) 13 SCC 710 : (AIR 2009 SC 3056), the Hon"ble Supreme Court at paragraph 34 has held that Section 166 of the M.V. Act deals with "just compensation" and even if in the pleadings no specific claim was made, a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the M.V. Act is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "just compensation" irrespective of the fact whether any plea was raised in respect of the claimant or not. Accordingly, even the third point of determination is liable to be decided against the appellants and in favour of the claimants."

15. In the said judgment, while holding that the claimants would be entitled to "just compensation" in the absence of cross appeal or

cross objection, this Court has referred to and relied upon judgments of the Hon''ble Supreme Court in the cases of Nagappa .v. Gurudayal Singh and others (reported in 2003(2) SCC 274); Sanobanu Nazirbhai Mirza and others .v. Ahmedabad Municipal Transport Service (reported in 2013 (16) SCC, 719) and Ningamma and another .v. United India Insurance Company Limited (reported in 2015 (9) SCC 150). The emphasis of this Court relying upon the aforesaid judgments of the Hon''ble Supreme Court is on the claimants getting "just compensation". In the same judgment passed in the case of State of Maharashtra .v. Kamaladevi Kailashchandra Kaushal and others (cited supra), this Court has rejected the contention that enhanced compensation could not be granted to the claimants because the compensation granted by the Tribunal was consistent with the law as it stood when the Tribunal decided the matter and that decision of the Hon''ble Supreme Court passed after the decision of the Tribunal, could not be taken into consideration. In this context, in the aforesaid judgment, this Court has held as follows :

"20. There is no merit in the contention of Mr. Dabke that the impugned award is consistent with the law as it stood on 5th August, 1995 when the impugned award was made. The decision in case of Sarla Verma 9AIR 2009 SC 3104) (supra), was delivered in the year 2009. However, the Hon''ble Supreme Court has basically declared the law and the MACT was duty bound to make an award towards loss of consortium, loss of love and affection as also

towards funeral expenses. The MACT was also duty bound to take into consideration the correct income of the deceased. For all these reasons, it cannot be said that the compensation awarded by the MACT in the impugned award constituted "just compensation".

16. Therefore, even in the instant case, the law declared by the Hon''ble Supreme Court in the recent Constitution Bench judgment in the case of National Insurance Company Limited .v. Pranay Sethi and others (cited supra) has to be applied and compensation towards loss of future prospects has to be granted to the respondents/claimants, even though the deceased was a self employed person. The calculation of the total amount

of the compensation will therefore change, although the basis of calculation i.e. monthly income as determined by the Tribunal is being left undisturbed.

17. In fact, I find that there is no substance in the contentions raised on behalf of the appellant that the monthly income arrived at by the Tribunal was erroneous and that quantum of compensation ought to have been calculated on the basis of notional income. I also do not find any substance in the contentions of the Counsel for appellant that spot panchnama demonstrated that there was contributory negligence on the part of the deceased and hence the said contention is also rejected.

18. As regards compensation payable for loss of consortium, the learned Counsel for the appellant has relied upon recent judgment of the Hon''ble Supreme Court in the case of National Insurance Company Limited .v. Pranay Sethi and others (cited supra) to contend that compensation of Rs.40,000/- could have been granted under the said head and that the amount of Rs.50,000/- granted by the Tribunal was not justified. Since the Hon''ble Supreme Court in the aforesaid judgment has held that amount of compensation towards loss of consortium is to be Rs.40,000/-, I am inclined to accept the aforesaid contention raised on behalf of the appellant. As per the directions in the aforesaid judgment of Constitution Bench of the Hon''ble Supreme Court, amount of Rs. 15,000/- each is also payable under the said heads of funeral expenses and loss of estate.

19. Learned Counsel for the appellant could not demonstrate any error in the deduction made for personal expenses and the multiplier applied by the Tribunal.

20. In the light of the above, the amount of compensation payable to the respondents/claimants works out as follows :

Annual income of deceased (as worked out by the Tribunal and not being disturbed by this Court). Rs. 1,78,000/--

40 per cent of annual income towards loss of future aspects.... Rs. 71,200/--

Rs. 2,49,200/--

Rs.2,49,200/-- x 16 (multiplier correctly applied by the Tribunal). ...
Rs.39,87,200/-

Loss of Consortium. ... Rs. 40,000/--

Loss of care and guidance for claimants (minors) (Rs.25,000/-- each). ...
Rs. 50,000/

Loss of estate. ... Rs. 15,000/--

Funeral expenses. ... Rs. 15,000/--

Total ... Rs. 41,07,200/--

21. Since the Tribunal had granted compensation of Rs.29,73,000/-, the increased amount payable to the respondents/claimants shall be Rs.11,34,200/- (Rs. 41,07,200/- (-) Rs. 29,73,000/-). The said increased amount shall also carry interest as determined by the Tribunal and the other conditions imposed by the Tribunal shall also be applicable to the aforesaid increased amount.

22. The said amount has been worked out in the appeal of the appellant/Insurance Company, even though the respondents/claimants have not filed any cross appeal or cross objection, in terms of the law laid down by this Court in the case of State of Maharashtra .v. Smt. Kamaladevi Kailashchandra Kaushal and others (cited supra), which, in turn, relies upon aforementioned judgments of the Hon''ble Supreme Court. In the said judgment of this Court, the amount of compensation granted by the Tribunal of Rs.1,65,000/- was increased to Rs.9,75,000/-, in an appeal filed challenging the order of the Tribunal, wherein no cross appeal or cross objection was filed by the respondents/claimants.

23. Therefore, the respondents/claimants are certainly entitled for benefits of compensation as laid down by the Hon''ble Supreme Court in the recent Constitution Bench judgment in the case of National Insurance Company Limited .v. Pranay Sethi and others (cited supra). In fact, the

additions and modifications made to the amount of compensation granted by the Tribunal in the instant case are more in the nature of corrections in the quantum of compensation payable to the respondents/claimants, in the light of the latest position of law enunciated by the Hon''ble Supreme Court in the said recent Constitution Bench judgment.

24. The basis of calculation of compensation has remained unchanged as the amount determined by the Tribunal towards monthly income and, therefore, the net annual income of the deceased, is found to be correctly calculated by the Tribunal. Therefore, following the mandate of the aforementioned judgments of the Hon''ble Supreme Court, to the effect that the Court must endeavour to arrive at a figure of "just compensation", this Court has rendered findings in this judgment towards further amounts payable by the appellant/Insurance Company to the respondents/claimants, even in the absence of cross appeal or cross objection filed by them.

25. The instant appeal is disposed of in aforesaid terms with no order as to costs.