(2011) 09 BOM CK 0079

In the Bombay High Court

Case No : First Appeal No. 192 of 2002

C.P. Aminakutty alias Aminakutty, since deceased and Others	APPELLANT
Vs	
Govind Naik, Mohamad Ram Padasath Pandey and The New India Assurance Company Ltd.	RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 140

Citation : (2011) 09 BOM CK 0079

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S.S. Kakodkar, for the Appellant; E. Afonso, for the Respondent No. 3, for the Respondent

Judgement

A.P. Lavande, J.—By this appeal, the Appellants take exception to the judgment and Award dated 2.4.2002 passed by the Motor Accident Claims Tribunal, South Goa, Margao in Claim Petition No. 392 of 1995 by which claim petition filed by the Petitioners has been partly allowed.

2. The Petitioners filed Claim Petition No. 392/1995 claiming an amount of Rs. 12,60,000/- from the Respondents on account of death of deceased K.T. Mohamed, husband of the Appellant No. 1 and father of Appellant Nos. 2 to 9, who died in a vehicular accident which took place on 26.5.1995 at Dabholim at about 9.00p.m. The Claim Petition was contested by the Respondents herein.

3. The Claims Tribunal framed following issues:

1. Whether the claimants prove that the accident took place on account of rash or negligent driving of vehicle No. GDS-2581?

2. Whether the claimants prove that the said accident has caused the death of K.T. Mohamed?

3. Whether the claimants prove that the claimants are entitled to recover

compensation of Rs. 12,60,000/- ?

4. What Order?

4. The claimants examined six witnesses namely Amina Kutty-CW1(Appellant No. 1); Anifa alias Hanifa-CW2, pillion rider; Kunjuman Nair-CW3, eye witness; Dr. Edmund Rodrigues-CW4,who had conducted post mortem on the dead body of the deceased; Babu Nazar-CW5, eye witness and Rajan Nair-CW6, Panch witness. No. evidence was led on behalf of the Respondents in the claim petition.

5. The Claims Tribunal upon appreciation of the evidence led by the claimants held that claimants had proved that the accident had occurred on account of rash and negligent driving of the vehicle GDS-2581 and that death was caused on account of the accident. Tribunal assessed the compensation at Rs. 5,35,000/- and awarded costs of Rs. 5000/- and further an amount of Rs. 3000/- by way of Advocate fees. The amount paid u/s 140 of The Motor Vehicles Act, 1988 was ordered to be adjusted against the liability under the award.

6. Mr. Kakodkar, learned Counsel appearing for the Appellants submitted that Tribunal has erred in holding that the deceased who was aged 47 years at the time of his death was earning Rs. 5000/- per month. According to taught Counsel the deceased had a shop dealing with grocery items at Birla and was also having quarry at his native place in Kerala and also had a truck. According to Mr. Kakodkar, evidence on record clearly discloses that the deceased husband was enlisted as PWD contractor and was paying sales tax. The deceased was also having agricultural property and had paid income tax of Rs. 1400/- for the year 1993-94 in terms of exhibit 47. According to learned Counsel Tribunal ought to have assessed monthly income of the deceased at the time of his death as Rs. 8500/- per month and as such compensation awarded in favor of the Appellants/ claimants deserves to be enhanced. Mr. Kakodkar, further submitted that Tribunal has erred in deducting 1/3rd from the income of the deceased towards personal expenses and considering that deceased had 8 children, the tribunal ought not to have deducted more than 1/5th of his total income for the purpose of assessment of the compensation. In support of this submission, Mr. Kakodkar placed reliance upon the judgment of the Apex Court in the case of Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. 2009 (4) ALL MR 429.

7. Per contra, Mr. Afonso, learned Counsel appearing for Respondent No. 3 submitted that assessment of the compensation done by the Tribunal cannot be faulted. He invited my attention to form No. 4-A which discloses that for the year 1993-94 the deceased had paid tax of Rs. 1400/- on the basis that his yearly income was Rs. 37,000/- Mr. Afonso, therefore, submitted that No. interference is warranted with the impugned award. Mr. Afonso, submitted that Tribunal was justified in deducting 1/3rd of the total income of the deceased in terms of the law that was prevailing and No. interference is warranted with the impugned award on the basis of the judgment of the Apex Court in the case of Smt. Sarla Verma(s) relied upon by Mr. Kakodkar.

8. In view of the rival submissions, the following point arises for consideration in the appeal.

Whether the compensation granted in favor of the Appellants is inadequate? If so, what compensation the Appellants are entitled to?

9. No. doubt, the evidence of CW1 Amina Kutty discloses that deceased was having a shop dealing in grocery items, a stone quarry, a truck and was in possession of agricultural property at Kerala; the deceased was enlisted as PWD contractor. However these facts by themselves are not sufficient to hold that deceased was earning Rs. 8500/- per month at the time of his death since claimants have themselves relied upon the income tax return for the year 1993-94 which discloses that for the relevant year the income of the deceased was Rs. 37,000/- per year.

10. In my considered opinion, the finding recorded by the Tribunal that income of the deceased at the time of his death could be considered as Rs. 5000/- per month cannot be said to be patently illegal so as to warrant interference in the appeal. Therefore, the finding of the Tribunal that monthly income of the deceased had to be taken as Rs. 5000/- per month cannot be faulted. In so far as the submission made by Mr. Kakodkar that Tribunal was not justified in deducting 1/3rd of the income for assessing the compensation is concerned, I find merit in the submission of Mr. Kakodkar, in view of the judgment of the Apex Court in the case of Sarla Verma(supra). In para 14 of the said judgment the Apex Court observed as under:

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, the general practice is to apply standardized 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(1/4th) where the number of dependent family members is 4 to 6, and one fifth(1/5th) where the number of dependent family members exceed six.

11. No doubt at the time of passing of the award by the Claims Tribunal consistent view was that normally 1/3rd of the income of the deceased had to be deducted towards personal expenses. However in the case of Smt. Sarla Verma (supra), the Apex Court has held that although the normal deduction should be 1/3rd, where the number of dependent family members exceeds six, the deduction should be 1/5th.

12. The judgment delivered by the Apex Court in the case of Smt. Sarla Verma is declaratory and I find No. reason not to give benefit of the said judgment to the Appellants. Therefore, I am unable to accept the submission of Mr. Afonso that since the Tribunal was justified in deducting 1/3rd in terms of the law then prevailing, No. interference is warranted in the appeal. It is settled law that the

appeal has to be decided taking into consideration the change in law during the pendency of the appeal.

13. In view of the ratio laid down in the case of Smt. Sarla Verma (supra), I am of the considered opinion that appropriate deduction for personal expenses should be 20% since admittedly there were 9 dependents. Applying the multiplier of 13, the compensation to which the claimants/Appellants are entitled works out to Rs. 6,24,000/- . The Appellants are also entitled to sum of Rs. 15,000/- as conventional sum towards funeral expenses and loss of estate as awarded by the Tribunal. Thus the total compensation to which the Appellants are entitled works out to Rs. 6,39,000/- . Needless to mention that the claimants are also entitled to the interest at the rate of 9% per annum from the date of the petition until payment, the costs of Rs. 5000/- and Advocate fees of Rs. 3000/- as ordered by the Tribunal.

14. In view of the above, appeal is partly allowed with No. order as to costs.

15. Mr. Afonso, learned Counsel for Respondent No. 3 states that compensation awarded by the Tribunal has already been deposited by the Respondent No. 3 before the Claims Tribunal, South Goa, Margao. The Respondent No. 3 to deposit the balance amount due within a period of 12 weeks.