
(2016) 04 GAU CK 0066
In the Gauhati High Court
Case No : MAC Appeal No. 254 of 2010

Golap Lata Goswami (Smti.) and another	APPELLANT
Vs	
Ajit Deka and others	RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2016) 3 ACC 331 : (2017) ACJ 680 : (2016) 163 AIC 580 : (2016) 4 CivilLJ 122 : (2016) 4 GauLJ 167 : (2016) 4 GauLR 1 : (2016) 2 GauLT 809 : (2016) 2 NEJ 262 : (2016) 2 TAC 896

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : S.S. Sarma, Sr. Advocate and A. Acharyya, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Suman Shyam, J. (CAV) - Heard Mr. B.K. Jain, learned counsel appearing on behalf of the appellants/claimants. Also heard Mr. S.S. Sarma, learned senior counsel representing the respondent No. 3 Insurance Company as well as Mr. A. Acharyya; learned counsel appearing for respondent No. 5.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and award dated 04/10/ 2007 passed by the Court of Learned Additional District and sessions Judge (1st Track Court) No. 2 cum Member, Motor Accident Claims Tribunal, Kamrup at Guwahati in connection with MACT Case No. 230/2004, seeking enhancement of the amount of compensation awarded by the learned Tribunal on account of death of the husband of the appellant no. 1 and father of the appellant no. 2, viz. Late Hemen Sarma.

3. The brief factual background of the case is that the husband of the appellant No. 1 late Hemen Sarma had met with an accident on 04.12.2003 in the National Highway No.31. While he was travelling in a Mahindra Pickup Van No. AS 01/

N-9997, at about 12-30 p.m., a bus coming from the opposite direction and being driven in a rash and negligent manner had met with a collision with the Pickup Van in which the driver of the vehicle expired on the spot whereas the deceased Hemen Sarma breathed his last on his way to the Gauhati Medical College and Hospital (GMCH), Guwahati. Hie wife and minor son of the deceased i.e. the appellant Nos. 1 and 2 here-in respectively, had lodged a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for an amount of Rs. 25 lakhs on account of death of Hemen Sarma. It is the case of the appellants/claimants that the deceased Hemen Sarma was a Class-1A contractor by profession having a monthly income of Rs. 20,000/- and he was aged about 43 years at the time of this death.

4. Besides the drivers and owners of the vehicle, the Insurance Companies covering both the vehicles were made parties to the claim petition. The Insurance Companies had contested the case by filing written statement while denying and disputing the case of the appellants.

5. Based on the pleadings of the parties, the learned Tribunal had framed the following issues for determination:-

"i) Whether the claim petition is maintainable in its present form?

ii) Whether on 4.12.2003 at 12:30 P.M. near Piyalikhata on 31 National Highway an accident occurred due to rash and negligent driving of Bus No. AS-01 "N-0050 by its driver and in the accident Late Hemen Sarma died ?

iii) Whether Van No., AS-01/L-9997 is also responsible for the accident?

iv) Whether the claimants are entitled to receive compensation and if so from whom the same is recoverable and to what extent?"

6. During the course of hearing, the claimant side had examined as many as 6 (six) witnesses in support of their case besides exhibiting number of documents in evidence. The opposite parties had cross examined PWs but did not adduce any evidence in rebuttal of the case of the claimants. At the conclusion of the hearing, the learned Tribunal had decided all the issues in favour of the claimants/ appellants awarding a total amount of Rs. 3.79,500/- as compensation in the following manner :-

i.

For total loss of dependency (Rs. 24,000 x 15)

=

Rs. 3,60,000/-

ii.

For funeral expenses

=

Rs. 2,000/-

iii.

For loss of estate

=

Rs. 2,500/-

iv.

For loss of consortium

=

Rs. 5,000/-

v.

For love and affection

=

Rs. 10,000/-

Total

=

Rs. 3,79,500/-

7. Being aggrieved by the meager amount of compensation granted by the Tribunal on account of loss of dependency, funeral expenses, loss of estate, loss of consortium and for loss of love and affection, the claimants/ appellants are before this Court by filing the instant appeal.

8. Mr. Jain, learned counsel for the appellants submitted that from the testimony of the PW-3 and PW-4 it is evident that the income of the deceased person at the time of his death was Rs. 20,000/- per month. However, ignoring such evidence available on record, the learned Tribunal had arbitrarily taken the income of the deceased to be Rs. 3,000/- per month without any rhyme or reason and thereafter computed the loss of dependency to be Rs. 3.60,000/- which is completely inadequate in the facts and circumstances of the present case and hence calls for re-consideration by this Court.

9. By referring to the decision of the Hon''ble Apex Court in the case of Rajesh and Ors. v. Rajbir Singh and Ors. reported in (2013) 9 SCC 54. Mr. Jain submits that the Hon''ble Apex Court has already laid down the amount that the Courts/ Tribunals are required to award on the head of funeral expenses, loss of estate, loss of consortium and on account of love and affection. By referring the law laid down by the Hon''ble Apex Court in the aforementioned case which was also

reiterated subsequently in the case of Kalpana Raj and Ors. v. Tamil Nadu State Transport Corporation reported in (2015) 2 SCC 764, Mr. Jain submits that the amount awarded by the learned Tribunal on the aforementioned heads are grossly inadequate and therefore, calls for suitable enhancement by this Court.

10. By referring to the decision of the Apex Court in the case of Syed Sadiq and Ors. v. Divisional Manager, United India Insurance Company Ltd. reported in (2014) 2 SCC 735 Mr. Jain submits that proof of income by means of documentary evidence is not a mandatory requirement of law. He submitted that in a proceeding under Motor Vehicles Act, 1988 the evidence need not be scrutinised in the same manner as is done in a civil suit and the Court would be entitled to embark on some hypothetical consideration, and some amount of sympathy in assessing the right compensation on account of loss of earning capacity is permissible. In support of his aforesaid arguments, Mr. Jain has relied upon the following decisions :-

i. 1995 (2) GLT 117 : 1995 (I) GLI 216 : Union of India and Anr v. Mrs. Saraswati Debnath and Ors.

ii. (1999) SLT 447 : Ashwini Kumar Mishra v. P. Muniam Babu and Ors.

iii. (2001)9 SCC 167 : Dr. KG Poovaiah v. General Manager/Managing Director, Karnataka State Road Transport Corporation

11. By referring to the decision of the Apex Court in the case of Josphine James v. United India Insurance Company Limited and Anr. reported in (2013) 16 SCC 711, Mr. Jain has further submitted that the learned Tribunal had committed gross illegality by awarding interest @ 6% per annum from the date of filing of the case till payment whereas it is settled law that interest @ 9% per annum on the compensation amount would be applicable. On the basis of the above submissions, the learned counsel has prayed for enhancement of the awarded amount in the manner indicated herein above.

12. Mr. Sharma, learned senior counsel appearing on behalf of the respondent No. 3, on the other hand submits that this is a case where the claimants have failed to produce documentary proof of income such as income tax return which was easily available with them for establishing their claim of income. By relying upon a decision of this Court in the case of Arati Das and Ors. v. Matilal Bhattacharjee and Anr. reported in 2007 (4) GLT 172, the learned senior counsel submits that oral testimony of the witnesses in support of proof of monthly income of the deceased would not be sufficient in the absence of documentary evidence on that behalf. Mr. Sharma submits that the learned Tribunal has erred in applying the multiplier of 15 in the facts of this case where the correct multiplier would have been 14. The learned senior counsel, however, fairly submits that the ratio of law declared by the Apex Court in the case of Rajesh and others (supra) as well as Kalpanaraj and others (Supra) would be applicable in the facts and circumstances of the present case.

13. I have considered the submissions made by the learned counsels for the parties and have also meticulously examined the materials available on record.

14. It appears from the records that the appellants/claimants had examined PW-1 Shri Govinda Ram Kalita who was an UD Assistant working in the office of the Executive Engineer, Irrigation Department, Goreswar Division, who, on being duly authorised by the concerned Executive Engineer, had come and deposed before the Tribunal that the deceased was a registered Class-I contractor under the department. The said witness had also stated that Class-I contractors are given work valued at above Rs. 5 lakhs. The PW-1 had also exhibited Ext. 2 to 4 work orders in support of the aforesaid facts.

15. PW-2 Jyotish Chandra Mazumdar, who was a retired Deputy Secretary to the Government of Assam, had come and deposed as a witness stating that he was working as the Project Director (PD) of the DRDA, Kamrup from the period from August, 1999 till the year 2001, during which period the deceased Hemen Sarma had executed contractual work under the department. The aforesaid witness had executed documents in the form of Ext. 6, 9 to 12 work orders issued by the DRDA. That apart, a certificate being Ext. 7 showing that the deceased person had executed work valued at more than Rs. 6,60,443/- during the tenure of the PW- 2 as the Project Director of DRDA was also brought on record.

16. From the testimony of the PWs 1 and 2, it is apparent that the deceased Hemen Sarma was earning livelihood by executing contractual works under the Irrigation Department as a registered Class-I contractor besides undertaking supply works under the DRDA Kamrup.

17. The PW-4 i.e. claimant no. 1 had deposed that at the time of his death the deceased Hemen Sarma was earning about Rs. 8,000/- from the business of Pulses, betel nut and muster seed. Besides that, the deceased was also earning about Rs. 12,000/- from his profession as a contractor under the aforesaid departments, thereby earning a total amount of Rs. 20,000/- per month. The said witness had also categorically stated that her deceased husband hails from Goreswar and that he was living in a rented house at Guwahati along with the family. The PW-4 had also stated that an amount of Rs. 50,000/- had been spent in the "Shradh ceremony" of her husband. During the cross examination, the opposite parties could not dislodge the aforesaid testimony. It was also not disputed that the age of the deceased person was about 43 years as stated by the PW-4.

18. The witnesses PW-5 and PW-6 have basically continued the fact that the deceased Hemen Sarma was engaged in carrying on with the business of Pulses. Muster oil seeds and earning about Rs. 8,000/- from his said business besides executing contractual work under the Irrigation Department. While the PW-5 had exhibited Ext. 15 certificate issued by the Goreswar Babsasaya Samity showing his income status, the PW-6 i.e. Lat Mondal of Goreswar Revenue Circle had exhibited document Ext. 17 to show that the yearly income of the deceased was

Rs. 2.4 lakhs.

19. It is no doubt the correct position of fact that the claimants did not produce any Income Tax Return showing the proof of income of the deceased Hemen Sarma, although it has been stated that the tax from the earnings of late Hemen Sarma used to be deducted at source. However, notwithstanding the same, from the bulk of evidence adduced by the claimants, it can be concluded with reasonable degree of certainty that the deceased husband of the claimant No. 1 was not only undertaking contractual works under the Irrigation Department as a Class-I contractor but was also making supply of orders to the DRDA department. That apart, the deceased Hemen Sarma was also involved in other side businesses of pulses, betel nut and mustard oil seed etc. That apart, the fact that the deceased Hemen Sarma was living at Guwahati along with his family consisting of a school going son in a rented house is sufficient indication of the fact that he had a reasonably good income from his aforementioned source of earnings. Therefore, even in the absence of any authentic documentary evidence showing the precise income of the deceased it is not possible for this court to agree with finding recorded by the Tribunal that the income of the deceased was Rs. 3,000/- per month.

20. In the case of Aswini Kumar Mishra (Supra), the Hon'ble Apex Court had observed as follows :-

"It was further held that whenever a tribunal or court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. However all such elements are required to be viewed with objective standards. While assessing damage, the court cannot base its opinion merely on speculation or fancy though conjectures to some extent is inevitable."

21. By applying the ratio laid down in the above case, it is, therefore, apparent that the Court would be entitled resort to a rational guess work so as to ascertain the income of the deceased when no definite materials are available so as to establish the same. From a scrutiny of the testimony of PWs. 4, 5 and 6 as well as the documents exhibited by the claimants, it can be reasonably assumed that the deceased was having a decent income at the time of his death in the year 2003. It is not in dispute that the deceased Hemen Sarma was a registered Class-I contractor under the Irrigation Department. The fact that he was living in a rented house in a metropolitan city like Guwahati strongly suggests that his income ought to be close to the amount claimed by the claimants. As such, I see no reason to doubt or disbelieve their statements.

22. In the case of Minu Rout and Anr. v. Satya Pradyumna Mohapatra and Ors. reported in (2013) 10 SCC 685, the Hon'ble Supreme Court had observed that the Tribunal ought to have taken judicial notice of the fact that the post of Driver is a skilled job and hence, the income ought to have been assessed accordingly even in the absence of any documentary proof. Assuming that the income of Rs.

20,000/- per month even for a Class-I contractor without definite proof of income would on the higher side, even in that case, having regard to the evidence on record, it would not be difficult for this Court to assume that the husband of the claimant No. 1 was earning a minimum amount of Rs. 8,000/- to 10,000/- per month in the year 2003. As such, taking the lower component into account, it is held that the income of the deceased person was Rs. 8,000/- per month at the time of his death.

23. Coming to the question of compensation granted by the learned Tribunal, on the other heads, it would be apposite to quote herein the observations made by the Apex Court in the case of Rajesh and others (supra):

" 17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socioeconomic issue, as contrasted from a legal principle, though a precedent, can be and in fact ought to be periodically revisited, as observed in Santosh Devi v. National Insurance Co. Ltd. reported in (2012) 6 SCC 421. We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs. 2500 to Rs. 10,000 in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma v. DTC reported in (2009) 6 SCC 121, it was held that compensation for loss of consortium should be in the range of Rs. 5000 to Rs. 10,000. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America. Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

24. The law laid down by the Apex Court in the case of Rajesh and others (supra) had been reiterated in the subsequent decision of the Apex Court in the case of Kalpanaraj and others (supra).

25. By following the ratio laid down in the case of Rajesh and others (supra), the Hon'ble Apex Court had awarded similar amount as compensation in the case of

Sanobanu Nazirbhai Mirza v. Ahmedabad Municipal Transport Service reported in (2013) 16 SCC 719. under the head of Pain and sufferings loss of consortium, loss of love and care, funeral expenses and other incidental heads, is a case where the accident had taken place on 30.05.1998 and the compensation was originally assessed by the learned MACT on 23.10.2001.

26. In the case of Union of India and Anr. v. Mrs. Saraswati Debnath and Ors. this Court had held that the evidence should not be scrutinised in a MACT case in a manner it is done in a civil or a criminal proceeding. Considering the fact that a proceeding under Motor Vehicles Act. 1988 is a summary enquiry, this Court has held that if there is some evidence to arrive at a finding than that itself would be sufficient. The ratio laid down by the Apex Court in the case of Rajesh and others (supra), in my opinion would be squarely applicable in the facts and circumstances of the present case, in as much as this Court would be bound by the said decision of the Apex Court.

27. Having regard to the facts and circumstances of the case as noted above as well as the authoritative judicial pronouncements referred to hereinbefore, I am of the considered opinion that this is a fit case where the compensation awarded in favour of the claimants needs to be revisited by this Court and on a re-assessment of the same, the amount of compensation deserves to be enhanced. The learned counsel for the appellants has not disputed before this court that the correct multiplier applicable in this case would be the multiplier of 14 and not 15 as applied by the learned Tribunal.

28. In view of the determinations made herein before, it is provided that the annual income of the deceased Hemen Sarma will be taken to be Rs. 96,000/- @ Rs. 8,000/-per month, out of which 1/3rd is to be deducted towards the personal expenses of the deceased. As such, the annual dependency would come to Rs. 64,000/-. Accordingly, it is provided that the appellants /claimants will be entitled to the following compensation under the heads :-

i.

Total loss of dependency Rs. 64.000/- x 14

=

Rs. 8,96,000.00

ii.

Funeral expenses

=

Rs. 25,000.00

iii.

Loss of estate

=

Rs. 1,00,000.00

iv.

Loss of Consortium

=

Rs. 1,00,000.00

v.

For love and affection

=

Rs. 1,00,000.00

Total

Rs. 12,21,000.00

(Rupees twelve lakhs twenty one thousand) only.

29. Coming to the contention of the appellants regard inadequacy of the interest granted @ 6% per annum, a reference may be made to the observations made by the Hon^{ble} Apex Court in the case of Josphine James (Supra), wherein the Apex Court has clearly laid down that applying the ratio of decision of the Apex Court in Uphaar Tragedy Victims Association reported in (2001) 14 SCC 481, the correct rate of interest that is required to be applied would be 9% per annum. By applying the ratio of the decision in the case of Josphine James (supra), it is hereby provided that the appellants/claimants would be entitled to interest @ 9% per annum on the amount of compensation instead of 6% interest as awarded by the learned Tribunal.

30. The award granted by the learned Tribunal would stand modified in the above manner by granting aforesaid enhancement.

31. This appeal stands allowed to the extent indicated herein above. There would be no order as to costs. Office to send back the LCR.