
(2022) 02 RAJ CK 0107

In the Rajasthan High Court

Case No : S.B. Civil Miscellaneous Appeal No. 1980 Of 2012

Hari Singh And Others

APPELLANT

Vs

Lalit Kumar And Others

RESPONDENT

Date of Decision : 24-02-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2022) 02 RAJ CK 0107

Hon'ble Judges : Anoop Kumar Dhand, J

Bench : Single Bench

Advocate : Sandeep Mathur, V.P. Mathur

Final Decision : Disposed Of

Judgement

Anoop Kumar Dhand, J

The present civil misc. appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the appellants-claimants aggrieved with the judgment and award dated 26.04.2012 passed by the Court of Motor Accident Claims Tribunal, Jaipur District Jaipur (for short 'the Tribunal') in Motor Accident Claim Case No. 87/12 (816/2005), whereby an amount of Rs. 3,72,700/- has been awarded by way of compensation on account of death of Anurag Meena in an accident occurred on 08.06.2004.

The Tribunal after framing the issues, evaluating the evidence available on record and hearing counsel for the parties, decided the claim petition of the appellants-claimants awarding compensation to the tune of Rs.3,72,700/- under various heads in favour of the appellants-claimants.

The issue involved in this appeal is that- 'Whether a Bachelor aged 22 years, studying in 3rd year, Bachelor of Engineering would be treated as skilled labour/ daily wager?'

Learned counsel for the appellants-claimants submits that the deceased at the

time of accident was a Bachelor aged 22 years and was studying in 3rd year of Bachelor of Engineering in Electrical. The original claimants- mother, father, brother and sister of the deceased filed the claim petition before the Tribunal claiming Rs. 44,05,000/- as compensation on different heads. Learned counsel for the appellants-claimants submits that the Tribunal has seriously erred in treating the deceased as a skilled worker and treating him as a daily wager determined his income as Rs. 4,030/- per month. Counsel for the appellants-claimants further submitted that the deceased at the time of accident was 22 years of age and was studying in Bachelor of Engineering, so, with no stretch of imagination he can be treated as a skilled worker or a daily wager.

In support of his contentions, learned counsel for the appellants-claimants has placed reliance upon the recent judgment delivered by the Hon'ble Supreme Court in the case of Smt. Meena Pawaia and Others Vs. Ashraf Ali and Others, reported in 2022 (1) RAR, in which the Hon'ble Apex Court has determined the income of a 22 years aged, student of Bachelor of Engineering as Rs. 10,000/- who met with an accident in the year 2012.

Learned counsel for the appellants-claimants further submitted that each of the deceased were 22 years of age and the Tribunal has applied the multiplier of 15. While as per the judgment delivered by the Hon'ble Supreme Court in the case of National Insurance Company Ltd. vs. Pranay Sethi & Ors. : (2017) 16 SCC 680, the multiplier of 18 should have been applied looking to the age of the deceased that was 22 years on the date of accident.

Learned counsel for the appellants-claimants further submits that no amount towards future prospect has been awarded by the Tribunal in the light of the judgment of the Hon'ble Supreme Court in the case of Pranay Sethi (supra). Lastly, counsel for the appellants-claimants argued that under the conventional head, the Tribunal has awarded a sum of Rs. 10,000/- only, hence, the impugned award needs suitable enhancement.

Per contra, learned counsel appearing for the Insurance Company submits that the Tribunal while deciding the claim petition of the appellants-claimants has correctly taken into consideration the factors while calculating the award in this case after evaluating the evidence produced before it. Counsel for the Insurance Company further submits that the deceased was simply a student, so he cannot be treated as a professional. Counsel further submits that the Tribunal has rightly treated his income as Rs. 4,030/- by treating him as a skilled worker. Counsel also submits that even the minimum wages as assessed by the Tribunal is on the higher side, as the minimum wages in the year 2004 were less. Lastly, counsel for the Insurance Company argued that the impugned award dated 26.04.2012 does not call for any interference of this Court.

Learned counsel for the Insurance company, however, is not in a position to controvert the submissions made by the counsel for the appellants-claimants with respect to re-computation of the award in the present case in the light of

the judgment of the Hon'ble Apex Court in the case of Smt. Meena Pawaia (supra) and Pranay Sethi (supra).

I have considered the submissions made at the Bar and gone through the judgment dated 26.04.2012 as well as the relevant record of the case.

Admittedly, deceased Anurag Meena was 22 years of age and he was a student of 3rd year of Bachelor of Engineering at the time of accident, therefore, the Tribunal was not right in determining his income as Rs. 4,030/- only by treating him as skilled labour and daily wager and the Tribunal was not right in applying the multiplier of 15. In the light of the judgment of the Hon'ble Supreme Court in the case of Smt. Meena Pawaia (supra), the income of the deceased is assessed as Rs. 8,000/- per month.

In the case of Smt. Meena Pawaia (supra), the controversy was almost similar and it was observed by the Hon'ble Supreme Court that:-

"At the outset, it is required to be noted that deceased at the time of accident was aged 2122 years and that he was a 3rd year student in civil engineering. Therefore, it can be said that looking to his educational qualification he was having a bright future. Learned Tribunal assessed the income of deceased at Rs.15,000/ per month for the purpose of awarding compensation under the head of future economic loss. However, by the impugned judgment and order, the High Court has reduced the compensation and determined the income of the deceased at Rs.5,000/ per month. Awarding the future economic loss to the claimants considering the income of the deceased as Rs.5,000/ is not sustainable at all. Even the labourers/skilled labourers were getting Rs.5,000/ per month under the Minimum Wages Act in the year 2012. As the deceased was studying in the 3rd/4th semester of civil engineering, he cannot be considered worse than the labourers/skilled labourers. Even the counsel appearing on behalf of the Union of India has fairly conceded that assessing the income of deceased at Rs.5,000/ per month for the purpose of awarding the compensation under the head of future economic loss can be said to be at lower side and as such is not justifiable. While awarding the future economical loss, when the deceased died at the young age 2122 years and was not earning at the time of death/accident, as per catena of decisions of this court, the income for the purpose of determining the future economic loss is always done on the basis of guess work considering many circumstances namely the educational qualification and background of the family, etc. Therefore looking to the educational qualification and the family background and as observed herein above, the deceased was having a bright future studying in the 3rd year of civil engineering, we are of the opinion that the income of the deceased at least ought to have been considered at least Rs.10,000/ per month, more particularly considering the fact that the labourers/skilled labourers were getting Rs.5,000/ per month even under the Minimum Wages Act in the year 2012."

When the age of the deceased was 22 years, multiplier of 18 should have been

applied in addition to 40% future prospects in the light of the judgment of Smt. Meena Pawaia (supra) which reads as under:-

"At this stage, the decision of the Hon'ble Apex Court in the case of National Insurance Company Limited vs. Pranay Sethi and Others (2017) 16 SCC 680, on addition of future prospects to determine the multiplicand is required to be referred to and considered. In the aforesaid decision the Constitution Bench of this court had an occasion to consider in detail the justification for addition of future prospects. In the aforesaid decision it is observed and held that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax. It is also further held that in case the deceased was selfemployed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. It is also further held that the established income means the income minus the tax component. While holding so in paras 54 to 57, it is observed and held as under:

"54. In Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421] the Court has not accepted as a principle that a selfemployed person remains on a fixed salary throughout his life. It has taken note of the rise in the cost of living which affects everyone without making any distinction between the rich and the poor. Emphasis has been laid on the extra efforts made by this category of persons to generate additional income. That apart, judicial notice has been taken of the fact that the salaries of those who are employed in private sectors also with the passage of time increase manifold. In Rajesh case [Sarla Verma v. DTC, (2009) 6 SCC 121], the Court had added 15% in the case where the victim is between the age group of 15 to 60 years so as to make the compensation just, equitable, fair and reasonable. This addition has been made in respect of selfemployed or engaged on fixed wages.

55. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion

vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121] and it has been approved in *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65]. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a wellaccepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the courts is difficult and hence, an endeavour has been made by this Court for standardisation which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardisation keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardisation" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

56. The seminal issue is the fixation of future prospects in cases of deceased who are selfemployed or on a fixed salary. *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121] has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.

57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the selfemployed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when

increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is selfemployed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardisation on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degreetest is imperative. Unless the degreetest is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degreetest has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.”

Hence, this Court is of the considered opinion that looking to the educational qualification the deceased was having a bright future as he was studying in 3rd year of Electrical Engineering, the deceased could not be treated as a skilled labour/daily wager. Hence, his income ought to have been considered at least Rs. 8,000/- per month.

Looking to the settled position of law in the above mentioned judgments, the multiplier of 18 is required to be applied in the present case while calculating the award. Further the amount to the extent of 40% is required to be added towards future prospects and an amount of Rs. 70,000/- is also required to be added in conventional heads in the light of the judgment of the Hon’ble Supreme Court in the case of Pranay Sethi (supra).

Thus, the award is re-computed as under:

Monthly income

Rs. 8,000/-

Annual income

Rs. 8,000 x 12 = Rs.96,000/- per

annum

Multiplier to be applied

18

$96,000 \times 18 = \text{Rs.} 17,28,000/-$

Deduction 50 per cent

$\text{Rs. } 17,28,000/- - \text{Rs. } 8,64,000/-$

$= \text{Rs. } 8,64,000/-$

Add 40 per cent towards

$\text{Rs.} 8,64,000/- + \text{Rs. } 3,45,600/-$

future prospects

$= \text{Rs. } 12,09,600/-$

Add general expenses (conventional)

$\text{Rs. } 70,000/-$

Total compensation awardable

$\text{Rs. } 12,09,600 + 70,000$

$= \text{Rs. } 12,79,600/-$

Less amount awarded by the Tribunal

$\text{Rs. } 12,79,600/- - \text{Rs.} 3,72,700/- = \text{Rs.} 9,06,900/-$

Enhanced amount of compensation

$\text{Rs. } 9,06,900/-$

Thus, an amount of Rs. 9,06,900/- is enhanced in the present case. The respondent-Insurance Company is directed to pay the enhanced amount of Rs. 9,06,900/- in addition to the amount already awarded by the Tribunal vide judgment dated 26.04.2012 within a period of six weeks from today. The enhanced amount shall carry interest @ 6% per annum from the date of filing the claim petition till the actual payment is made.

The Tribunal is directed to adjust the amount already deposited by the Insurance Company in fixed deposit before disbursement to the claimants-appellants.

It is further ordered that out of the enhanced amount the Tribunal shall disburse a sum of Rs.2,00,000/- in the Saving Bank Account of the claimants-appellants and the balance amount of the enhanced compensation be invested in any Nationalized Bank initially for a period of three years and interest accrued on the said amount shall be paid to the appellants-claimants on monthly basis.

With the above observations, the present appeal stands disposed of.

All the pending application(s), if any, also stand disposed of.

Registry is directed to send back the record of the Tribunal forthwith.