

(2010) 08 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 676 and 679 of 2000 and 1210 of 2002

Harju (Smt.) and Others

APPELLANT

Vs

Mahadev and Another

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 2 RLW 1227

Hon'ble Judges : Dalip Singh, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Dalip Singh, J.—All these three miscellaneous appeals, u/s 173 of the Motor Vehicles Act, 1988, arise out of an accident, which took place on 27.09.1995 involving a tanker bearing registration No. GJ-12-T-9648 resulting into the death of three persons namely, (i) Narendra Kumar, (ii) Chandra Prakash and (iii) Mewaram and causing injuries to two persons namely, Tara Chand and Rajendra.

S.B.C.M.A No. 679/2000 (Smt. Harju and Ors. v. Mahadev and Anr.)

2. Miscellaneous Appeal bearing No. 679 of 2000 has been filed by the claimants-Smt. Harju Devi and Ors. against the award dated 29th March, 2000 passed by the learned Motor Accident Claims Tribunal, Ajmer in claim case No. 85/98 (258/95) in respect of death of Mewaram.

3. Submission of the learned Counsel for the claimant-Appellants in this miscellaneous appeal is that the learned Tribunal gave a finding with regard to the age of the deceased as 45 years and has erroneously taken the multiplier as 12 only, whereas, in fact, it ought to have been 15 in accordance with the provisions of the II Schedule to the Motor Vehicles Act, 1988.

4. The learned Counsel for the Respondent insurance-company, on the other hand, contended that the learned Tribunal has taken the income of the deceased

as Rs. 2000/- per month, but while calculating the dependency has only deducted an amount of Rs. 1/4th of the amount in place of 1/3rd and has calculated the amount on the basis of the monthly income as Rs. 1500/- whereas in fact if Rs. 2000/- is considered as the monthly income then annual income will be Rs. 24,000/- and after 1/3rd deduction the dependency would be only Rs. 16,000/- per annum and not Rs. 1500/- per month as calculated.

5. I have considered the aforesaid submissions.

6. So far as the submission of the learned Counsel for the claimant-Appellants is concerned that the learned Tribunal has erred in taking the multiplier of 12 only in place of 15, there appears to be substance in the same. As per the provisions of the II Schedule to the Motor Vehicles Act, 1988, in the case of the deceased being 45 years of age the multiplier would be 15.

7. However, at the same time, there appears to be a substance in the submission of the learned Counsel for the Respondents that the dependency after deducting the personal expenses ought to have been reduced to Rs. 16,000/- per annum in place of 1500/- per month as has been calculated by the learned Tribunal taking personal expenses as 1/3rd.

8. In the facts and circumstances, therefore, the loss of income on account of death of Mevaram to the claimants is assessed as $(2000 \times 12) = \text{Rs. } 24,000/-$, less 1/3rd = $\text{Rs. } 16000 \times 15 = \text{Rs. } 2,40,000/-$ less paid under the award Rs. 2,16,000/- i.e. a balance of Rs. 24,000/- only.

9. The learned Tribunal had awarded under the aforesaid head an amount of Rs. 2,16,000/-, which deserves to be enhanced to Rs. 2,40,000/-. The rest of the award is maintained.

10. In the facts and circumstances, this miscellaneous appeal is allowed to the extent of Rs. 24,000/- (rupees twenty four thousand only).

11. The Appellant would be entitled to receive an additional amount of Rs. 24000/- with interest @ 6% per annum with effect from the date of filing of this miscellaneous appeal i.e. 26.05.2000 till realization. The aforesaid amount be calculated and deposited with the learned Tribunal within a period of three months from today to be paid to the claimants.

12. There shall be no order as to costs.

S.B. C.M.A. No. 676 of 2000 (Gopal and Ors. v. Mahadeva through his LRs. Laxmi Ben and Ors.)

13. Miscellaneous Appeal bearing No. 676 of 2002 has been filed by the claimants-Gopal and Others against the award passed by the learned Tribunal in claim case No. 84/98 (257/95) for the death of Chandra Prakash.

14. The learned Tribunal has held the income of the deceased to be Rs. 2000/- per month.

15. The learned Counsel for the claimant-Appellants submitted that the learned Tribunal has erred in reducing the aforesaid income to one-half for personal expenses and then calculated the dependency for the parents as Rs. 1000 x 12 x 3 = Rs. 36000/- by adopting the multiplier of 3 only, which is contrary to all norms.

16. Learned Counsel relied upon the judgments of the Hon"ble Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, as also the case of Steel Authority of India Vs. Union of India (UOI), and the case of Kamla Sharma and Anr. v. Oriental Insurance Co. Ltd. in Civil Miscellaneous Appeal No. 2460 of 2008, decided on 03.04.2008, wherein their Lordships have held that even in the case of a unmarried person, where the claim petitions have been filed by the parents, deduction towards personal expenses have to be taken as 1/3rd and not 50%.

17. In National Insurance Co. Ltd. v. Gurumallamma and Anr. (supra) (decided on 23rd July 2009) the Hon"ble Supreme Court in Para No. 7 of the report after considering the provision of the Act in a case arising out of a death of an unmarried son held as follows:

...The Second Schedule furthermore provides that in a case of fatal accident, the amount of claim shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred upon himself, had he been alive....

18. It is submitted by the learned Counsel for the claimant-Appellants that since the age of the mother of the deceased was 45-years "and that of the father 48 years, taking the aforesaid age into consideration a multiplier as per provisions of Second Schedule of the Motor Vehicles Act, 1988 for the age group of 45-50 ought to have been adopted, which is 13.

19. In the case of Kamla Sharma and Anr. (supra) decided on 3.4.2008, the Hon"ble Supreme Court while yet again dealing with the case of : unmarried son, in Para No. 12 of the judgment held as follows:

12. There was one other point which was raised by Mr. Rai regarding the assessment of the loss of dependency which according to him should not have been taken as 50% but one-third as is generally taken in similar cases. On this point we are in agreement with Mr. Rai and we feel that both the forums below took a wrong view of the matter and that loss of dependency should have been taken as 1/3rd and not 50% as has been awarded."

13. "The judgment of the High court is accordingly, modified to the extent that in calculating the amount of compensation to be awarded, the loss of dependency should be taken as 1/3rd and not 50%.

20. The learned Tribunal in the present case held that the deceased earned of Rs. 2000/- per month at the time of the accident and came to the conclusion that the annual loss of income to the dependents was Rs. 12000/- after deducting 50% of the personal expenses.

21. Since their Lordships of the Hon''ble Supreme Court have held that the deduction should be taken as 1/3rd and not 50% the above approach of the learned Tribunal can not be accepted.

22. In *Oriental Insurance Co. Ltd. v. Deo Patodi* (supra) decided on 12.05.2009, dealing with a case of death of an unmarried student and a claim filed by his parents their Lordships in Paragraph No. 14 of the report after considering the entire case law cited before their Lordships held that "indisputably deduction of 1/3rd towards personal expenses is the ordinary rule in India. We think that in the facts and circumstances of the case, the same should be applied".

23. Learned Counsel for the Respondents, on the other hand, relied upon the judgment of the Hon''ble Supreme Court in the case of *Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another*, (decided on 6th Jan. 2009).

24. In the aforesaid judgment in Paragraph No. 18 of the report, their Lordships have held that...." In the absence of any evidence to the contrary, the practice is to deduct towards the personal and living expenses of the deceased, one-third of the income in case he was married and one-half (50 per cent) if he was a bachelor. Thus, there is no material on record warranting interference with the consistent view of both the courts below on the point."

25. On the basis of the above, the learned Counsel for the Respondent, insurance-company sought to contend that the learned Tribunal has not committed any error in taking the deductions as one-half in the present case since the deceased was unmarried person.

26. I have given my thoughtful consideration to the rival submissions.

27. Though, no doubt the Hon''ble Supreme Court in the case of *Syed Basheer Ahamed and Ors.* (supra) has laid down in Para 18 that deduction of half towards personal expenses is the practice, however, I find that in subsequent judgments of the Hon''ble Supreme Court in *National Insurance Co. Ltd. v. Gurumallamma and Anr.* (supra) and *Oriental Insurance Co. Ltd. v. Deo Patodi and Anr.* (supra) their Lordships have held after taking into consideration the case law cited at the Bar including the case of *Halkibai and Another Vs. Managing Director, Rajasthan State Road Trans. Corpn. and Another*, in Para 13 of the report and the earlier judgments of the Hon''ble Supreme Court in *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, where again deduction of 1/3rd from the earning of the deceased was approved as also in the case of *Bilkish Vs. United India Insurance Co. Ltd. and Another*, where again it was held that determining the loss of dependency by 50% was not correct and as such the same was assessed as 1/3rd towards personal expenses and the contribution to the family as 2/3rd. Their Lordships further took into consideration the judgment in the case of *MG. Dir., Bangalore Metropolitan Tpt. Corp. Vs. Sarojamma and Another*, and held that "ordinarily 1/3rd should be deducted from the income of the deceased and not the half thereof. It may be stated here that their Lordships in Para 13 of the judgment have also noticed *Syed Basheer Ahmed's* case relied upon by the

learned Counsel for the Respondents but in conclusion have laid down that deduction of 1/3rd is the ordinary rule in India.

28. In view of the aforesaid, judgment of the Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. v. Dev Patodi and Ors.* (supra) which has taken into account the various earlier judgments and has approved the deduction towards personal expenses in the case of unmarried person of 1/3rd as against one-half (50%) of the income, I am inclined to accept the contentions of the learned Counsel for the Appellants that in the instant case the deduction of one-half towards personal expenses as done by the learned Tribunal was not correct.

29. Accordingly the loss of income on account of dependency would be as follows:

30. Total income as assessed Rs. 2000/- per month, annual income Rs. 24,000/-, less 1/3rd towards personal expenses = Rs. 16,000, multiplied by 13 (looking to the age of the parents, which is between 45 and 50 years) = Rs. 2,08,000/- less 69,600/- = Rs. 1,38,400/-, enhanced amount for which the Appellant would also be entitled to receive interest along with the aforesaid amount with effect from the date of filing of this miscellaneous appeal i.e. 26.05.2000 @ 6% per annum to be paid within three months from today.

S.B.C.M.A. No. 1210/2002 (Poonam Chand Verma and Ors. v. Mahadeva and Ors.)

31. Miscellaneous Appeal bearing No. 1210/2002 filed by the claimants-Poonam Chand Verma and Ors. who are the dependents of deceased Narendra, against the award passed by the learned Tribunal in claim case No. 83/98 (256/95) for the death of Narendra.

32. The learned Counsel for the Appellants submitted that the learned Tribunal came to the finding that the age of the deceased at the time of his death was 20-years. The income of the deceased was held to be Rs. 3000/- per month on the basis of the evidence produced before it. However, the learned Tribunal has deducted one-half towards personal expenses. In the light of the aforementioned discussions in the case of S.B. C.M.A. No. 676/2000 Gopal son of Shri Bhanwar Lal and Ors. v. Mahadeva through his LRs. Laxmi Beri and Ors. herein-above the deduction towards personal expenses ought to have been 1/3rd and not one-half as has been done by the learned Tribunal.

33. The learned Tribunal has also further taken multiplier as 5 only. The multiplier of 13 ought to have been applied looking to the fact that the age of the parents was between the 45-50 years of age. As such the multiplier for the age group of 45-50 as prescribed under II Schedule of the Motor Vehicles Act, 1988 is to be adopted. The compensation for loss of earning in the instant case would be Rs. 2000 being 1/3rd of the income ($2000 \times 12 \times 13$) = Rs. 3,12,000/-.

34. The learned Tribunal has awarded under this head only an amount of, Rs. 1,26,000/-. The same is liable to be deducted from the aforesaid amount, as such the Appellants are entitled to receive enhanced amount of Rs. 1,86,000/-

(Rs. 3,12,000-1,26,000) with interest @ 6% per annum with effect from the date of filing of this miscellaneous appeal i.e. 19.05.2000 to be paid within three months from today.

35. In the result, all these three appeals are allowed to the extent mentioned hereinabove.

There shall be no order as to costs.