
(2014) 05 RAJ CK 0038
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 449 of 2014

ICICI Lombard General Insurance Co. Ltd.	APPELLANT
Vs	
Gautam and Others	RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2015) 2 ACC 128 : (2016) ACJ 673 : (2015) 1 CDR 534 : (2015) 1 RLW 336

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Vinay Kothari, Advocates for the Appellant

Judgement

Sandeep Mehta, J.—Heard learned counsel for the appellant. The instant appeal has been preferred by the appellant ICICI Lombard General Insurance Company Ltd. against the judgment and awarded dated 21.2.2004 passed by the learned Motor Accident Claims Tribunal No. 1 Udaipur in Motor Accident Claim Case No. 1036/2010 whereby whilst accepting the claim application filed under Section 166 of the Motor Vehicles Act by the claimants for the death of their son Babu in a road accident, they were awarded a total compensation of Rs. 5,36,000/- along with interest @ 9% from the date of filing of the claim application.

2. Learned counsel for the appellant insurance company submitted that the compensation awarded is highly excessive and thus, should be reduced. He submitted that the deceased was a bachelor and thus, the Tribunal wrongly applied the multiplier based on the age of the deceased whereas, it should have been applied in context to the age of the dependents. He further submitted that the Tribunal committed a gross error in adding 50% in the income of the deceased by way of future prospects. The view taken by the Tribunal is contrary to the judgment of the Hon''ble Apex Court in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, . He thus prayed that the compensation

awarded be reduced suitable under the above two heads.

3. I have heard and considered the arguments advanced at the Bar and perused the impugned judgment.

4. The first contention which was advanced by the learned counsel for the appellant is regarding the multiplier to be applied in assessing the quantum of claim filed on account of death of a bachelor. In the opinion of this Court, the multiplier applied by the tribunal in context to the age of the deceased, is absolutely just and proper. The issue regarding applicability of the multiplier in the cases of death of a bachelor is no longer in controversy in view of the decisions rendered by the Hon'ble Apex Court in the cases of (1) Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, Reshama Kumari (supra). The Hon'ble Supreme Court in the case of Reshama Kumari (supra) relying on some of its earlier decisions, observed in paras No. 37 to 40 of the judgment, as below:

"37. As regards deduction for personal and living expenses, in Sarla Verma 17, this Court considered Susamma Thomas 1, Trilok Chandra 3 and Fakeerappa[23] and finally in paras 30, 31 and 32 of the Report held as under:

"30..... 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 is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that the bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be

taken as two-third."

38. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

39. In our view, the standards fixed by this Court in *Sarla Verma* 17 on the aspect of deduction for personal living expenses in paragraphs 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding para is made out.

40. In what we have discussed above, we sum up our conclusions as follows:

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in *Sarla Verma* 17 read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in *Sarla Verma* 17 should be followed.

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of *Sarla Verma* 17 for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the judgment in *Sarla Verma* 17. (vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in *Sarla Verma* 17 subject to the observations made by us in para 38 above.

(vii) The above propositions *mutatis mutandis* shall apply to all pending matters where above aspects are under consideration;"

(Emphasis Supplied)

5. Thus, the argument advanced by the learned counsel for the appellant

challenging the multiplier applied by the Tribunal for calculating the loss of income caused to the claimant has no force whatsoever.

6. The next argument which was raised in regarding the addition of 50% in the income of deceased who was a daily wage earning labourer by applying the principle of future prospects. The learned counsel for the appellant placed heavy reliance on the observations made by the Hon''ble Apex Court in the case of Reshama Devi (supra) in support of this contention and tried to impress that the rise in income by future prospects should not be applied while assessing a claim filed in relation to the death of a daily wage earner.

7. In Reshama Devi's case (supra), the Hon''ble Apex Court observed at para 36 of the judgment as below:

"36. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."

8. The Hon''ble Apex Court laid down the criterion for calculating the addition of income of the deceased by future prospects observing that where the deceased was self employed or was working on a fixed salary, the Court will usually take into account the income at the time of death. A departure therefrom can only be justified in the extraordinary and exceptional circumstances.

9. Now this Court has to consider as to what would be the exceptional and extraordinary circumstances referred to in the aforesaid decision.

10. As has been noted above, the Tribunal whilst assessing the income of the deceased applied the criterion of the prevalent minimum wages and held the income of the deceased to be Rs. 3,000/- per month. The standard of minimum wages is governed by the notifications issued by the State Government from time to time. The minimum wages fixed by the notifications issued by the State Government periodically need to be referred whilst appreciating the argument advanced by learned counsel Mr. Kothari. A comparative table of minimum wages for unskilled, semi-skilled and skilled labour/workman applicable in the State of Rajasthan prepared on the basis of the notifications issued by the State Government from time to time between March, 1982:

11. From a bare look at the notification, it is apparent that an unskilled labourer, who was entitled to a minimum wage of Rs. 73/- per day in the year 2004 was entitled to Rs. 166/- per day in the year 2013. Thus, there is a rise of almost 130% in the minimum daily wages prescribed by law in the last ten years. If despite this phenomenal rise in the minimum wages prescribed by law, the benefits of rise in income by future prospects is denied to the claimants dependent on a person drawing daily wages, then such a proposition would be totally violative of the fundamental right of equality and life as guaranteed under the Articles 14 and 21 of the Constitution of India. Simply because a person is working as daily wager, he cannot be treated to be less resourceful than the one who is posted on a government job. Such person earns his livelihood by hard labour and even the Government has recognized the value of his/her labour by enhancing the prevalent rates of daily wages by nearly 130% in the last ten years. Thus, this court is of the opinion that while assessing claim applications arising out of the death or injury to a daily wager, rise in income by future prospects has to be acknowledged as being covered by the extraordinary and exceptional circumstances mentioned in para No. 36 of Reshma Devi's judgment.

12. Furthermore, whilst concluding the decision of Reshama Kumari (supra), the Hon"ble Apex Court gave the following guidelines :

"40. In what we have discussed above, we sum up our conclusions as follows:

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma 17 with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma 17 should be followed.

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma 17 for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma 17.

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma 17 subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration."

(Emphasis supplied)

13. The Hon'ble Apex Court directed that while making addition to income by future prospects, the Tribunal shall follow para 24 of the judgment rendered in the case of Sarla Verma (supra). Para 24 of Sarla Verma's case does not deal with the cases of daily wagers. Consequently, the argument advanced by the learned counsel for the appellants that in the claims filed for death of or injury to a person earning daily wages, the benefit of rise in income of the victim by way of future prospects should be denied, is without any basis and is liable to be rejected outright.

14. As an upshot of the above discussion, this Court is of the firm opinion that the Tribunal committed no error, illegality or perversity in adding 50% as rise in income of the deceased by way of future prospects while assessing loss of income caused to the claimants. Whilst assessing the compensation if any differentiation in applying this criterion is made on the basis of the status of a person, then it would amount to violation of right of equality, life and liberty as guaranteed by Articles 14 and 21 of the Constitution of India. Simply, because the victim is a poor labourer and earns his livelihood by daily wages, he cannot be put a disadvantageous position as compared to a salaried person. Accordingly, the appeal being bereft of any merit, is hereby dismissed.

Stay petition is also dismissed.

There shall be no order as to costs.