
(2012) 07 DEL CK 0643
In the Delhi High Court
Case No : MAC App. No. 186 of 2012

Icici Lombard General Insurance Co. Ltd	APPELLANT
Vs	
Meena and Others	RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22

Citation : (2012) 07 DEL CK 0643

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Priyadarshi Gopal, for the Appellant; S.N. Parashar, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

CM. APPL. No. 3157/2012(delay)

1. Issue notice to Respondents No.1 and 2. Mr. S.N. Parashar Advocate accepts notice.

2. This motor vehicle accident took place on 17.11.2008. The Claim Petition came to be decided on 16.03.2011. The Appellant Insurance Company simply sat over the matter to deny compensation to the widow and the children and merely decided to challenge the quantum of compensation of Rs. 6,13,648/- after expiry of seven months of the period of limitation on the ground of lack of communication between officials and the lawyer. In the circumstances, delay is condoned subject to payment of Rs. 25,000/- as cost. If the cost of Rs. 25,000/- is not paid to the Respondents within four weeks, the statutory amount deposited by the Appellant shall be refunded to the Claimants by the Registry.

3. The Application is disposed of.

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4. Mr. S.N. Parashar, Advocate states that he is prepared with the case which can be finally disposed of.

5. The Appeal is for reduction of compensation of Rs. 6,13,648/- awarded in favour of the Respondents No.1 and 2 for the death of Manoj Kumar @ Monu (a bachelor aged 20 years) who died in a motor vehicle accident which occurred in the early hours of 17.11.2008.

6. On appreciation of evidence, the Motor Accident Claims Tribunal(the Claims Tribunal) found that the accident was caused because of rash and negligent driving of the motor car bearing No.UP-16T-0149 driven by the Respondent No.3.

7. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a Supervisor with Jai Hanuman Engineering Works, Shop No.1, Dallupura Market, Delhi-110096 and was getting a salary of Rs. 8,500/- per month. In the absence of any cogent evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of a matriculate i.e. Rs. 4131/-, deducted 50% towards personal and living expenses, as the deceased was a bachelor, applied the multiplier of "18" on the basis of the Supreme Court judgment in P.S. Somanathan & Ors. v. District Insurance Officer, I (2011) ACC 659 to compute the loss of dependency as Rs. 4,46,148/-. Apart from that, a compensation of Rs. 7,500/- was awarded towards funeral expenses, Rs. 10,000/- towards loss to estate and a sum of Rs. 1,50,000/- towards loss to love and affection.

8. Following contentions are raised on behalf of the Appellant:

(i) The multiplier has to be selected as per the age of the deceased or the Claimant, whichever is higher. The Claims Tribunal ought to have applied the multiplier of "15" as per the age of the deceased's mother.

(ii) Compensation of Rs. 1,50,000/- awarded towards to loss of love and affection is exorbitant and excessive.

9. It is urged by the learned counsel for the Respondents No.1 and 2 that even if multiplier of "15" is applied, the compensation cannot be said to be excessive or exorbitant as the Claims Tribunal has not given any increase on account of inflation.

10. This Court in Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors. (MAC. APP. No.1148/2011) decided on 03.01.2012 discussed various judgments on the issue including P.S. Somanathan (supra) and observed as under:

4. As far as the selection of multiplier is concerned, the law is settled that the choice of multiplier is determined by the age of the deceased or that of the claimants whichever is higher. There is a three Judges Bench judgment of the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, where the Supreme Court relied on General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas

and others, and reiterated that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is more. Para 12 of the report is extracted hereunder:-

12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed:

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last. The principle was explained and illustrated by a mathematical example: "The multiplier represents the number of Years" purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs.10,000 would be 20. Then the multiplier i.e., the number of Years" purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.

5. There is another three Judges" decision of the Supreme Court in New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, where in the case of the death of a bachelor, who was aged only 25 years, the multiplier of 5 was applied according to the age of the mother of the deceased, who was about 65 years at the time of the accident. Para 6 of the report is extracted hereunder:-
"6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3,500/-. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the

multiplier of 5 considering the fact that the mother of the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs.3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs.2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.

6. Learned counsel for the Appellant referred to Sarla Verma (supra 1) in support of the proposition that age of the deceased is to be taken into consideration for selection of the multiplier. As an example the multiplier taken in various cases such as in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, as clarified in New India Assurance Co. Ltd. Vs. Charlie and Another, and the multiplier as mentioned in Second Schedule to the Motor Vehicles Act were compared and it was held that the multiplier as per Column No.4 in the said table was appropriate for application. Sarla Verma (supra) related to the death of one Rajinder Prakash who had left behind his widow, three minor children apart from his parents and the grandfather. Obviously, the age of the deceased was taken into consideration for the purpose of selection of the multiplier as the deceased left behind a widow younger to him, apart from three minor children. It was not laid down as a proposition of law that irrespective of the age of the claimants, the age of the deceased is to be taken into consideration for selection of the multiplier for calculation of the loss of dependency. It is true that in Mohd. Ameeruddin (supra 2) and P.S. Somanathan (supra 3) and National Insurance Company Ltd. v. Azad Singh (supra 5), the Hon"ble Supreme Court applied the multiplier according to the age of the deceased, yet in view of Trilok Chandra (supra) and Shanti Pathak (supra) decided by the three Judges of the Supreme Court, the judgment in Mohd. Ameeruddin (supra 2), P.S. Somanathan (supra 3) and Azad Singh (supra 5) cannot be taken as a precedent for selection of the multiplier. 7. In the latest judgment of the Supreme Court in National Insurance Company Ltd. Vs. Shyam Singh and Others, decided on 04.07.2011, the Supreme Court referred to Ramesh Singh and Another Vs. Satbir Singh and Another, and held that the multiplier as per the age of the deceased or the claimant whichever is higher would be applicable. Para 9 and 10 of the report are apposite:- "9. This Court in the case of Ramesh Singh and Another Vs. Satbir Singh and Another, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:-

6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. Vs. Charlie and Another, it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before

the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life." 10. In our view, the dictum laid down in Ramesh Singh (supra) is applicable to the present case on all fours. Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years." 8. Similarly in Manam Saraswathi Sampoorna Kalavathi and Others Vs. The Manager APSRTC, Tadepalligudem A.P. and Another, decided on 26.03.2010, the multiplier of 13 was applied in case of death of a young bachelor where the mother was 47 years of age.

11. Thus, in view of the law laid down in the three Judge Bench Judgment of the Supreme Court in Trilok Chandra (supra), there is no escape from the conclusion that the multiplier has to be selected as per the age of the deceased or that of the Claimant whichever is higher. Since the age of the mother in this case was 40, the appropriate multiplier was "15" instead of "18".

12. It is urged by the learned counsel for the Respondents that under Order XXI Rule 22 CPC he can resist the Appeal without filing any Cross Objection. It is urged that no addition was made in the deceased's income towards inflation to compute the loss of dependency.

13. In Santosh Devi Vs. National Insurance Company Ltd. and Others, , the Supreme Court observed that the persons who are on a fixed salary or are self-employed also increase the cost of their labour and in the absence of evidence of future prospects they should be given an increase of 30% while computing the loss of dependency. Relevant para of the report in Santosh Devi(supra) is extracted hereunder:

14.....In our view, it will be naive to say that the wages or total emoluments/ income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/ emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/ income of those employed in unorganized sectors has not registered a

corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

14. Thus, the Claimants were entitled to an addition of 30% in the deceased's wages on account of inflation.

15. The loss of dependency thus comes to Rs. 4,83,327/- (Rs. 4131 + 30% x 1/2 x 12 x 15).

16. Normally, a sum of Rs. 25,000/- is awarded towards loss of love and affection Sunil Sharma and Others Vs. Bachitar Singh and Others, and in Baby Radhika Gupta and Others Vs. Oriental Insurance Co. Ltd. and Others, However, in its latest judgment in Amrit Bhanu Shali & Ors. v. National Insurance Co. Ltd. & Ors., 2012(6) SCALE 1, the Supreme Court granted a sum of Rs.1,00,000/- towards loss of love and affection to the parents of a deceased who died as a bachelor. Following the judgment of the Supreme Court in Amrit Bhanu Shali (supra), the overall compensation of Rs. 6,13,648/- cannot be said to be exorbitant and excessive.

17. Thus, I will not interfere with the compensation of Rs. 6,13,648/- awarded by the Claims Tribunal.

18. The Appeal is devoid of any merit; the same is accordingly dismissed.

19. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.