

(2009) 11 GAU CK 0045
In the Gauhati High Court

Jamuna Das and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2010) 2 GLR 765

Hon'ble Judges : T. Nanda Kumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nanda Kumar Singh, J.—This appeal, for enhancement of the award u/s 173 of the Motor Vehicles Act, 1988, is directed against the judgment and award dated 30.9.1999 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S. (MAC) No. 503 of 1997.

2. Heard Mr. S. Deb, learned senior Counsel assisted by Mr. B. Debnath, learned Counsel appearing for the appellant-claimants as well as Mr. P. Patta, learned Counsel appearing for the respondents.

3. Concise fact, sans unnecessary details of the appellants-claimants' case in T.S. (MAC) No. 503 of 1997, is noted for decision of this appeal. The appellant-claimants are the wife and children of one Sushil Das, who was a businessman dealing with the vegetables at Madhupur bazaar, Bishalgarh having monthly income of Rs. 3,000. On the fateful day of 17.10.1999 at about 6:30 a.m. while he was standing in front of Bishalgarh New Market was knocked down by the offending vehicle bearing registration No. TRP-360 (Jeep) because of the rash and negligent driving of the driver. The said offending vehicle, which admittedly belonged to the respondents, was coming from Udaipur side and moving towards Agartala at a very high speed at the time of said vehicular accident. As a result of the said vehicular accident, Sushil Das sustained severe injuries on his person. Immediately thereafter he was taken to Bishalgarh hospital and therefrom he

was taken to G.B. Hospital for better treatment, but unfortunately on the same day he succumbed to his injuries. Accordingly, the appellant-claimants filed T.S. (MAC) No. 503 of 1997 before the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala praying for compensation at the tune of Rs. 8,50,000 and also interest @ 20% per annum from the date of filing of the claim petition till the date of payment of compensation.

4. In the said claim petition the appellant-claimants had categorically pleaded that Late Sushil Das was a businessman with good physic, he was earning Rs. 3,000 per month and used to contribute the entire amount towards maintenance of his family members consisting of seven members including Late Sushil Das and also the age of the deceased Sushil Das at the time of death because of the vehicular accident was 47 years. The respondents filed their written statement categorically denying the said pleaded case of the appellant-claimants in the said claim petition that Late Sushil Das was a businessman with good physic and earning Rs. 3,000 per month.

5. The appellant-claimants in support of their case had examined two PWs, namely, (1) PW No. 1, Smt. Jamuna Das, appellant-claimant No. 1 (wife of the deceased Sushil Das) and (2) PW No. 2, Shri Milan Das, who was a businessman and running his business at the said market where the deceased Sushil Das was also running his business for vegetables. PW No. 1 in her deposition stated that her husband (Late Sushil Das) was earning about Rs. 3,000 per month and in support of her statement she submitted a certificate issued by the Secretary of the Madhupur Bazar Babshayee Samiti, Tripura West, where Late Sushil Das was running his business, that the monthly income of Late Sushil Das was Rs. 3,000 per month and also that since Late Sushil Das was a businessman of the said Madhupur Bazar, the Secretary of the said Bazar Board knew the income of Late Sushil Das. The said income certificate, issued by the secretary of the Madhupur Bazar Babshayee Samiti, along with other certificate were exhibited as Exbt.-1 series. PW No. 2, Shri Milan Das, in his deposition stated that he knew Late Sushil Das as he was a businessman of the said Madhupur Bazar where he was also running his business. He further stated that the monthly income of Late Sushil Das was Rs. 3,000 per month, and the said vehicular accident was occurred due to the fault of the driver. Both the PW Nos. 1 and 2 were not cross-examined by the defendants-opposite parties, thereby admitting the statement of the PW Nos. 1 and 2 that the deceased Sushil Das was earning about Rs. 3,000 per month at the time of his death due to the said vehicular accident on 17.10.1997. In support of the case of the respondents, one witness, i.e., OPW No. 1, Shri Bimal Chandra Roy was examined. The OPW No. 1 in his deposition did not mention anything about the income of Late Sushil Das at the time of his death due to the said vehicular accident.

6. It is fairly well settled law that the facts pleaded in the plaint and proved by examination of the witness, not denied by the opposite party, shall be deemed to have been admitted by the opposite party. In the instant case, the statement of

the PWs and the pleaded case of the appellant-claimants in the claim petition that the monthly income of Late Sushil Das was Rs. 3,000 per month was not denied by the opposite party. Further it also fairly well settled law that in a case of civil nature or civil suit, the plaintiff or the applicant cannot be expected to prove his case beyond any reasonable doubt; a high degree of probability lending assurance of case of the plaintiff or applicant would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiff's burden of proof can safely be deemed to have been discharged. In the instant case, it can safely be presumed that the onus of proving of appellant-claimants' case that Late Sushil Das was earning Rs. 3,000 per month at the time of his death due to vehicular accident can safely be deemed to have been discharged. Ref. R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another,

7. The Division Bench of Kolkata High Court in Chaya Rani Baidya and Others Vs. National Insurance Co. Ltd. and Others, held that "this Court has to identify the income for adjudication of this matter. As already discussed, there is evidence on record that the victim was earning Rs. 4,500 per month as a tailor having his own sewing machine. In view of absence of any contrary evidence, this Court has no other alternative but to accept the same as the income of the deceased at the material time. This Court is not unmindful of the fact that save and except salaried personnel working in any Government, Government undertakings and/or private organization, there is hardly any possibility to file any documentary evidence regarding proof of income and more particularly by the persons concerned who are running their own small tailoring shop". In the case in hand, there is an income certificate issued by the secretary of the Madhupur Bazar Babshayee Samiti, where Late Sushil Das was running his business, that the monthly income of Late Sushil Das at the time of death was Rs. 3,000 per month. This certificate also corroborate or/support the statements of the PWs that the monthly income of Late Sushil Das was Rs. 3,000 per month at the time of his death due to the vehicular accident. In the absence of any contrary evidence produced by the respondents-opposite parties, this Court has to accept that the monthly income of Late Sushil Das was Rs. 3,000 per month which is not even denied by the respondents-opposite parties by cross-examining the PWs.

8. The learned Member, Motor Accident Claims Tribunal in the impugned judgment and award dated 30.9.1999 had come to a finding that "it has been stated by the claimant-petitioner No. 1 that monthly income of her husband by selling vegetables, at Madhupur Bazar was about Rs. 3,000, PW2 is also corroborated said facts. One certificate issued by the Secretary, Madhupur Bazar Samiti has been filed. It also shows that monthly income of deceased Sushil Das was Rs. 3,000 and further that said Sushil Das used to sell vegetables. No evidence have been adduced by the opposite parties". After such finding, the learned Member, Motor Accident Claims Tribunal held that the net contribution of the deceased towards his family was Rs. 1,200 per month. But there was no

reason in coming to the decision of the learned Member, Motor Accident Claims Tribunal in the impugned judgment and award dated 30.9.1999 that net contribution of the deceased Sushil Das towards his family was Rs. 1,200 per month. In the absence of reason for coming to the decision that net contribution of the deceased Sushil Das towards his family was Rs. 1,200 per month after clear cut finding that the monthly income of deceased Sushil Das was Rs. 3,000 per month is not sustainable the eye of law.

9. Compensation awarded does not become "just compensation" merely because Tribunal considers it to be just. It is a cardinal principle of rule of law which governs our policy that the courts including writ court are required to record reasons while disposing of a writ petition or/petition or/case in order to enable the litigants more particularly the aggrieved party to know the reasons which weighed with the mind of the court in determining the questions of facts and law raised in the writ petition or in the action brought. This is imperative for the fair and equitable administration or justice. More so when there is a statutory provision for appeal to the higher court in the hierarchy of courts in order to enable the superior court or the appellate court to know or to be apprised of the reasons which impelled the court to pass the order in question. This recording of reasons in deciding cases or application affecting rights of parties is also a mandatory requirement to be fulfilled in consonance with the principles of natural justice. Ref. Vasudeo Vishwanath Saraf Vs. New Education Institute and Others,

10. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. Therefore, if different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among the Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system. Basically only three facts need to be established by the claimants for assessing compensation in the case of death, i.e., (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. Further, the issues to be determined by the tribunal to arrive at the loss of dependency are; (1) additions/deductions to be made for arriving at the income of the deceased; (ii) the deduction to be made towards the personal living expenses of the deceased and (iii) the multiplier to be applied with reference to the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. Ref. Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

11. The Apex Court in *Sarla Verma (Smt.) (supra)* held that "though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, the general practice is to apply standardized deductions. 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 member exceeds six". The Apex Court in para No. 19 of the SCC in *Sarla Verma (Smt.) (supra)* further held as follows:

19. To have uniformity and consistency, the tribunals should determine compensation in cases of death, by the following well settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs. 5,000 to Rs. 10,000 may be added as loss of estate. Where the deceased is survived by his widow another conventional amount in the range of 5,000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

12. Therefore, according to the ratio laid down by the Apex Court in *Sarla Verma*

(Smt.) (supra), deduction towards personal and living expenses of the deceased Late Sushil Das would be one-fourth (1/4th) because the number of his dependant was six. Accordingly, the amount of compensation should be calculated thus; (a) total loss of income comes to Rs. 3,000 (-) 1/4th, i.e., Rs. 7,50 = Rs. 2,250. Now Rs. 2,250 x 12 x 13 (multiplier as provided under 2nd schedule to the Motor Vehicles Act, 1988) = Rs. 3,51,000; (b) consortium Rs. 5,000 and (c) along with this amount interest @ 12% per annum w.e.f. 22.12.1997. The enhanced amount, i.e., Rs. 3,56,000 (-) Rs. 1,90,000 (awarded under the impugned judgment and award) = Rs. 1,66,000 (Rupees one lakh sixty-six thousand) along with interest @ 12% per annum w.e.f., 22.12.1997 shall be paid by the respondents to the appellant-claimants. The enhanced amount of Rs. 1,66,000 along with interest shall be kept in a fixed deposit in a nationalized bank in the joint account of the appellant-claimants till the minor appellant-claimants attain majority.

13. With the above observations and directions, this appeal is allowed.

Send down the lower court record immediately.