
(2014) 12 SHI CK 0051
In the High Court Of Himachal Pradesh
Case No : FAO No. 389 of 2007

Kamla Sharma

APPELLANT

Vs

Bharat Tour and Travels Pvt. Ltd.

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 12 SHI CK 0051

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Suneet Goel, Advocate for the Appellant; Jeevesh Sharma and J.S. Bagga, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—Appellant-claimant has invoked the jurisdiction of this Court in terms of mandate of Section 173 of the Motor Vehicles Act, 1988, (for short, the Act), by the medium of this appeal, and sought enhancement of compensation awarded by the Motor Accident Claims Tribunal (II), Shimla, (for short, the Tribunal), in MAC Petition No. 14-S/2 of 2004, titled Kamla Sharma vs. M/s. Bhart Tour & Travels Pvt. Ltd. and others, vide award, dated 26th June, 2006, whereby compensation to the tune of Rs. 2,28,760/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till its realization, stands awarded in favour of the appellant-claimant and against insurer, (for short, the impugned award).

2. Facts of the case, in brief, are that the claimant, being mother of deceased Joginder Sharma, filed Claim Petition before the Tribunal, for grant of compensation on the ground that on 3.12.2003, said Joginder Sharma, while riding on a motorcycle, a bus bearing registration No. DL-IPA-7798, being driven by its driver, namely, Mohd. Salim, rashly and negligently, came from opposite side, hit the motorcycle and crushed the said Joginder Sharma resulting into his death on the spot, hence the Claim Petition for grant of compensation to the tune of Rs. 20.00 lacs, as per the break-ups given in the Claim Petition.

3. Respondents filed replies and resisted the Claim Petition on various grounds.

4. On the pleadings of the parties, the following issues were settled by the Tribunal:

"1. Whether Joginder Sharma died in a motor accident caused by rash and negligent driving of a bus (No. DL-IPA) by respondent 2, Mohd. Salim near IGMCI, Shimla on December, 3, 2003? OPP

2. Whether the petitioner is entitled to compensation. If so, to what amount? OPP

3. Whether the driver of the bus in question was not having a valid and effective driving licence at the time of accident? OPR-3

4. Whether the bus in question was being driven in violation of the terms and conditions of the insurance policy? OPR-3

5. Whether the deceased also contributed to the accident. If so, to what extent?

6. Relief."

5. The Claimant, in order to prove her case, examined four witnesses, while the driver of the offending bus also stepped into the witness box as RW-1.

6. The Claimant while appearing as PW-1 stated that the deceased Joginder was growing vegetables and had also owned an apple orchard. PW-2 Vidya Sagar stated that the deceased was cultivating cabbage and was also having an orchard of 400 to 500 apple plants and was earning about Rs. 2.00 lacs to 2.5 lacs per annum from the apple produce and about Rs. 1.5 lacs to 2.00 lacs per annum by selling vegetables.

7. The Tribunal, after scanning the entire evidence, assessed the income of the deceased as Rs. 4,000/- per month and after making deduction, it was held that the claimant lost source of dependency to the tune of Rs. 2,200/- per month. The Tribunal, while keeping in view of the age of the deceased and the age of the claimant-mother, applied the multiplier of 12. Thus, the Tribunal held the claimant entitled to Rs. 3,26,800/-, including Rs. 10,000/- awarded under the head "loss of expectation of life, pains and sufferings". However, it was held that since the deceased was also responsible for the accident to the extent of 30%, therefore, the claimant was entitled to 70% of the total assessed compensation, i.e. Rs. 2,28,760/-. Feeling aggrieved and dissatisfied, the claimant has filed the present appeal.

8. The insurer, the insured/owner and the driver have not questioned the impugned award on any ground, thus, the same has attained finality so far as it relates to them.

9. The core question involved in the present appeal is - Whether the amount of compensation is adequate or otherwise?

10. I have heard the learned counsel for the parties and have gone through the

record of the case.

11. During the course of hearing, Mr. Suneet Goel, learned counsel for the appellant, argued that the Tribunal has fallen in error in assessing the income of the deceased as Rs. 4,000/- per month. It was further submitted that the deceased was earning Rs. 15,000/- per month, as pleaded in the Claim Petition, at the time of his death, from agriculture and horticulture vocations. The learned counsel further submitted that the Tribunal has applied the multiplier keeping in view the age of the deceased and the claimant-mother, while the multiplier was to be applied keeping in view the age of the deceased. Thus, the impugned award suffers from grave illegality and is liable to be set aside and the compensation deserves to be enhanced accordingly.

12. Admittedly, the deceased was a young boy of the age of 20 years at the time of accident and was a student. He would have got married after 2-3 years and would have his own family. The claimant has specifically pleaded in the Claim Petition that the deceased was also pursuing agriculture/horticulture vocation simultaneously and has also led evidence to that effect, as discussed hereinabove, which evidence of the claimant has remained un-rebutted. Therefore, it can safely be concluded that the deceased would have been earning not less than Rs. 6,000/- per month.

13. The Apex Court dilated on the issue of granting compensation, in cases where the deceased is survived by parents and held that 50% of the total income would be treated as personal and living expenses of the bachelor and the remaining 50% has to be treated as contribution towards family, in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, which decision was also upheld by the larger Bench of the Apex Court in *Reshma Kumari and Others Vs. Madan Mohan and Another*. It is apt to reproduce paragraph 32 of the said decision hereunder:

"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 family of the bachelor is large and dependant 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."

14. In view of the dictum of the Apex Court in *Sarla Verma's* case (supra), it can safely be held that the claimant-mother has lost source of dependency to the tune of 50% of the total income, which the deceased would have been earning at the time of his death. Accordingly, it is held that the claimant-mother lost source of dependency to the tune of Rs. 3,000/- per month.

15. The second argument of the learned counsel for the appellant that only the age of the deceased was to be taken into consideration while applying multiplier

is devoid of any force for the simple reason that it is well settled that while assessing compensation, the age of the deceased and that of the victim has to be taken into consideration, in view of the decision of the Apex Court in Sarla Verma's case (supra), which position was restated by the Apex Court in its latest decision in Civil Appeal Nos. 8131-8132 of 2014, titled Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & Anr., decided on 25th September, 2014. Following observations are relevant and are being reproduced hereunder:

".....Therefore, we have no doubt in ascertaining the future income of the deceased at Rs. 25,000/- p.m. i.e. Rs. 3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi and Ors., and applying the appropriate multiplier of 13, keeping in mind the age of the parent of the deceased, as per the guidelines laid down in Sarla Verma case (supra), we arrive at a total loss of dependency at Rs. 26,00,000/- [(Rs. 3,00,000/- minus 1/3 X Rs. 3,00,000) X 13]."

Emphasis supplied.

16. Thus, the Tribunal has rightly applied the multiplier of 12 keeping in view the age of the deceased and of the claimant-appellant.

17. The learned counsel for the appellant has also argued that the Tribunal has awarded Rs. 10,000/- under the head "loss of expectation of life, pains and sufferings", which is quite meager and needs to be enhanced keeping in view the age of the deceased. It is also submitted that the claimant is also entitled for compensation to the tune of Rs. 1.00 lac under the heads "loss of estate" and "loss of love and affection" and since the Tribunal has not awarded any amount under these heads, the impugned award deserves to be modified accordingly.

18. While dealing with the above argument of the learned counsel for the appellant, a reference may be made to the latest decision of the Apex Court in Saraladevi Vs. Divisional Manager, Royal Sundaram Alliance Ins. Co. Ltd., is relevant and is being reproduced below:

"14. In the result, the impugned judgment and order of the High Court is liable to be set aside and accordingly set aside and the Award of the Tribunal is affirmed. Therefore, the appellants shall be entitled to compensation under the following heads:

Thus, the total compensation payable to the appellants/claimants will be Rs. 37,33,248/- with interest @7.5% per annum from the date of filing of the application till the date of payment. The apportionment of the compensation in favour of the appellants is as per the Award of the Tribunal."

19. Accordingly, I deem it proper to award Rs. 10,000/- each under both the heads i.e. "loss of estate" and "loss of love and affection".

20. A perusal of the impugned award shows that the Tribunal has held that the deceased also contributed to the accident to the extent of 30% and, therefore,

deducted 30% amount from the amount of compensation assessed under the head "loss of source of dependency", which findings of the Tribunal are not sustainable. The driver of the offending bus appeared in the witness box as RW-1 and stated that on the fateful day, he was driving the offending bus and was proceeding towards Sanjauli side. He further deposed that all of a sudden, the deceased came on the motorcycle at a very high speed and struck with the bus, which was stationery at the relevant point of time. No independent evidence has been led by the respondents in support of the statement of the driver of the bus. In the absence of any independent evidence, it is not understandable from where the Tribunal came to the conclusion that the accident was the outcome of contributory negligence on the part of the deceased and the driver of the offending bus. The findings of the Tribunal are based on the contents contained in the FIR, which have not been properly appreciated by the Tribunal. I have gone through the FIR, wherein it has been clearly recorded that the accident had occurred due to the negligence of the driver of the offending bus. Therefore, it is held that the accident was the outcome of rash and negligent driving of the driver of the offending bus. Accordingly, the findings recorded by the Tribunal on Issue No. 1 are set aside and the said Issue is answered in favour of the claimant-appellant and against the respondents.

21. In view of the above discussion, the impugned award is modified and the appellant-claimant is held entitled to compensation as under:

22. The compensation amount shall carry interest at the rate of 7.5% per annum from the date of the Claim Petition till realization. The insurer is directed to deposit the enhanced amount within a period of six weeks from today and on deposit, the Registry is directed to release the same in favour of the appellant-claimant, strictly in terms of the impugned award.

23. The impugned award is modified, as indicated above and the appeal is disposed of accordingly.