

(2004) 08 BOM CK 0100
In the Bombay High Court
Case No : First Appeal No. 60 of 1996

Kulsum Bai and Others

APPELLANT

Vs

Jagdish Singh and Another

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 3 ACC 114 : (2005) 2 ALLMR 234 : (2005) 1 MhLj 150

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : N.H. Shams, for the Appellant; A.J. Pophaly and None, for the Respondent

Judgement

Anoop V. Mohta, J.—Heard. This appeal has been preferred by the original petitioners/appellants herein, and challenged the Judgment and Award dated 21st September, 1995, passed by the Motor Accident Claims Tribunal, Nagpur (for short "the Tribunal"), in Claim Petition No. 492/1994, whereby the respondents were jointly and severally directed to make payment of compensation of Rs. 1,75,000/- together with proportionate cost and interest " 12% from the date of petition i.e. 7th January, 1992. However, being dissatisfied with the same, the appellants have preferred this appeal for enhancement of the compensation.

2. That on 8th August, 1991 the deceased Zahid Hussain, while travelling in Mini Truck No. MWZ 5268 from Amravati to Nagpur met with an accident with another Truck bearing No. MP 23.3158, belonging to the respondent No. 1, and insured with the respondent No. 2. Therefore, an application u/s 166 of the Motor Vehicles Act, 1988 (for short "the Act"), in question came to be filed by the appellants. The appellant No. 1 is wife, the appellant Nos. 2 and 4 are daughter and the appellant No. 3 is a son of the deceased Zahid Hussain. The appellants in all claimed the total compensation of Rs. 7 lakhs, read with 18% interest thereon.

3. The respondent No. 2, New India Assurance Company Limited (for short

"Insurance Company"), contested the said claims. The respondent No. 1 Jagdish Singh, never appeared before the Tribunal or contested the said proceedings. Therefore, the basic averments in respect of incident and accident and the claims as made by the appellants remained untouched and uncontroverted. The appellants led evidence of (1) Aishabi, (2) Kulsumbai - Appellant No. 1, and (3) Manohar - Employer of the Deceased. The Tribunal after considering the material, as well as evidence placed on the record, held that the death of Zahid Hussain was due to rash and negligent driving of the vehicle owned by the respondent No. 1, and therefore, awarded the compensation of Rs. 1,75,000/- to be paid by the respondents jointly and severally. The appellant therefore, being dissatisfied with the award have preferred this appeal.

4. Heard Mr. Shams, the learned Counsel appearing for the appellants and Mr. Pophaly, the learned Counsel appearing for the respondent No. 2. None appeared for the respondent No. 1, though served. Therefore, basically there is no challenge from the respondent No. 1 on merit of the matter.

5. The points for determination here is, as under :

(i) Whether the appellants are entitled for the Yes. enhanced compensation, as prayed? (ii) What order? Appeal allowed.

6. The evidence on record remained undisturbed so far as the monthly salary of Rs. 2000/- per month of the deceased is concerned. The evidence of the employer - Manohar, supports the case of the appellants. The employer Manohar, said that, "I used to pay him net salary of Rs. 2000/- and in addition to that the T. A., D. A., on tour. " He further admitted in his cross-examination that, "In the certificate, I have not mentioned that I was paying T.A., D. A, to Zahid Hussain on tour. " Mr. Manohar, also deposed that. "His duty was to visit several places, supply the stationery, secure the orders and fill up the tenders etc. " The appellant No. 1 deposed that, "My husband was serving as a salesman with Manoharrao Sakode, who was running a press under the name Swastic Printers. My husband was getting the monthly salary of Rs. 2000/-." This evidence justifies one thing, that the deceased was on tour on most of the time or at least his nature of business was travelling. Considering this aspect, one thing also emerge that, apart from his own salary of Rs. 2000/- he must be getting the amount of T. A., D. A. on tour. The evidence on record is justifies that, he was on tour being a salesman for about more than 10 to 12 years. In view of this, the assessment of Rs. 1300/- per month contribution by the deceased to the appellants, needs interference. The Tribunal after considering Rs. 2000/- per month, as basic salary deducted 1/3rd from that amount and arrived at a figure of Rs. 1300/- per month, and granted multiplier of 11. As regards the actual loss of dependency, I am of the view that the deceased was definitely getting more than Rs. 2000/- per month. The applicants/appellants in their application submitted that the deceased was getting Rs. 2000/- per month and Rs. 900/- per month as House Rent allowance. The theory of H.R.A. could not be proved. However, the fact that they were getting Rs. 2900/- per month cannot be totally

overlooked. Still for want of factual figure of T. A. and D. A. On record, I am considering to it at Rs. 200/- per month towards additional contribution to the family by the deceased. The restricted approach of Rs. 1300/- passed on the basis of Rs. 2000/- per month cannot be accepted totally. This additional amount of Rs. 200/- per month towards T. A., D. A. after considering Rs. 900/- as an additional amount according to me is a just and fair. I am of the view, that victims or the sufferers should be awarded, if material and/or evidence is available on the record, on the higher side. In view of this, I am enhancing the compensation by taking Rs. 1300 + Rs. 200 i.e. Rs. 1500/- per month, as contribution by the deceased to the family, thereby the annual loss of dependency would come to Rs. 18000/-. Then comes the multiplier theory. The Tribunal after considering the material on the record, awarded the multiplier of 11. The age of the deceased was 49 years, at the time of accident. The deceased was in a private service. In these days, the life expectancy is upto 60 to 65 years. Therefore, considering 17 years of earning capacity more, as per the IIInd Schedule of the Motor Vehicles Act, 1988, 13 is the relevant multiplier, which deserves to be adopted. The multiplier as considered by the tribunal according to me was on lower side. Multiplier of 13 is a just and fair. Therefore, the amounts comes to Rs. 18000 x 13 = 2,34,000/-. The appellants according to me are entitled for this amount. However, the amount already granted or received has to be adjusted from this amount.

7. The learned Advocate appearing, has relied in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , and basically concluded that the loss of consortium and loss of estate was not at all considered properly. The Tribunal has awarded additional amount of Rs. 3400/- for the loss of consortium. There is no amount awarded towards loss of estate and/or funeral expenses. Considering the Apex Court decision in Susamma (supra), and considering the existing provisions based on the Scheduled referred to above, I am of the view that the applicants/appellants are entitled as follows :

(i) Compensation amount Rs. 2,34,000/- (ii) Loss of Consortium Rs. 5,000/- (iii) Funeral expenses Rs. 2,000/- (iv) Loss of estate Rs. 2,500/- (v) Pains and suffering Rs. 5,000/- ----- Total..... Rs. 2,48,500/- -----

There is no dispute that except of consortium figure of Rs. 3200/- all other damages have not been awarded by the tribunal. In the facts and circumstances of the case, basically when there is death of husband of applicant No. 1 award of additional compensation is just, fair and reasonable in the circumstances of the case. The learned Advocate appearing for the Insurance Company, have objected for the enhancement from all count. One basic object which cannot be overlooked that there is no appeal filed by the owner of the vehicle, there is no contest from the owner, at any stage of the proceedings on merit. The case of the applicants/appellants therefore basically remained unchallenged on the merit. The Insurance company even though resisted in its written statement still

no evidence was lead opposing the case of the appellants. In this view, in absence of any counter appeal filed by the respondent No. 1, the finding given by the learned Tribunal remained undisturbed or unchallenged. So far as the respondent is concerned. I am not inclined to consider the objection as raised by the respondent No. 2, especially when there is no challenge made by the owner of the vehicle. I see there is no reason to consider the objection and/or opposition as raised by the respondent No. 2. The order on the face of the record is binding to them. I am enhancing the compensation based on the existing evidence on the record, as the applicants/appellants are claiming enhancement of the compensation based on the same evidence, and after reappreciating the same evidence, as it remained un-challenged from all counts by the respondent No. 1. He remained ex parte throughout and despite service failed to attend this proceeding also.

8. Therefore, considering the material placed on the record, I am inclined to interfere with the order and enhancing the compensation as under :

(i) The appellants/original petitioners are entitled for total compensation of Rs. 2,48,500/- (para 7) with interest " 9% on the additional amount of compensation, i.e. on Rs. 73,500/-

(ii) The appeal is allowed in the aforesaid terms.

(iii) No order as to costs.