

(2004) 08 BOM CK 0038
In the Bombay High Court
Case No : First Appeal No. 385 of 1993

Maharashtra State Road Transport Corporation	APPELLANT
Vs	
Darabkhan and Others	RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 166

Citation : (2006) ACJ 1410 : (2005) 2 ALLMR 568 : (2005) 1 MhLj 51

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : S.C. Mehadia, for the Appellant; Khan, for Respondent Nos. 1, 2 and 3 and Mirza, for the Respondent

Judgement

Anoop V. Mohta, J.—This Appeal has been preferred by the original respondent/appellant herein, Maharashtra State Road Transport Corporation (for short "MSRTC") u/s 173 of the Motor Vehicles Act, 1988 (for short "M.V. Act") and thereby, challenged the award and judgment dated 25th February, 1993, passed in Claim Petition No. 90 of 1989, whereby, the total compensation of Rs. 2,00,000/- and interest " 12% p.a. from the date of Petition i.e. 18th October, 1989 has been awarded with other directions. Therefore, this Appeal by the appellant. Facts:

2. On 6-7-1989, one Zafarulla Khan died in the road accident near naka of Anjangaon to Lakhd Road, due to rash and negligent driving of the driver of the appellant. Therefore, two Claim Petition Nos. 90 of 1989 and No. 106 of 1989 were separately filed by the parents and brother i.e. respondent Nos. 1, 2 and 3 herein and by the wife i.e. respondent No. 4 herein, respectively, and they accordingly claimed separate compensation. The common evidence was led by the parties of Darabkhan (PW1), Ramakant (PW2) in M.A.C.T. Case No. 90 of 1989. As per the case of the respondents, the deceased was earning Rs. 1,500/- per month or Rs. 18,000/- per year. He was the only earning member of the

family. Therefore, the parents and brother claimed compensation of Rs. 3,80,000/-. However, they restricted their claim to Rs. 2,00,000/-. On the other hand, respondent No. 4-wife in her Claim Petition No. 106 of 1989 also claimed the said monthly income and based on that, claimed Rs. 3,60,000/-. However, she also restricted her claim to Rs. 2,00,000/- only. Appellants resisted the same by its Written Statement, including of driver. They also raised objection to tenability of the claim Petition on behalf of the parents and the brother. The learned Tribunal, after considering the material, as well as, the evidence led by the parties by common impugned order, held that the accident in question was caused due to rash and negligent driving of S. T. Bus No. MCA-6062, driven by opponent/respondent No. 2 and owned by opponent/respondent No. 1. The deceased Zafarulla Khan was sitting on the pillion seat of the motorcycle bearing No. MXG-6618, driven by Ramakant Adhav at the time of the accident. The Tribunal, therefore, awarded lump sum compensation of Rs. 2,00,000/- as under:

"ORDER

Both the petitions are allowed. The amount of total compensation is determined at Rs. 2,00,000/- plus interest at the rate of Rs. 12% p.a. from the date of petition i.e. 18-10-1989 till realization.

The petitioners in claim petition No. 90/1989 and claim petition No. 106/1989 shall equally receive the amount of Rs. 50,000/- each and the amount of interest from the S.T. Corporation. The amount of Rs. 25,000/- received by Maher Nigar is not to be adjusted while taking into account the amount of award of Rs. 2,00,000/- in this petition.

The S.T. Corporation shall also bear the cost of petition filed by parents as well as Maher Nigar.

The award be drawn accordingly."

Submissions :

3. Mr. Mehadia, the learned counsel appearing for the appellant basically resisted the impugned award and relied on The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, , Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, AIR 1994 Gau 22, Smt. Muhini Thakuria and on. v. Dhiraj Kalita and Ors. 2004 (2) All. M.L.R. 803, Smt. Mandabai wd/o Prahakar Pudake v. Daljitrai s/o Dinanath Chhabra and Ors. and contended further that the grant of the award is contrary to the record, as well as, the law laid down by the various Courts. There is non application of mind. He further contended that the brother - respondent No. 3 was not entitled for any compensation, not being the legal representative of the deceased. That the respondent No. 4- wife who remarried later on, was also not entitled for the said compensation. That there was no rash and negligent driving of the vehicle in question and/or at least, it was a case of contributory negligence. That the Award, therefore, is wrong, excessive and exorbitant. That the 12% interest rate

is also on the higher side. That the finding regarding the income of the deceased was vague and cannot be relied upon. That the entire calculation made by the Tribunal based on 25 years of life expectancy of the deceased is not proper. The amount of no fault liability cannot be excluded while passing final award.

4. Mrs. Khan, the learned counsel for the respondent Nos. 1 to 3 and Mr. Mirza, the learned counsel for the respondent No. 4 resisted the Appeal and the grounds and contentions raised by the appellants. They supported the judgment of the Tribunal. They relied on Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair, , Lata Wadhwa and Others Vs. State of Bihar and Others, , S. Chandra and Others Vs. Pallavan Transport Corporation, , Jyoti Kaul and Others Vs. State of M.P. and Another, , 1994 (2) T.A.C. 547, Veerappan v. Mathamma.

5. The points for determination are :

(1) Whether the Claim Petitions were maintainable filed by the brother and the wife who remarried later on? - Yes (2) Whether the impugned order is bad, contrary to the record, and liable to be quashed and set aside? - No. However modified. (3) What order? - As per Order below. Appeal allowed partly.

LEGAL REPRESENTATIVES UNDER M. V. ACT - (a) Brother :

6. First and foremost contention, as raised, about the maintainability of the Claim Petition No. 90 of 1989 on the foundation that the original claimants/respondents therein are not the legal representatives of the deceased. The circumstances, which are changed now, are that respondent Nos. 1 and 2 were deleted because of their death. So, respondent No. 3, the brother of the deceased, is the only contesting respondent. In the Claim Petition No. 106 of 1989, respondent No. 4 - wife, is the contesting respondent. Both the parties, in fact, relied on Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, to extend their respective submissions based on the phrase "legal representatives applying for compensation under the M. V. Act. Though the judgment is based on the old M.V. Act, both the parties conceded that the principle definitely applies to the existing provisions of the M.V. Act. The basic extract which concludes the issue is as under :

"A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of Section 110A of the Act authorizes all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident."

"The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression legal representative" in Section 110-A of the Act should be given a

wider meaning and it should not be confined to the spouse, parent and children of the deceased."

Another judgment, which was relied upon by the appellant was of AIR 1994 Gau 22 , Smt. Muhini Thakuria and Ors. v. Dhiraj Kalita and Ors. (supra), whereby the Court has explained the position based on Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , as referred above, and further relied on the facts and circumstances of the case and held that they are not preferential heirs, and, therefore, they are not the legal representatives. In the present case, factually, as referred above, the position is otherwise in view of the personal law, as referred. In view of the settled decision of the Apex Court, as referred above, the question is whether in view of the respective personal law of the parties, respondent No. 3 is "legal representative" as contemplated and defined under the M.V. Act for the purpose of claiming compensation. Mrs. Khan, the learned counsel for the respondent Nos. 1 to 3 relied on the book "Principles of Mohamedan Law, Eighteenth Edition the definition and meaning of "sharers" u/s 63 of the Mohamedan Law. She further pointed out the meaning and the Schedule of "Residuary" u/s 65. In view of this, it is very clear that the father and mother and wife are entitled for the fixed shares as explained and defined under the table of shares in respect of the estate of the deceased. The word and meaning of "Residuary" is defined and explained, which is as under :

"Residuary.- If there are no Shares, or if there are Shares, but there is a residue left after satisfying their claims, the whole inheritance of the residue, as the case may be, devolves upon Residuary in the order set forth in the annexed table."

As per the Table of Residuary in order of Succession, the full brother is also entitled as per the said Residuary definition. After considering the Supreme Court judgment there remains no doubt that there is no bar for the parents and brother for applying for the compensation. There is no express definition of "legal representative" under the Act. Therefore, a legal representative can mean a person who, in law, represents the estate of the deceased person and/or a person on whom the estate devolves on the death of an individual. In absence of any definition, the provisions of the CPC (for short "CPC") and the express meaning of "legal representative" as defined u/s 2(11) is also the available guideline. This cannot be overlooked. Therefore, according to me, the application, as filed at the relevant time by the respondent Nos. 1, 2 and 3 was maintainable. The deceased was issue-less. Original application was filed by parents and brother of the deceased, (b) WIFE WHO REMARRIED LATER ON :

7. The respondent No. 4 was re-married. Therefore, the objection of the appellant appear to be that after re-marriage, such person is not entitled for the compensation and, therefore, such application was not maintainable. The learned counsel appearing for the appellant relied on the judgment in 1994 (2) T.A.C. 547 Veerappan v. Mathamma (supra). Even though that judgment is based on the Workmen's Compensation Act, 1923, according to me, the principles can be

extended in the compensation case arising out of the M.V. Act. At the relevant time, admittedly, the respondent No. 4 was entitled for compensation being a widow of the deceased. Her entitlement cannot be curtailed or taken away only because she married later on. A widow cannot wait for the compensation to come and then decide for another marriage. The realities of life cannot be overlooked. A widow may, or may not be in a position to marry again. There is no bar or anything pointed out under any provisions of law that such widow, after marriage, is disentitled for claim of the deceased husband. In view of this, I am of the view that this objection about the maintainability of the respondent No. 4's application cannot be accepted. The present application by the respondent No. 4- wife, therefore, is also maintainable and within the framework of law. Reasonable Compensation and Supporting Reasons :

8. The basic argument has been that there is no material evidence on record to justify the income of Rs. 700/- per month as awarded by the Tribunal. After going through the evidence led by the applicants witnesses, they have made out a case that the deceased was earning near about Rs. 1,500/- to Rs. 2,000/- per month. He was contributing the whole of his income towards the family. There was no cross-examination by the appellants. There was no evidence led by the appellants. There is nothing to shatter the evidence in the cross-examination so far as this part is concerned. Therefore, in absence of any counter evidence or material, the case of the respondents cannot be said to be without any substantial evidence to support their claim basically regarding the income para in question. In view of this, I am of the view that the assessment of Rs. 700/- per month towards the family contribution by the deceased was on lower side, but as there is no challenge to the same by the respondents and needs no interference. Mrs. Khan, the learned counsel appearing for the respondent Nos. 1 to 3 relied on *Lata Wadhwa* and *Ors. State of Bihar and Ors.* (supra) to support that even if there is no material on the record to justify the particular income, that itself is not sufficient to discard the right of the respondents to claim just, fair and reasonable compensation. In the case of *Lata Wadhwa* (supra), the Apex Court has, after considering the particular case based on the death of a housewife in a fire accident, awarded the compensation by observing as under :

"But even in the absence of such datas and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3,000/- per month and Rs. 36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life."

Apart from this, in the present case, there is an ample evidence on the record to justify the monthly income and/or contribution by the deceased. Even though the amount claimed was of Rs. 1,500/- to Rs. 2,000/- per month, it was assessed " Rs. 700/- per month. According to me, on lower side.

9. Now comes the question of life expectancy and/or award of compensation as per the existing provisions of law. Admittedly, the deceased was, at the relevant

time, aged 37 years. The life expectancy, as observed now by various Courts, is about 65 years. Therefore, considering this aspect, the learned Tribunal rightly accepted 25 years as a foundation for awarding the compensation. It appears from the order that the total compensation awarded is in the nature of lump sum. Even though there is no calculation on the face of the record and/or at least reflected on the record, still the award of compensation to the tune of Rs. 2,00,000/- based on Rs. 700/- per month and multiplied by 25 years, it comes to near about the same figure. The learned counsel appearing for the appellants, however, resisted that admittedly, the present case is governed by the provisions of M.V. Act, 1988 and the prescribed Schedule. The Schedule provides the foundation of multiplier based on the age of the victim only. Here, the compensation agreed by the parties, based on the Schedule, comes within the ambit of multiplier of 16. There is no reference made in the order about the Second Schedule in question. The multiplier, as per the Second Schedule is the formula now, as observed by the Apex Court and should be awarded while awarding the compensation. The learned counsel for the appellants, therefore, insisted that the compensation, if awarded, cannot go beyond any other formula than this formula of multiplier. Considering this, on this issue, I am of the view that without disturbing the other observations, it is necessary to interfere with the order for modification only and to apply the formula as per the Second Schedule. Therefore, if admitted monthly income of the deceased was Rs. 700/- p.m., if multiplied by 12 months, it comes to Rs. 8,400/- and if we adopt the multiplier, as applicable in the present case i.e. 16, the amount comes to Rs. $8,400 \times 16 = \text{Rs. } 1,34,400/-$. According to me, this should be the total amount of compensation so far as the applicants are concerned.

10. If we adopt the Second Schedule of the M.V. Act, I find that there is nothing specially discussed or granted in the award, so far as the other damages are concerned. There is no observation even to those parts except the observation based on 1992 M. L.J. 1488, Kanchanbala v. Government. Considering this aspect, the respondents are, therefore, entitled for the following amounts and I am awarding that also as I am interfering and re-assessing the compensation itself. This aspect of general damages, as per the Schedule, cannot be overlooked. The Apex Court has already taken decision in this regard and always awarded general damages to the parties. Therefore, I am awarding general damages as admitted in Award while assessing the compensation. Those are as follows : Funeral expenses - Rs. 2,000/-; Loss of consortium - Rs. 5,000/-; Loss of estate Rs. 2,500/- and, Pain and suffering - Rs. 5,000/-. This total comes to Rs. 14,500/-. Applicants are, therefore, entitled for total compensation of Rs. $1,34,400/- + \text{Rs. } 14,500/-$, totalling to Rs. 1,48,500/-.

11. The learned counsel appearing for the appellant strongly relied on The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, and basically contended that the Court has ample power to reduce the multiplier, if any, awarded. The principle of multiplier has to be based on the factors such as age of the deceased, claimants, marital status of the deceased and separate

income of the claimants and their education and loss of pecuniary benefits. There is no dispute so far as the proposition of law is concerned and the facts of that particular case are apparently distinguishable. In the present case, I am interfering with the order and awarding the multiplier of 16, I see further reduction in no way is unacceptable, as sought to be contended by the appellant.

12% Interest:

12. As regards the rate of interest, which was awarded " 12% p.a. from the date of the Claim Petition i.e. 18-10-1989 as contended by the counsel for the respondents that, at the relevant time, the said rate of interest was permissible and looking to the facts and circumstances of the case, the said rate of interest cannot be said to be unjust or contrary to law and it should be maintained. I am of the view that considering the facts and circumstances of the case, and after more than ten years, there is no point now to interfere with the rate of interest which was already granted. However, the applicants are entitled for the compensation as calculated above only and also to the rate interest " 12% p.a. on that amount from the date of the Claim Petition i.e. 18-10-1989.

13. Municipal Corporation of Greater Bombay (supra), itself provides the rate of interest " 12% p.a. Therefore, the rate of interest of 12% p.a. is within the framework of law and cannot be said to be unjust or improper. The reliance for the rate of interest based on Smt. Mandabai wd/o Prabhakar Pudake (supra), in view of the above Supreme Court judgment, cannot be said to be the rate of interest for all the purposes. It all depends upon the facts and circumstances of each case. In view of the said Supreme Court judgment, I am not declined to reduce the rate of interest, as claimed.

14. The amount of Rs. 25,000/-, which was already received towards no fault liability by the applicants at the relevant time, as it was received by the wife only, I see there is no reason now to interfere with the said order of excluding the said amount. Therefore, in the facts and circumstances of the case, I am not inclined to interfere with the order of adjusting the amount of Rs. 25,000/- which was already awarded in favour of the wife Maher Nigar. There is dispute about the existing provision in this regard. I am not reducing this Rs. 25,000/- payable to wife as according to me, assessment of Rs. 700/- per month by the Tribunal was on lower side, even though Rs. 1,500/- per month was claimed towards family contribution of the deceased. Therefore, this additional amount to wife would serve the end of justice. Therefore, no reduction of this amount, at this stage of the matter.

15. The learned counsel for the respondent Nos. 1 to 3 contended that the claim of the applicants still survives even after the death of respondent Nos. 1 and 2 and relied on the judgment of the Apex Court in the case Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair, . There is no controversy on this issue and as I am basically interfering with the compensation as awarded, there is no further discussion necessary on this issue.

16. The learned counsel appearing for the respondent No. 4-wife, however, insisted for maintaining the award on the basis of Jyoti Kaul and Others Vs. State of M.P. and Another, . The facts and circumstances of that particular case are distinguishable. The said judgment reiterates principle based on General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, that the multiplier method is logically sound and legally well established. The multiplier method is the accepted method of ensuring a "just" compensation which will make uniformity and certainty of the awards. In the present case, without going into the further aspect of dependency and without going into the further aspect of death of the applicant Nos. 1 and 2, as awarded compensation based on the evidence on the record, according to me, is reasonable. For want of details about applying the lump sum principle and vagueness therein, the multiplier of 16 based on the Schedule is a just and proper.

17-18. He further relied on S. Chandra and Others Vs. Pallavan Transport Corporation, and submitted that in this particular case, the average multiplier of 20 years was applied on a foundation that average life expectancy is 65 years. The deceased was 42 years of age. However, one cannot overlook the basic judgment of G.M., KSRTC v. Susamma Thomas (supra) which was followed time and again, and recent trend of the various judgments that the multiplier formula is the formula which should be made applicable. In the present case, therefore, I decline to maintain the lump sum compensation order of the learned Tribunal on the basis of 25 years of life expectancy as considered and awarded. The multiplier system and formula, as applied in the present case, according to me, based on the judgments, even of the Supreme Court, is a necessary and proper formula. Therefore, this judgment, on facts itself, is not helpful to the respondents to support impugned order. Conclusion :

19. Considering the above reasoning, I am modifying the award passed by the Tribunal and pass the following Order :

ORDER

(i) The respondents are entitled to compensation for the amount of Rs. 1,48,500/- (Para 10) with interest " 12% p.a. from the date of the Claim Petition i.e. 128/10/1989 till realisation.

(ii) The amount of Rs. 25,000/- shall not be adjusted while taking into account the amount of the above compensation and said amount is payable to wife respondent No. 4 only,

(iii) The interim orders, if any, to stand vacated.

(iv) Parties are entitled to receive the amount on the basis of the directions in the Claim Petition.

(v) Parties to take steps accordingly. Therefore, Appeal is allowed partly. No order as to costs.