(2016) 04 DEL CK 0137

In the Delhi High Court

Case No : MAC. APP. No. 298 of 2013

Mani Ram and Another — APPELLANT

Vs

Ritu Pal and Others — RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 168, 173

Citation : (2016) 2 ACC 804 : (2016) 3 TAC 489

Hon'ble Judges : R.K. Gauba, J.

Bench : Single Bench

Advocate : Navneet Goyal and Rupika Singh, Advocates, for the Appellant; A.K. Soni, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Gauba, J. (Oral) - On 18-11-2006, at about 9.40 PM, motor cycle bearing registration no. DL-8SAD-4597 (motorcycle) was being driven by one Jagdish with Jaibeer and Pawan travelling on the pillion. It met with an accident involving motor vehicle described as Eicher Canter bearing registration No.UP 17B 5391 (the offending vehicle), statedly driven in rash manner by Ritu Pal (driver), it being admittedly owned by Rameshwar Dayal (the owner) and insured against third party risk for the period in question with Oriental Insurance Company Ltd. (the insurer). Pawan and Jaibeer died in the accident. Their dependant family members instituted accident claim petitions under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 06-12-1996 they having been registered as Suit no.62/06/11 and 733/06/10 respectively. In the claim arising out of death of Pawan, he being a bachelor, the petitioners were his parents (now appellants in MAC. APP.No.298/2013). In the case of claim arising out of death of Jaibeer, the petitioners were his widow and other members of the family (now appellants in MAC.APP.No.330/2013).

2. Both the claim petitions were inquired into simultaneously and by separate judgments passed on 15-12-2012, the motor accident claims tribunal (tribunal)

held the driver to be at fault on account of negligent driving of the offending vehicle causing the accident and two deaths. The driver having been held to be the principal tort-feasor, the owner of the offending vehicle was held vicariously liable.

3. The tribunal awarded compensation in the case relating to death of Pawan, calculating it thus:

1

Loss of dependency

Rs. 2,63,952/-

2

Funeral charges

Rs. 10,000/-

3

Loss of Estate

Rs. 10,000/

4

Loss of love, company and affection etc.

Rs. 1,00,000/-

Total

Rs. 4,13,952/-

4. In the case of death of Jaibeer Singh, the tribunal assessed the compensation as under :

1

Loss of dependency

Rs. 6,64,836/-

2

Funeral charges

Rs. 10,000/-

3

Loss of Estate

Rs. 10,000/-

4

Loss of consortium

Rs. 10,000/-

5

Loss of love, company and affection etc.

Rs. 1,00,000/-

6

Loss of gratuitous services

Rs. 30,000/-

Total

Rs. 8,24,836/-

5. The above mentioned awards were made with interest at 9% per annum and the insurance company was called upon to satisfy the same in each case.

6. The insurance company had taken the plea of breach of terms and conditions of the insurance policy on the ground that the driver was not holding a valid driving license, which contention was upheld. Thus, while the insurer was called upon to pay, it was granted recovery rights.

7. The insurance company has come up in appeals (MAC. APP. No. 388/2013 & MAC.APP.No.397/2013) questioning the computation of the compensation essentially raising the issue that the future prospects were wrongly added. It also pleads that instead of being called upon to satisfy the award, it should have been fully exonerated in the face of the finding of breach of terms and conditions.

8. Per contra, the claimants in the two cases have come up with their two appeals (MAC.APP.No.298/2013 & MAC.APP.No.330/2013) seeking enhancement of the compensation on the ground that the evidence about income from the private employment was wrongly brushed aside and the loss of dependency has not been properly compensated since minimum wages have been adopted as the benchmark. Additionally, the claimants submit that the non-pecuniary damages awarded are unduly low.

9. In both the cases, it was claimed that each of the two deceased persons was employed as a clerk with Chetak Roadways, having office near Arora Ara Mill, Shahbad Dairy, Delhi, at salary of Rs.7,500/- (certificate Ex.PW3/A in respect of each of them being produced in the two cases). In order to prove said employment and earnings, Shish Ram (PW3, Branch Manager of Chetak Roadways) was produced. The witness was cross examined wherein he conceded that he had not brought any records of the company corroborating the claim about his employment, including in the nature of cash book, ledger book, salary

register or attendance register that could show the person in question to be a regular employee who was receiving wages against duty performed.

10. In above nature of the evidence, the testimony of PW3 was not accepted by the tribunal in both the cases, it rather deciding to go by the minimum wages payable to a matriculate (Rs.3,760/- per month). On reappraisal of the facts and evidence, this court finds no error in the approach adopted by the tribunal.

11. Having assumed the income on the basis of minimum wages of matriculate, however, in both the cases, the tribunal added the element of future prospects of increase to the extent of 30%. This is found to be erroneous.

12. In the case reported as Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, Supreme Court, inter-alia, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon''ble Judges in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in Rajesh & Ors. v. Rajbir & Ors., (2013) 9 SCC 54, the issue was later referred to a larger bench, inter-alia, by order dated 02.07.2014 in National Insurance Company Ltd. v. Pushpa & Ors., (2015) 9 SCC 166.

13. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956 of 2012 (Sunil Kumar v. Pyar Mohd.), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189 of 2014 (HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.) decided on 12.1.2015, presently taking the decision in Reshma Kumari (Supra) as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

14. There is no proper proof of earnings of either of the deceased. The element of future prospects in their cases could not have been factored in to calculate the loss of dependency. Thus, the loss of dependency has to be computed only on the basis of minimum wages.

15. Since deceased Pawan was a bachelor, 50% has to be deducted towards personal & living expenses and, therefore, monthly loss of dependency comes to (3,760 ? 2) Rs.1,880/-. The tribunal adopted the multiplier of 9 in the said case on the basis of finding that the claimant mother was 59 years old at the time of death. The contention of the claimants in their appeal is that the age of the mother was stated by her to be 50 years. The oral claim about the age has not been considered by the tribunal in as much as the documentary proof (election I Card) showed her age to be 59 years on the relevant date. Thus, multiplier of 9 was correctly adopted.

16. In view of the above, the loss of dependency in case of Pawan comes to (1,880 x 12 x 9) Rs.2,03,040/- rounded off to Rs.2,04,000/-.

17. In the case of death of Jaibeer Singh, one third has been correctly deducted towards personal & living expenses and, therefore, the loss of monthly dependency comes to (3,760 x 2 ? 3) Rs.2,507/-. The learned counsel for the insurance company fairly concedes that multiplier of 17 was correctly adopted as the age of deceased was 30 years. Thus, the total loss of dependency comes to (2,507 x 12 x 17) Rs.5,11,428/-, rounded off to Rs.5,12,000/-.

18. Following the view taken in Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala v. Gangalakshmamma (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense deserve to be added in the case of Jaibeer Singh. Since Pawan was a bachelor, in the case arising out of his death the same awards excluding the award on account of loss of consortium deserve to be added.

19. Thus, the total compensation payable in the case of death of Pawan comes to (2,04,000 + 1,50,000) Rs.3,54,000/-. In the case of death of Jaibeer, the total compensation is computed as (5,12,000 + 2,50,000) Rs.7,62,000/-.

20. The compensation in the two above mentioned cases are reduced accordingly. Needless to add, award in each case shall carry interest as levied by the tribunal.

21. The insurance company having already been granted recovery rights on account of breach of terms and conditions, there is no case made out for any further relief, including in the nature of exoneration. [National Insurance Company v. Swaran Singh (2004) 3 SCC 297 and United India Insurance Company Ltd. v. Lehru & Ors. (2003 3 SCC 338]

22. The awards in the two cases are modified as above. In appeals of the insurance company (MAC.APP.NO.388/2013 & MAC.APP.NO.397/2013) concerning the deaths of Pawan and Jaibeer respectively, by identical orders passed on 22-05-2013, the insurance company had been directed to deposit the entire awarded amounts with up-to-date accrued interest with the Registrar General within the period specified and out of the same 50% was allowed to be released to the concerned claimants, the balance having been kept in fixed deposits initially for a period of six months to be renewed periodically.

23. The Registrar General shall now calculate the total compensation payable to the claimants in terms of the award modified as above and release the same from out of the balance in the deposits refunding the excess with statutory deposits to the insurance company in these appeals.

24. The appeals are disposed of in above terms.

