

(2009) 02 BOM CK 0004
In the Bombay High Court
Case No : F.A. No. 3904 of 2008

Mejabeen Rafiq Chamdiya

APPELLANT

Vs

Lata Ashok Hiwale and Another

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 56 : (2011) 1 TAC 965

Hon'ble Judges : S.B. Deshmukh, J

Bench : Single Bench

Advocate : N.C. Garud, for the Appellant; S.G. Chapalgaonkar, for the Respondent

Judgement

S.B. Deshmukh, J.—This appeal filed by the Appellant, seeks enhancement in the amount of compensation. Appellant was the claimant in the court of learned Member, Motor Accidents Claims Tribunal, Shrirampur, District Ahmednagar. It was Motor Accident Claim Petition No. 145 of 2002 filed u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 3,00,000. There were two respondent; respondent No. 1 the owner of the motor vehicle bearing registration No. MH 17-A 5995 and respondent No. 2 the insurance company with which said vehicle was insured at the relevant time (parties hereinafter are referred to by their status as the claimants and respondents, respectively).

2. The Tribunal, after considering the evidence on record, allowed the application partly. The Respondent Nos. 1 and 2 were directed to pay or deposit an amount of Rs. 1,02,500 with interest at the rate of 6 per cent per annum from the date of application till its realization in full and proportionate costs of the petition. This award was passed by the learned Tribunal on 26.2.2007.

3. This appeal, by the claimant is for enhancement in amount of compensation. This being first appeal, this Court under Order 41, Rule 31 of the Code of Civil Procedure, is required to frame points for determination. Despite this fact, I am

framing only two points for determination for the reason that rashness and negligent manner of driving the vehicle by the driver, at the relevant time, is not disputed by the Respondents. The claimant is seeking enhancement in the amount of compensation. Looking to the nature of this appeal, following two points, in my view, would suffice the purpose.

4. Both the points can be considered together and findings thereon can be recorded simultaneously.

5. Learned Counsel for the Appellant took me through the evidence of claimant herself and the medical officer examined on behalf of the claimant. According to learned Counsel for the Appellant, Tribunal has assessed Rs. 3,000 as monthly income of the claimant and awarded Rs. 9,000 compensation for three months" period as she was advised by the medical officer to take bed rest. Taking this cue from the judgment of the Tribunal, counsel for the claimant urged that income of the claimant needs to be taken as Rs. 3,000 per month. According to him, the claimant was assisting her husband in his business of scrap. He also states that the claimant has sustained permanent disability to the extent of thirty per cent. According to him, claimant is required to have assistance of one person while discharging her household duties and figured the payment to such person being a sum of Rs. 2,000 per month. If Rs. 3,000 is considered as income of the claimant, according to the learned Counsel for the claimant, 3rd amount roughly Rs. 1,000 can be reduced for personal expenses. The learned Counsel for the Appellant-claimant states that Rs. 2,000 can be considered to be income of claimant per month available to the family and if multiplied by 12, i.e., twelve months, per annum figure available is Rs. 24,000. Referring to the Schedule, learned Counsel for the Appellant urged that multiplier 17 can be safely selected. With this, according to learned Counsel for the Appellant Rs. 4,08,000 (rupees four lakh eight thousand) would be the amount of compensation to which the claimant is entitled. Tribunal has awarded Rs. 1,27,350. If this amount is deducted, according to the learned Counsel for the Appellant, the Appellant is entitled for enhanced amount of compensation of Rs. 3,54,500. Grievance is raised that learned Judge has awarded 6 per cent per annum interest. He relied on a judgment of the Supreme Court in the case of H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, , on the point of more interest.

6. Learned Counsel for the insurance company states that even though there is no cross-objection filed on behalf of the Respondent insurance company, he can canvass the submission apart from supporting the judgment of the Tribunal. According to him, there is no evidence so far loss in income of the claimant is concerned. There is no evidence that the claimant was doing some business and/or assisting her husband in his business, as a scrap merchant. He has pointed out from the cross-examination of the medical officer that there is no fracture sustained to any organ of the body of the claimant. In the absence of such fracture, according to him, the amount awarded by the Tribunal, i.e., Rs. 1,27,350 is just and proper. Apart from this, he submits that Rs. 33,350 can be

considered towards medical bills. While giving break-up counsel for the insurance company submits that Rs. 85,000 can be considered towards loss in earnings (future loss), Rs. 25,000 can be considered for permanent disability (30 per cent) and discomfort in life. Thus, according to him, total amount to which claimant is entitled, comes to Rs. 1,43,350 and against this the Tribunal has awarded Rs. 1,27,350. He, therefore, opposes the claim for enhancement beyond Rs. 1,43,350. In para 13 of the judgment, the learned Tribunal awarded Rs. 50,000 lump sum for discomfort, inconvenience and enjoyment of life. This part of the judgment of learned Tribunal, in my view, is per se illegal. The multiplier method ought to have been followed in view of the Apex Court judgment in the matter of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , for arriving at just amount of compensation.

7. Precise question to be considered in this appeal is the compensation to be awarded to a housewife in the facts and circumstances of the case. Learned Counsel for the Appellant drew my attention to the evidence of claimant-Appellant. He emphasised on para 2 of the affidavit of the claimant. I quote the specific words from this para, which are pointed out by the learned Counsel for the Appellant:

I have incurred Rs. 50,000 for medical treatment, Rs. 5,000 towards special diet, Rs. 5,000 for travelling, Rs. 5,000 towards attendance and business loss (scrap), Rs. 2,000 per month totalling to Rs. 1,00,000.

Counsel for the claimant submits that this part of the evidence in affidavit makes it clear that the claimant was doing the business of scrap. With this, he also invited my attention to initial part of the affidavit of the claimant wherein after her name her age is shown as 28 years, occupation is shown as household and business. Thus, counsel for the Appellant, with this part of the evidence, states that Appellant indulged in business of scrap and claims Rs. 2,000 per month and/or Rs. 1,00,000 towards loss in business income (future loss). He also submits that the claimant has further stated in her evidence, para 2, that she cannot properly walk, stand, sit and for that ought to engage a domestic help at the cost of Rs. 2,000 per month. The learned Counsel for the insurance company has invited my attention to the cross-examination. Suggestion was given to the claimant that she was only looking after the household work. Of course, she has denied the suggestion. However, the claimant has admitted that business, i.e., scrap merchant, stands in the name of her husband. She further stated in the cross-examination that there are other workers engaged by her husband. Further, she has stated in this part of the cross-examination that her residence is behind their shop. With this cross-examination, learned Counsel for the insurance company submits that there is absolutely no evidence to show that the claimant was doing the scrap business on the date of accident. This is the only evidence of the claimant which is required to be considered while recording a finding as to whether claimant has indulged in the scrap business and/or assisting her

husband. In a given case it may happen that the wife may give some assistance to her husband in the business of the husband but then in that case the part played by the wife or the assistance rendered by the wife may be of a particular nature. For example, maintenance of account, relieving husband either for lunch, dinner or for some other time to attend to other casualties, etc. Wife, in a given case, may assist her husband while performing particular part of the business. Such assistance of the wife may differ from case to case, pleading and evidence either oral or documentary, can be brought on record by claimant. In the case on hand, considering the oral evidence as well as documentary evidence placed on record, in my view, it cannot be said that the claimant wife has either indulged in the scrap business herself or was assisting her husband.

8. With this, now I proceed to consider the submission of the learned Counsel, the monetary value of performance of the household duty by the Indian wife.

9. Learned Counsel Mr. Garud for the Appellant, at this stage, invited my attention to the three-Judge Bench judgment of the Apex Court in the matter of Lata Wadhwa and Others Vs. State of Bihar and Others, . With the assistance of learned Counsel for the parties, I have read this entire judgment. I am not reproducing the facts. However, suffice to note that the Apex Court, in the matter of Lata Wadhwa (supra), had appointed Mr. Y.V. Chandrachud, Former Chief Justice of India, to determine the compensation payable to the legal heirs of the deceased, as well as compensation payable to the injured persons in an unfortunate happening of that case. There, the issue involved was in respect of evaluating the services rendered by the housewives. In para 10 of the judgment, the Supreme Court estimated the value of services rendered to the house by housewife, to the tune of Rs. 36,000 per annum (Rs. 3,000 per month).

Learned Counsel Mr. Chapalgaonkar, for Respondent insurance company, would submit that in the matter of Lata Wadhwa (supra) housewives were the widows of the employees or wives of the employees working with the reputed company, i.e., Tata Iron and Steel Company. The earnings of their deceased husbands, their status in life, family background and other things were considered by the Supreme Court while evaluating the value of services of those housewives to the tune of Rs. 3,000 per month. In substance, he urged that Rs. 3,000 cannot be taken a figure, i.e., the figure of valuable service of any other or every other housewife. It cannot be universally made applicable to all housewives. Per contra, learned Counsel Mr. Garud for the Appellant states that in the case on hand, the services rendered by the Appellant to her family needs to be valued at the same rate, i.e., Rs. 3,000 per month.

10. Housewife has to render service to every member of the house and/or perform multifarious duties. Status of the family, income of the family, number of members of the family, etc. may differ from case to case. However, the services required to be rendered by the housewives, in my view, in general may be considered. Housewife usually is required to cook for the family. She is supposed to maintain, nurture and raise her own children and take similar care of the other

children in the family, if any. Escorting the children and bringing them back from the school especially at primary schools, take care of the ailing member of the family. She, in fact, need to act as next to nurse. She has to look after the old members of the family. She has to take care of guests and family friends. By and large considering Indian culture, in my view, it can be said that housewife need to perform and render services in many ways. Every member of the family, in fact, is in requirement of presence and services of such housewife. Valuation of her services allegedly rendered to the house may differ from case to case. The figure of Rs. 3,000 per month, in the facts and circumstances of the present case, with status of the Appellant as housewife, in my considered view, can be accepted. With this, in my view, Rs. 3,000 per month can be considered to be value of the services rendered by the present Appellant to her house as housewife, irrespective of pleading and evidence regarding members in the family of the Appellant. From the record, at least it cannot be disputed that Appellant, at the relevant time, was residing under the same roof along with her husband. Rs. 3,000 with multiplication by 12 months comes to Rs. 36,000, i.e., annual value of the services rendered by the housewife, i.e., Appellant. From this figure also, I wish to deduct 3rd amount towards uncertainties which gives us the balance amount of Rs. 24,000. Advocate Mr. Garud insisted that multiplier of 18 should be considered. Per contra, Mr. Chapalgaonkar, learned Counsel submits that multiplier of 16 would suffice the purpose. According to him, Schedule is only guideline and figure mentioned in the Schedule cannot be picked up and applied.

Considering the submission of learned Counsel, in my view, in the facts and circumstances of the case on hand, 16 can be accepted to be the multiplier and with this the sum of Rs. 3,84,000 (Rs. 24,000 x 16) is available towards value of the services rendered by the housewife, i.e., Appellant. I am not oblivious of the fact that the evidence on record shows that the Appellant has sustained 30 per cent disability for which medical officer is examined and certificate is placed on record. I have also considered the submission of the learned Counsel Mr. Chapalgaonkar that medical officer has admitted that the Appellant has not sustained fracture to any organ of the body of the Appellant. Still, the evidence of the Appellant and/or medical officer, which shows that the Appellant cannot sit, walk, and/or her movements are restricted, cannot be lost sight of. Therefore, this 30 per cent disability is considered from the figure of Rs. 3,84,000, i.e., the value of the service rendered by the Appellant housewife. With this, the Appellant is entitled for Rs. 1,15,200 towards the compensation. I am adding Rs. 33,350 for medical bills for which there is no serious dispute. I am also adding Rs. 15,000 towards pain and suffering, with which Appellant-housewife has to live her life till her natural death. Total compensation thus comes to Rs. 1,63,550. At this stage, reference needs to be made to the submission of the learned Counsel Mr. Chapalgaonkar. He submits that value of the service rendered by the Appellant housewife may be considered Rs. 2,000 per month which gives ultimate figure of Rs. 1,25,150 (added with medical bill of

Rs. 33,350 and Rs. 15,000 towards pain and suffering). In my considered view, considering the facts and circumstances of the present case, the submission of learned Counsel Mr. Chapalgaonkar, on this count, cannot be agreed with.

11. One more aspect is required to be considered. Appellant housewife requires domestic help. Question is not of only performance of duty by Appellant housewife to the members of the family but at time question of her own self also needs to be taken into consideration since she had sustained 30 per cent disability. Domestic help I am considering at the rate of Rs. 70 per day, which comes to Rs. 2,100 per month. There, if the annual figure is worked out, it comes to Rs. 25,200. Here also, considering the fact and circumstances I am accepting deduction of 7rd amount and with this figure comes to Rs. 16,800 for twelve months. Applying the multiplier of 16, this figure comes to Rs. 2,68,800. Considering the 30 per cent disability, on this amount of Rs. 2,68,800, amount to which Appellant, in my view, is eligible, comes to Rs. 80,640 for the future. This amount of Rs. 80,640 in my view can be added to earlier figure, i.e., Rs. 1,63,550 and the sum would be Rs. 2,44,190, the total amount of compensation, inclusive of N.F.L., if paid. From this amount, the amount which is already awarded by the Tribunal Rs. 1,27,500 (inclusive of N.F.L.) needs to be deducted and net sum comes to Rs. 1,16,690.

The learned Counsel Mr. Chapalgaonkar points out that total amount of Rs. 1,27,500 with interest is paid. In this view of the matter, the Appellant-applicant now is entitled for Rs. 1,16,690. Mr. Chapalgaonkar, at this stage, states that accepting Rs. 3,000 per month, i.e., value of the services rendered to the house by housewife/Appellant and considering Rs. 70 per day towards domestic help, which ends with Rs. 80,640 may be a double amount of compensation in favour of the Appellant. It is not possible to agree with the submission of learned Counsel Mr. Chapalgaonkar that it amounts to a double compensation.

12. Appeal, therefore, is partly allowed. The amount of Rs. 1,16,690 is enhanced compensation payable to the Appellant. Considering peculiar facts and circumstances of the case, I am not modifying the order of interest even though learned Counsel for the Appellant seek enhancement in the amount of interest. Whatever interest awarded by the trial court, is already paid along with the amount of compensation and has been withdrawn by the Appellant. In view of this fact, I am not now awarding any amount of interest on Rs. 1,16,690, however, I am directing the Respondent insurance company to deposit this sum within 90 days in the trial court. In the facts and circumstances of this case, parties to bear their own costs.