
(2009) 12 BOM CK 0109
In the Bombay High Court
Case No : First Appeal No. 171 of 2000

Namdeo Tulshiram Daiwate and Others	APPELLANT
Vs	
Gurumajursingh Autarsingh Chhatwal, Mohd. Usman Mohd. Hanif and National Insurance Company Ltd.	RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 171, 173

Citation : (2011) ACJ 1341

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : C.A. Joshi, for the Appellant; S.K. Borkar, for the Respondent

Judgement

A.P. Bhangale, J.—By this appeal u/s 173 of the Motor Vehicles Act, appellants-claimants challenge judgment and award dated 16.11.1998 passed by the Additional Member, Motor Accident Claims Tribunal, Akola in MACP No. 113 of 1995.

2. Facts briefly stated are:

Unfortunate Vinod Namdeo Daiwate, aged about 19 years, died in motor vehicle accident occurred on 21.10.1994 at about 4 to 5 p.m. at Rashia-Dhangaon District Khandwa while he was working as cleaner on motor Truck No. MTV/2622 driven rashly and negligently by respondent No. 2. The truck was insured with respondent No. 3 National Insurance Company Limited. The deceased was earning Rs. 1500/-per month as salary as also bhatta/extra allowance at the rate of Rs. 40/- per day.

3. Appellant No. 1 deposed in support of the claim. No other evidence was led. The Tribunal granted compensation in the sum of Rs. 1,68,000/-.

4. Learned Advocate for the appellants in support of appeal submitted that there was no challenge to the evidence led on behalf of claimants. The driver and owner though served remained absent and the insurance Company chose not to

contradict evidence led on behalf of claimant as it did not lead any evidence to the contrary.

5. According to learned Counsel for the appellants, deceased was a young boy, aged about 19 years and a cleaner on the truck earning Rs. 2400/-per month and appellants were dependent on him at the time of his death. The compensation ought to have been computed on that basis with appropriate multiplier which, according to learned Advocate for appellants, is 18. Learned Advocate for appellants also submitted that additional compensation for damage on account of untimely death of victim i.e. loss of love and affection; funeral expenses etc. ought to have been granted along with 12% interest on the amount of award.

6. Learned Advocate for the Insurance Company opposed these submissions contending that award granted was just and cannot be excessive. He also submitted that there was no documentary evidence about salary and allowances of the deceased. Hence, award in the facts and circumstances was proper and need not be interfered.

7. My attention is drawn by learned Advocate for appellants to the ruling in *Sarla Verma and Ors. v. Delhi Transport Corporation and Anr.* reported in 2009 (5) Mh.L.J. 775 (SC) which laid down guidelines for just compensation and the manner of assessing the same. I have perused the ruling.

8. It appears from the evidence led before the Tribunal that testimony of appellant No. 1 Namdeo (father of victim) was believed and monthly income of victim was accepted as Rs. 1500/per month. Daily allowance (bhatta) of Rs. 40/ per day appears left out of consideration by the Tribunal for no reason. The appellant Namdeo deposed that his son Vinod was earning bhatta (daily allowance) at the rate of Rs. 40/- per day. Thus, taking into account the tour of deceased on truck for at least twenty days per month, the amount of earning by way of daily allowances would be Rs. 800/-per month. Thus, total monthly earning of the deceased prior to the time of accident was Rs 1500 + Rs. 800 = Rs. 2300/-and number of dependents upon him at the time of accident were five. The deceased was a bachelor. Hence, after deducting one-third amount towards his personal expenses of Rs. 766/-, the net income available for the dependents was Rs. 1534/-per month. Considering life expectancy, future earning and contribution that deceased would have made had he been alive; bearing in mind prospects of better wages and better employment and at the same time brothers and sisters of deceased would become independent in near future by earning themselves as also not overlooking possibility, premature death of Vinod or his dependent including future prospects and growing inflation and imponderables that may enter into mind and, therefore, the average loss of income for the dependents per month can safely be computed on the enhanced basis of Rs. 1600/-per month at multiplicand of Rs. 19,200/-per year. The multiplier has to be appropriate considering the age of deceased as also ages of parents and other dependents. There is no rigid rule or mathematically exact formula of universal

application. The relevant factors considered objectively and collectively bearing in mind ages of dependents and age of the deceased and by juxtaposing or off-setting the balance on the basis of guidelines for assessing the just compensation.

9. The rough and ready broad formula that crops up in mind on the basis of leading rulings on the subject in respect of motor vehicle accidental death compensation claims by the dependents towards pecuniary loss is to ascertain multiplicand of net annual loss of dependency after deducting self-maintenance or personal expenses of the deceased and then to multiply it by an appropriate multiplier so as to ensure that dependents can get the capital amount that would in normal course yield interest equal to the monthly or yearly dependency for the period of dependency expected to last. To explain it in terms of formula:

Monthly earnings of the deceased (-) Personal expenses/self-maintenance depending upon number of dependents in family = Loss of monthly dependency
 $\times 12$ = annual loss of dependency multiplied by a chosen, multiplier which is appropriate (as guided in Sarla Verma's case (supra))

= Loss of dependency for expected period.

+ Funeral expenses.

+ Loss of love and affection.

+ Loss of consortium for widow/widower, as the case may be.

+ Loss of estate

= Total compensation for motor-vehicle fatal accident claim

+ simple interest payable u/s 171 of the Motor Vehicles Act till payment

= Just and fair compensation (inclusive of no-fault liability paid).

It has to be borne in mind that the compensation amount is just, fair and equitable in the facts and circumstances of the case and not a bonanza, largesse or source of profit as observed in Sarla Verma's case (supra). The Apex Court suggested deduction of personal expenses from the net annual earnings of the deceased tabularised by me as under:

(A). If deceased was bachelor (unmarried).

10. I think appropriate multiplier would be fixed at 16 in the facts and circumstances of the case. Thus, Rs. 19,200 $\times$ 16 = Rs. 3,07,200/- would be loss of dependency for the claimants. In addition, they are entitled to general damages for death of Vinod in the form of loss of love and affection; funeral expenses etc. which are added as Rs. 5000/- + Rs. 5000/- = Rs. 10,000/-. Thus, total compensation computed is Rs. 3,17,200/-. Hence, claimants are entitled to the award of Rs. 3,17,200/- plus simple interest payable u/s 171 of the Act which shall be at the reasonable rate of 6% per annum on the awarded amount from

the date of petition till realisation. That would be fair and just compensation. As observed in *Ningamma v. United India Insurance Co. Ltd.* Reported in AIR 2009 SC 3056 (para 25), the Court is duty-bound and entitled to award just compensation irrespective of the fact whether any plea in that behalf was raised by the claimant or not. In the facts and circumstances, the enhanced amount of compensation along with simple interest and costs of prosecuting the claim as awarded shall be paid to the parents of the victim Vinod. The respondents shall be jointly and severally liable to pay the compensation accordingly in the sum of Rs. 3,17,200/-along with reasonable simple interest at the rate of 6% per annum on the awarded amount from the date of petition till realisation. The award impugned is modified accordingly. The amount already paid/deposited be adjusted accordingly. The appeal is partly allowed with costs throughout in above terms.