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(2003) 04 RAJ CK 0080

In the Rajasthan High Court

Nanji Bhai and Others — APPELLANT

Vs

Bhagwandass D. Darbar and Others — RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Citation : (2006) 3 ACC 113

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Judgement

H.R. Panwar, J.—These five appeals are directed against a common judgment and award dated 1.6.1996 passed by the Motor Accident Claims Tribunal, Dungarpur (for short ''the Tribunal'') whereby the Tribunal awarded compensation in the sum of Rs. 3,04,500 in M.A.C. Case No. 99 of 1994 filed by the appellant-claimant Nanji Bhai and Others; Rs. 2,04,500 in M.A.C. Case No. 100 of 1994 filed by Vishal and others; Rs. 1,09,500 in M.A.C. Case No. 97 of 1994 filed by Harakhchand and others; Rs. 2,000 in M.A.C. Case No. 98 of 1994 filed by Rakesh and Rs. 10,000 in M.A.C.T. Case No. 101 of 1994 filed by Kumari Foram. Aggrieved and dissatisfied with quantum of compensation awarded by the Tribunal, the appellant-claimants hereinabove (for short ''the claimants'') have filed the aforesaid appeals seeking enhancement of compensation.

2. Briefly stated facts to the extent they are relevant and necessary for decision of these appeals are that on 24.11.1993 at about 8.30p.m., Moolchand Bhai, Ranjan Ben, Manjula Ben Rakesh, Kumari Foram and Nanji Bhai were travelling in a taxi car bearing No. GRU 4929, which was driven by the respondent No. 1, Bhagwandass D. Darbar, owned by respondent No. 2 Bhoopendra and was insured with respondent No. 3, New India Assurance Co. Ltd. (for short ''the Insurance Company''). When the said car was plying on the State Highway near Bichhiwara, a truck bearing No. RJ 27-G 0748, which was driven by respondent No. 4 Shanker Lal and was owned by respondent No. 5 Om Prakash and was insured with respondent No. 6 National Insurance Co. Ltd. came from behind and suddenly overtook the car and thereafter, the driver of the truck brought the

truck in front of the car as a result of which there was a collision between the said car and truck. The occupants of the car, namely, Moolchand Bhai, Ranjan Ben and Manjula Ben sustained severe injuries and succumbed to the injuries. Rakesh and Kumari Foram sustained personal injuries. Legal representatives of the deceased persons as also the injured, filed claim applications before the Tribunal for compensation.

3. On appreciation of the evidence produced by the parties, the learned Tribunal held the car driver as well as the truck driver negligent and responsible for the said accident and awarded compensation to the respective claimants as noticed above,

4. I have heard the learned Counsel for the parties and perused the judgment and award impugned. I have also carefully gone through the records of the Tribunal.

5. Learned Counsel for the appellants contended that the Tribunal fell in error in awarding low compensation in favour of the claimants (hereinafter referred to as ''the appellants''). He further contended that there is oral as well as documentary evidence on record by which the income of the deceased persons as also dependency of the claimants have been established. It was further contended that the Tribunal fell in error in awarding compensation on the basis of lump sum method as against the well established multiplier method.

6. The learned Counsel for the respondents supported the judgment and award impugned.

7. Since all the aforesaid claim petitions arose out of one and same accident and between same parties, the Claims Tribunal consolidated all the claim petitions with M.A.C. Case No. 97 of 1994 Harakhchand v. Bhagwandass D. Darbar and recorded the evidence in the said case.

8. In S.B. Civil Misc. Appeal No. 485 of 1996 arising out of M.A.C. Case No. 99 of 1994, deceased Moolchand Bhai, aged 44 years died in the said accident. He was running his business in the name and style ''Gala Stationery and General Stores'' at Ahmedabad. He was income tax payer. Claimants produced on record the income tax returns for the assessment years 1992-93 Exh. 1; 1993-94 Exh. 2 and 1994-95 Exh. 3.

9. P.W. 1 Nanji Bhai stated on oath before the Tribunal that his son Moolchand Bhai, aged 44 years, used to run a business in the name and style ''Gala Stationery and General Stores'' at Ahmedabad. The annual income of the deceased Moolchand Bhai has been proved producing the income tax returns noticed above. He further stated that after the death of his son Moolchand, the business which deceased used to run has completely been closed. He further stated that the claimants were fully dependent on the income of the deceased Moolchand and after his death, there is no source of income for the dependents of the deceased Moolchand. He has also proved the income of his daughter-in-

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law Manjula Ben by producing income tax returns for the assessment years 1991-92 Exh. 10, 1992-93 Exh. 11 and 1993-94 Exh. 12.

10. In S.B. Civil Misc. Appeal No. 487 of 1986, P.W. 2 Harakhchand, husband of deceased Ranjan Ben, aged about 36 years has proved the income of deceased Ranjan Ben by producing income tax returns showing that for the assessment year 1992-93.

11. In S.B. Civil Misc. Appeal No. 484 of 1996, P.W. 3 Kumari Foram stated before the Tribunal that she sustained injuries vide Exh. 13. The injury certificate issued by Seth Vadilal Sarabhai General Hospital shows that there was closed shaft femur right without DNVD.

12. In S.B. Civil Misc. Appeal No. 488 of 1996, the claimant Rakesh sustained 15 cm. long sutured CLW on right front temporal region.

13. In U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , the Apex Court observed that the most commonly practised method of assessing the loss suffered is to calculate the loss for a year and then to capitalise the amount by a suitable multiplier. To that is added the loss suffered on account of loss of expectation of life and the like. After having considered the method adopted by Viscount Simon in Nance v. British Columbia Electric Railway Co. Ltd. (1951) AC 601 and in the House of Lords decision in Davies v. Powell Duffryn Associated Collieries Ltd. (1942) AC 601, the Supreme Court observed that the Courts in India as well in England preferred Davies'' formula as being simple and more realistic. In Davies v. Powell Duffryn Associated Collieries Ltd. (supra), it was observed as under:

The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered. The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death.

14. In Municipal Corporation of Delhi v. Subhagwanti 1966 ACJ 57 , the Apex Court extracted from the judgment in the case of Davies v. Powell Duffryn Associated Collieries Ltd. (supra), as under:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years'' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent and other like matters of speculation and doubt.

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15. After having examined the multiplier method, the Apex Court in U.P. State Road Trans. Corporation v. Trilok Chandra (supra), observed as under:

We thought it necessary to reiterate the method of working out ''just'' compensation because, of late, we have noticed from the awards made by Tribunals and Courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in matter of determination of compensation. It must be realised that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two english decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in Davies (1942) AC 601, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier.

16. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Hon''ble Apex Court held that the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher). It was further observed by the Apex Court that it is necessary to reiterate that the multiplier method is logically sound and legally well established. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Their Lordships held that it must be borne in mind that the multiplier method is the accepted method of ensuring a just compensation which will make for uniformity and certainty of the awards. Their Lordships disapproved decisions of the High Courts who had taken a contrary view and indicated that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases. Thus, the law is settled that the Davies'' formula of multiplier is preferred as being simple and most realistic by the Courts in India as being logically sound and legally well established, departure from which can only be justified in rare and extraordinary circumstances and in very exceptional cases.

17. The cases in hand do not fall within the ambit of extraordinary circumstances or very exceptional cases and, therefore, I am of the considered view that the Tribunal fell in error in awarding lump sum compensation to the respective claimants in the death cases noticed above as against the well established

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multiplier method. Keeping in view the settled principle of law for computation of compensation, the appropriate computation in each death case noticed above needs to be made in these appeals.

18. in S.B. Civil Misc. Appeal No. 485 of 1996, it is established that deceased Moolchand Bhai, aged 4A years, was having a stable business in the name and style ''Gala Stationery and General Stores'' at Ahmedabad, which is evident from the statement of P.W. 1 Nanji Bhai as also the income tax returns filed by the deceased for the assessment years 1992-93, Exh. 1,1993-94, Exh. 2 and 1994-95, Exh. 3. The income tax return for the assessment year 1991-92 shows net profit of Rs. 50,495, for the year 1992-93 Rs. 58,075, for the year 1993-94 Rs. 70,411 and for the year 1994-95 Rs. 71,081. The last return filed by the deceased for the assessment year 1994-95 shows net profit of Rs. 71,081. Considering the fact that the deceased was to spend expenses on business establishment as also personal living expenses, the annual dependency can safely be taken to be at Rs. 35,000. This amount needs to be multiplied by a multiplier of 15 years'' purchase factor, which comes to Rs. 5,25,000. Tribunal awarded Rs. 2,000 for funeral expenses and Rs. 2,500 for loss to estate. This appears to be reasonable. Thus, total compensation works out to Rs. 5,29,000, rounded to Rs. 5,30,000.

19. In S.B. Civil Misc. Appeal No. 486 of 1996, deceased Manjula Ben, wife of deceased Moolchand Bhai, aged 39 years also used to run a business in the name and style ''Gala Trading Company'' at Ahmedabad as is evident from the income tax returns filed by claimants for the assessment years 1991-92, Exh. 10,1992-93, Exh. 11 and 1993-94,Exh. 12. Her net profit from the business for the year 1991-92 was Rs. 61,457, for 1992-93 was Rs. 63,505 and for 1993-94 was Rs. 68,479. Thus, her annual income can safely be taken to be at Rs. 65,000. She left behind her a minor son aged 8 years and three minor daughters aged about 16, 14 and 12 years respectively. Her husband Moolchand Bhai also died in the same accident and compensation has been assessed as noticed above. Keeping in view the fact that the deceased was to maintain business establishment and was required to spend expenses on the business establishment and also had personal living expenses as also for maintaining vehicle, etc., a sum of Rs. 20,000 can be said to be annually contributed to the claimants. This amount needs to be multiplied by a multiplier of 15 years'' purchase factor. Thus, the amount comes to Rs. 3,00,000. The Tribunal awarded a sum of Rs. 2,000 for funeral expenses and Rs. 2,500 for loss to estate, which are quite reasonable. Thus, total compensation comes to Rs. 3,04,500.

20. In S.B. Civil Misc. Appeal No. 487 of 1996, deceased Ranjan Ben aged 36 years, had an income of Rs. 20,590 on account of commission received from JBA ptg. Inks Ltd. for the assessment year 1992-93. For the assessment year 1993-94, her income was from interest and dividend, etc. and as such, for the whole year, the income derived by her was only by interest on the deposits. For the assessment year 1994-95, the source of income has not been disclosed as

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along with the acknowledgement Exh. 9, the computation sheet on the basis of which Exh. 9 was filed, has not been filed by claimants. Therefore, in overall it appears that the deceased used to have an income of Rs. 20,000 to Rs 21,000 from commission. Deducting 1/3rd therefrom as her personal living expenses, the annual dependency to the claimants will come to Rs. 14,000. This amount needs to be multiplied by a multiplier of 15 years'' purchase factor. Thus the amount comes to Rs. 2,10,000. The Claims Tribunal awarded sums of Rs. 5,000 for love and affection, Rs. 2,000 for funeral expenses and Rs. 2,500 for loss to estate which appears to be proper. However, claimant Harakhchand is entitled for Rs. 20,000 for loss of company and consortium. Thus, the total compensation works out to Rs. 2,39,500 rounded to Rs. 2,40,000.

21. In S.B. Civil Misc. Appeal No. 488 of 1996, Rakesh has suffered one simple injury. The Tribunal awarded Rs. 2,000. There is nothing on record to suggest that any expense was incurred for the treatment. Therefore, the compensation awarded by the Tribunal appears to be just and proper and calls for no interference.

22. In S.B. Civil Misc. Appeal No. 484 of 1996, Kumari Foram has suffered injury on femur bone. The Tribunal awarded Rs. 10,000 in all. Considering all the facts and circumstances of the case and keeping in view the nature of injury and that the claimant underwent treatment for bone injury, in my view, the compensation awarded is on lower side. Thus, for the fracture injury, a sum of Rs. 25,000 is just and proper compensation, which would include physical pain and mental agony suffered by the claimant as also the expenses incurred on treatment and conveyance, etc.

23. No other point was urged.

24. In the result, S.B. Civil Misc. Appeal Nos. 485, 486, 487 and 484 of 1996 are allowed. The compensation awarded by the Claims Tribunal in S.B. Civil Misc. Appeal No. 485 of 1996 is enhanced from Rs. 3,04,500 to Rs. 5,30,000; in S.B. Civil Misc. Appeal No. 486 of 1996 is enhanced from Rs. 2,04,500 to Rs. 3,04,500; in S.B. Civil Misc. Appeal No. 487 of 1996 is enhanced from Rs. 1,09,500 to Rs. 2,40,000; and in S.B. Civil Misc. Appeal No. 484 of 1996 is enhanced from Rs. 10,000 to Rs. 25,000. The enhanced amount shall carry interest at the rate of 9 per cent per annum from the date of judgment till realisation. However, S.B. Civil Misc. Appeal No. 488 of 1996 has no merit. Accordingly, it is dismissed. There shall be no order as to costs.

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