

(2012) 02 CHH CK 0040
In the Chhattisgarh High Court
Case No : M.A. (C) No. 812 of 2009

Narendra Kosare and Another

APPELLANT

Vs

Kundanlal Bairwa and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 2 CGBCLJ 233 : (2012) 3 MPJR 33

Hon'ble Judges : Rajeev Gupta, C.J.;Rangnath Chandrakar, J

Bench : Full Bench

Advocate : R. Pradhan, for the Appellant; Sonia Kuldeep, Advocate for Respondent No. 1, Mr. Dashrath Gupta, Advocate for Respondent No. 2 and Mr. Amiyakant Tiwari, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajeev Gupta, C.J.—The unfortunate parents of deceased Dixit Kumar are the appellants before us in this appeal for enhancement of the compensation awarded by 7th Additional Motor Accident Claims Tribunal, Durg, (for short the Tribunal") vide award dated 31.1.2009, passed in Claim Case No. 47/2007. As against the compensation of Rs. 20,00,000/- claimed by the appellante/claimants unfortunate parents of deceased Dixit Kumar, by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 1.10.2006, the Tribunal awarded a total sum of Rs. 2,49,500/- as compensation along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

2. The Tribunal on a close scrutiny of the entire evidence led before it held that the claimants' son Dixit Kumar died on account of the injuries sustained by him in the motor accident on 1.10.2006; the accident occurred due to the negligence of the motorcyclist of the motorcycle bearing registration No. CG08-F/0893, on which deceased Dixit Kumar was travelling as pillion-rider and the driver of the other vehicle Maruti Car bearing Registration No. CG-07-ZD/2412; the

negligence of the motorcyclist and the driver of Maruti Car was to the extent of 60% : 40% respectively; as the above Maruti Car on the date of the accident was insured with the United India Insurance Company Limited and the Insurance Company could not establish any breach of the policy conditions, the Insurance Company was liable to pay 40% of the compensation assessed to the claimants and the remaining 60% of the compensation was to be paid by the owner-cum-driver of the motorcycle.

3. The Tribunal assessed the income of the deceased at Rs. 3,000/- per month and Rs. 36,000/- per annum. By deducting 1/3rd of Rs. 36000/- towards the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 24,000/- per annum. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of 10, the compensation was worked out to Rs. 2,40,000/- by awarding further sum of Rs. 9,500/- under other heads, the Tribunal awarded a total sum of Rs. 2,49,500/- as compensation to the claimants for the death of deceased Dixit Kumar in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 2,49,500/- @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

4. Shri R. Pradhan, learned counsel for the appellants submitted that the Tribunal has erred in directing the insurer of the Maruti Car to pay only 40% of the compensation assessed holding it to be a case of "Contributory Negligence", whereas in fact it was a case of "Composite Negligence, vis-à-vis deceased Dixit Kumar; in assessing the income of the deceased at Rs. 3,000/- per month and Rs. 36,000/- per annum only; in selecting the lower multiplier of 10; and in awarding low compensation of Rs. 2,49,500/- only.

5. Shri Dashrath Gupta, learned counsel for respondent No. 2, the United India Insurance Company Limited, on the other hand, submitted that the Tribunal has awarded excessive sum of Rs. 2,49,500/- by deducting only 1/3rd of the income of the deceased towards his personal expenses as the deduction in that behalf ought to have been to the extent of 50% of the income of the deceased in view of the dicta of the Apex court in the cases of Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

6. Shri Amiyakant Tiwari, learned counsel for respondent No. 3, Dev Kumar, owner-cum-driver of the motorcycle also submitted that the Tribunal has erred in directing respondents No. 3 & 4 to pay 60% of the compensation assessed to the claimants.

7. Ms. Sonia Kuldeep, learned counsel for respondent No. 1 Kundan Lal Bairwa, owner of the Maruti Car also supported the award.

8. Admittedly, claimants son Dixit Kumar was a pillion-rider on the motorcycle which was involved in the accident resulting in his death. It was nobody's case before the Tribunal nor before us that he was driving any of the two vehicles

involved in the accident.

9. The Apex Court while outlining the distinction between the cases of "Contributory Negligence" and "Composite Negligence" in the case of T.O. Anthony Vs. Karvarnan and Others, , observed in paras 6 and 7:

6. Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicle are involved in an accident and one of the drives claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore, where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50 : 50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed in correct the said error.

10. In the above factual scenario of the present case and in view of the above quoted dictum of the Apex Court in the case of T.O. Anthony Vs. Karvarnan and Others (Supra), the finding recorded by the Tribunal holding the present case to be a case of "Contributory Negligence vis-?-vis deceased Dixit Kumar cannot legally be sustained and is liable to be set aside.

11. The Tribunal has also erred in deducting only 1/3rd of the income of the deceased towards his personal expenses. Deceased Dixit Kumar on the date of the accident was unmarried and the claimants are his parents.

12. The Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, while laying down the guidelines for

deduction towards the personal expenses, observed:

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

13. The multiplier of 10 selected by the Tribunal considering that the claimants are parents of the deceased cannot be found fault with in view of the dictum of the Apex Court in the case of *The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another*, wherein it was held that in those cases where the claimants are parents of the deceased, the multiplier should never exceed 10.

14. For the foregoing reasons, we deem it proper and in the interest of justice that the matter be remanded back to the Tribunal for passing award afresh inline with the observations made hereinabove.

15. The appeal filed by the appellants/claimants, therefore, is allowed. By setting aside the impugned award dated 31.1.2009, the matter is remanded back to the Tribunal for passing fresh award giving proper opportunity to the parties in the matter. As the accident relates to the year 2006, the Tribunal is directed to decide the matter finally within six months from the receipt of the Tribunal's records. Parties are directed to appear before the Tribunal on 19.3.2012.

16. Additional Registrar (Judicial) is directed to send the Tribunal's records within three days. No order as to costs.