
(2013) 03 MP CK 0082

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 803 of 2013

National Insurance Comp. Ltd.

APPELLANT

Vs

Badi Bahu @ Haribai

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : (2013) 4 MPHT 390 : (2013) 4 MPLJ 415

Hon'ble Judges : M.C. Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Garg, J.—At the consent of learned counsel for the parties they are heard finally.

This appeal has been filed by the Insurance Company against the award dated 4/12/2012 passed by Motor Accident Claims Tribunal, Jabalpur in Claim Case No. 212/2012 only on the ground that future prospects have been considered by the learned Accident Claims Tribunal by adding 30% annual income of the deceased.

It is submitted that in a death case the Claims Tribunal while considering the future prospects, has added 30% annual income of the deceased who was aged more than 30 years, however, such increase was not justified as there is no provision under the Motor Vehicles Act to consider such enhancement on the ground of future prospects. Para-16 is relevant which reads thus:

2. This argument on behalf of the learned counsel for the appellant has been opposed by learned counsel for respondents 1 to 8 who accepts the notice of the appeal as having filed caveat petition.

3. I have heard learned counsel for both the parties.

4. My attention has been drawn to a judgment of Hon''ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, wherein question of addition of annual income for future prospects was discussed

in para-10 while relying upon the judgment in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, wherein the question of additional income for future prospects was discussed in para-10 of the said judgment. In the aforesaid judgment it has been held that formally it was followed by the Apex Court in Susamma Thomas (supra) that a case should be complied with slide modification. Para 10 and 11 are relevant which read as under:

Question (i) - addition to income for future prospects:

10. Generally, the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects? In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependants); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the salary of the deceased, aged 39 years at the time of death, was Rs. 1032/- per month. Having regard to the evidence in regard to future prospects, this Court was of the view that the higher estimate of monthly income could be made at Rs. 2000/- as gross income before deducting the personal living expenses. The decision in Susamma Thomas was followed in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , where the deceased was getting a gross salary of Rs. 1543/- per month. Having regard to the future prospects of promotions and increases, this Court assumed that by the time he retired, his earning would have nearly doubled, say Rs. 3000/-. This court took the average of the actual income at the time of death and the projected income if he had lived a normal life period, and determined the income as Rs. 2200/- per month. In Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , as against the actual salary income of Rs. 42,000/- per annum, (Rs. 3500/- per month) at the time of accident, this court assumed the income as Rs. 45,000/- per annum, having regard to the future prospects and career advancement of the deceased who was 40 years of age.

11. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , this Court increased the income by nearly 100%, in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , the income was increased only by 50% and in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the

taxable range, the words "actual salary" should be read as "actual salary less tax"]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

5. In the present case, the age of the deceased was only 39 years, however, as per the post-mortem report it was taken as 40 years. In these circumstances, addition of income @ 30% for future prospects is fully justified and is in accordance with law laid down by the Hon"ble Apex Court. I do not find any infirmity in the award passed by the Claims Tribunal. The appeal is dismissed at the admission itself.