
(2014) 02 BOM CK 0200
In the Bombay High Court
Case No : First Appeal No. 505 of 2002

National Insurance Company Limited	APPELLANT
Vs	
Shrawanji and Others	RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 2 ABR 521 : (2014) 2 ACC 880 : (2014) 4 ALLMR 107 : (2014) 5 BomCR 436

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

Bench : Single Bench

Advocate : G.N. Khanzode, for the Appellant;

Final Decision : Partly Allowed

Judgement

S.B. Shukre, J.—This appeal is filed against the judgment and award passed on 30th April, 2002 in Claim Petition No. 757 of 1997 by the Motor Accident Claims Tribunal, Nagpur. The present respondent Nos. 1 to 4 had preferred Claim Petition u/s 166 of the Motor Vehicles Act, 1988 on account of death of Manoj son of respondent Nos. 1 and 2 and brother of respondent Nos. 3 and 4 herein. Death of Manoj occurred in a road accident which took place on 19th June, 1997 on Nagpur-Chhindwara Road, Near Koradi Tank. On that day, the deceased was proceeding by his Scooter bearing registration No. MP-28-3675 and as he reached a spot situated near Koradi Tank, one truck bearing registration No. MTG-2042, gave a dash to the Scooter of the deceased from behind and as a result deceased Manoj sustained injuries and died on the spot. The truck was owned by the respondent No. 5 and insured with appellant. It was driven by the respondent No. 6, against whom the present appeal has been already dismissed in default. It was the contention of the respondent Nos. 1 to 4 that this accident occurred only due to rash and negligent driving of the offending truck. They submitted that deceased Manoj was an employee of Zilla Parishad, Nagpur and working as a Primary School Teacher at Kochi, Taluka Saoner, Distt. Nagpur and

earning Rs. 4,000/- per month. They submitted that they were dependent upon the deceased. Therefore, they filed a Claim Petition against the present appellant and respondent Nos. 5 and 6 claiming compensation of Rs. 23,00,000/-, which was restricted to the tune of Rs. 10,00,000/-.

2. The Tribunal, after considering the evidence available on record, allowed the petition and granted compensation of Rs. 8,18,000/- to the respondent Nos. 1 and 4 and directed the appellant, respondent No. 5 and driver of the offending vehicle to pay the same with interest at the rate of 9% p.a. from the date of petition.

3. Not satisfied with this award, the appellant/Insurance Company is before this Court in this first appeal.

4. I have heard Mr. G.N. Khanzode, learned counsel for the appellant. None appeared for the respondents, although duly served.

5. I have carefully gone through the impugned judgment and award and record of the Court below. Now, the only point which arises for my determination is:

Whether the quantum of compensation fixed by the M.A.C.T. Nagpur is just and proper?

6. The appellant has challenged the judgment and award passed by the Tribunal on the grounds that the Tribunal has taken into account the monthly income of deceased Manoj at Rs. 6,000/- per month, although there was no evidence in this regard, that it has made wrong calculations in determining the total dependency of respondent Nos. 1 to 4 upon deceased Manoj and that it applied wrong multiplier in fixing the final amount of compensation.

7. On going through the evidence adduced by the respondent Nos. 1 to 4, I find that the Tribunal has wrongly taken the income of deceased Manoj to be at Rs. 6,000/- per month. There is no dispute about the fact that deceased Manoj was in permanent employment of Zilla Parishad and was working as a Primary Teacher in the Primary School of Zilla Parishad at Kochi. His salary certificate has been proved through the evidence of PW 3 Anil Tijare (Exhibit-18). The salary certificate is at Exhibit-27 and it shows that at the time of death, gross monthly salary of the deceased Manoj was Rs. 3,665/-. If we deduct the statutory dues, which were of Rs. 590/- in total, as seen from the salary certificate (vide Exhibit-27), the net salary of the deceased would come to Rs. 3,075/- per month. No doubt, PW 3 Anil has deposed that deceased Manoj was eligible to draw pay and allowances as per the recommendations of the Fifth Pay Commission and according to those recommendations, his gross pay would have been Rs. 6,000/- per month. But, he has not stated the date from which the recommendations of Fifth Pay Commission would have been or were to be implemented. There is no evidence brought on record by the respondent Nos. 1 to 4 to establish that from the date of accident, deceased Manoj would have drawn monthly salary in accordance with the recommendations of Fifth Pay

Commission and it would have been Rs. 6,000/- per month. It is now well settled law that monthly income that is required to be taken into account for the purpose of claim for compensation, is the monthly income earned by the deceased on the date of accident together with other applicable criterion, if any. A useful reference in this regard may be made to elaborate exposition of principles governing computation of compensation in death cases made by the Hon'ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Therefore, the Tribunal should not have considered the monthly income of the deceased at Rs. 6,000/- per month.

8. The question however, is: What should have been the correct figure of the monthly income of the deceased? According to the learned counsel for the appellant, only the net income of the deceased at the time of death should be taken into consideration and nothing more. There is, however, only half truth in this contention. Not only the income at the time of death which should be taken into account but also the possibility of addition to it on account of further prospects that should be considered, as held by the Hon'ble Supreme Court in the case of Sarla Verma (supra). The Hon'ble Supreme Court has held in the said case of Sarla Verma (supra) that if the deceased was self-employed or in permanent job and below 40 years of age, 50% of actual salary should be added to actual salary income and if the deceased was aged between 40 to 50 years, 30% of actual salary should be added to actual salary income. Therefore, the contention of the learned counsel for the appellant in this regard cannot be accepted and it would be necessary to make further addition of 50% of actual salary to the salary earned by the deceased at the time of his death on account of future prospects. Such addition has been found necessary as a person who is self employed or in a permanent job, is expected to make further progress in his profession or job and earn higher income as he carries on further in his profession or job. I have already found that the net salary of the deceased at the time of his death was Rs. 3,075/- per month. 50% of the actual salary would be Rs. 1,537.50 and adding the same to the net income, the monthly income of the deceased would come to Rs. 4,612.50. It is rounded off to Rs. 4,615/- per month. So, this amount would have to be taken as monthly income of the deceased at the time of his death.

9. The Tribunal has made 1/3rd deductions from the monthly income of the deceased so as to make up for his personal and living expenses. Ordinarily, in the case of a bachelor, 50% deduction on this count is made. In the instant case, PW 1 Mirabai (Exhibit-18), has given an admission in her cross-examination taken on behalf of the appellant that Manoj was unmarried. Therefore, instead of 1/3rd deduction, one half deduction on account of personal and living expenses from the monthly income of the deceased would have to be made. The amount of one half deduction from the monthly income of Rs. 4,615/- comes to Rs. 2,307/- (fraction of Ps. Fifty is not considered) and when it is deducted from monthly income, the amount that comes is Rs. 2,308/-, and this amount can be said to be the contribution made by the deceased to his family every month. For

12 months, this contribution would come to Rs. 27,696/- and that would be the annual dependency of the respondent Nos. 1 to 4 upon the income of the deceased.

10 Now comes the question of selection of appropriate multiplier. Learned counsel for the appellant has submitted that the Tribunal has committed serious error of law in applying the multiplier based upon the age of the deceased. According to him, the multiplier should have been selected with reference to the age of the parents and in support, he places his reliance upon these cases: 1) Gyan Chand Jain and another vs. Permanand and others, reported in 2003 (1) T.A.C. 490 (S.C.), 2) National Insurance Co. Ltd. Vs. Smt. Nanubai, Shekhar and Abdul Rauf, and 3) Ramesh Singh and Another Vs. Satbir Singh and Another, .

11 No doubt, in the cases of Gyan Chand Jain and Ramesh Singh (supra), the Hon''ble Apex Court has held that the age of the parents is relevant factor for the choice of multiplier and has also selected the multiplier by making reference to the age of the parents in those cases. In the case of Nanubai (supra) learned Single Judge of this Court has considered the decision of the Hon''ble Apex Court in the case of Sarla Verma and others (supra) and recorded a finding that the multiplier applied in that case by considering the age of the deceased as well as age of the dependents as just and proper. So, these cases together would show that apart from the age of the deceased, the age of the parents is also a relevant factor for selection of appropriate multiplier. However, in the subsequent case of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, the Hon''ble Apex Court considered at length the principles of computation of compensation in death cases as laid down in the case of Sarla Verma and others (supra) and held that the selection of multiplier is based upon the age of the deceased and not on the basis of the age of dependents and that the age of dependents has no nexus with the computation of compensation. The observations of the Hon''ble Apex Court made in paragraph 17 in the judgment rendered in the said case are relevant and they are reproduced as under:

The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

12 The law laid down in the aforestated case of Amrit Bhanu Shali is later in point of time and has been stated after considering the judgment of the Hon''ble Apex Court rendered in the case of Sarla Verma (supra). It marks a significant change in the factors which are required to be taken into account for selection of multiplier and, therefore, this Court would have to follow the same.

13 The Tribunal has applied the multiplier of 17 as given in the second schedule. However, the multiplier that has to be chosen would have to be as per the law laid down in the aforestated case of Amrit Bhanu Shali by considering the age of the deceased at the time of death and the applicable multiplier would have to be

selected from column 4 of the table prepared by the Hon'ble Apex Court in the case of Sarla Verma (supra). The age of the deceased was 23 at the time of accident and, therefore, as per column 4 of the said table, the appropriate multiplier would be, not 17, but 18 in this case. By application of this multiplier to the annual family contribution made by the deceased Manoj, which is of Rs. 27,696/-, the total loss of dependency of respondent comes to Rs. 4,98,528/-, which is rounded off to Rs. 4,99,000/-. Funeral expenses of Rs. 2,000/- would have to be added to this amount and that would make the total compensation payable to the respondent Nos. 1 to 4 to be at Rs. 5,01,000/-. In the circumstances, I find that the amount of compensation awarded by the Tribunal, as rightly submitted by learned counsel for appellants, has not been properly computed and the judgment and award of the Tribunal to this extent needs to be modified. However, as regards the rate of interest granted by the Tribunal, I find no justification for making any change in that regard, as it does not appear to be on the higher side, given the fact that no evidence has been shown to me by the appellant that 9% interest rate granted by the Tribunal did not represent the prevailing interest rates. The point is answered accordingly. The appeal deserves to be partly allowed with proportionate costs. Accordingly, the appeal is partly allowed with proportionate costs and directions as given hereunder are issued:

A) The impugned judgment and award directing payment of compensation of Rs. 8,18,000/- to respondent Nos. 1 to 4 are modified and substituted by the direction that the appellant and respondent No. 5 and also the driver of the offending truck shall, jointly and severally, pay the compensation of Rs. 5,01,000/- to respondent Nos. 1 to 4, out of which respondent Nos. 3 and 4 shall be entitled to receive their 1/10th share each therein, which is Rs. 50,100/- each, together with interest at the rate of 9% p.a. from the date of petition till final payment.

B) The impugned award stands modified in the above terms.

C) The decree be drawn up accordingly.