

(2014) 07 DEL CK 0236
In the Delhi High Court
Case No : Mac. App. 508/2014

New India Assurance Co. Ltd.

APPELLANT

Vs

Devnath Thakur

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 168

Citation : (2014) 07 DEL CK 0236

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Ravinder Singh, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Suresh Kait, J.

CM No. 9531/2014 (for exemption)

Exemptions allowed, subject to all just exceptions.

The application stands disposed of.

MAC. APP. 508/2014

1. Vide the present appeal, the appellant/Insurance Company has assailed the impugned award dated 07.04.2014, whereby the learned Tribunal has awarded compensation for a sum of Rs. 6,56,646/- with interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the amount.

2. Mr. Ravinder Singh, learned counsel appearing on behalf of the appellant/Insurance Company submits that age of the deceased, Pankaj Thakur was 17 years on the date of the accident, i.e., 11.11.2008. The claimants claimed that the deceased was earning around Rs. 6,000/- to Rs. 7,000/- per month and simultaneously studying in 10th class. Since the claimants could not prove the avocation of the deceased and income earned by him, therefore, the learned

Tribunal has assessed the income of the deceased as Rs. 3683/- per month as applicable to an unskilled worker at the prevalent time as per the Minimum Wages Act, 1948.

3. Learned counsel further submits that the learned Tribunal has erred in adding 50% of the income of the deceased in his actual income towards future prospects being contrary to the settled law in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which has been further affirmed by the Full Bench of the Apex Court in the case of Reshma Kumari & Ors. Vs. Madan Mohan & Anr., delivered in Civil Appeal No. 4646 of 2009 on 02.04.2013.

4. Second issue argued by the learned counsel for the appellant is that the deceased was 17 years of age on the date of the accident, he was bachelor and the claimants are the parents. Therefore, the learned Tribunal has erred in applying the multiplier of 18 contrary to the settled law.

5. So far as the issue of income of the deceased is concerned, he was studying in 10th class, simultaneously doing private tuitions and earning around Rs. 6,000/- to Rs. 7,000/- per month. Moreover, nothing contrary came in the cross-examination to dispute the fact that the deceased was not a student of 10th class. PW1, Devender Nath Thakur, has not adduced any corroborative evidence or particulars to whom the deceased used to give tuitions etc., however, he deposed that he was earning through tuitions. As deceased was found to be potential earning member for the family, therefore, the learned Tribunal has assessed his monthly income as Rs. 3683/- applicable to an unskilled worker as per the Minimum Wages Act, 1948.

6. As regards the issue of future prospects is concerned, the same has been dealt with by this Court in the case bearing MAC. APP. No. 846/2011 titled as ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors., decided on 30.09.2013, wherein held as under:-

22. The Apex Court in Rajesh has discussed the issue regarding the assessment of future prospects; and has also come to a specific conclusion that the self-employed or persons with fixed wages are entitled for future prospects. The Apex Court succinctly specified the reasons for the same considering the socio-economic changes in the society. It also made thrust on the age of the deceased as one of the factors for computing the future prospects.

23. I note, the Apex Court in Santosh Devi noted the finding in Sarla Verma; and canvassed a different reasoning regarding the assessment of future prospects: one of the factors in the multiplicand.

24. The Apex Court in Santosh Devi, did not refer the matter to a Larger Bench, whereas it followed all the principles formulated in Sarla Verma except the finding in respect of the assessment of future prospects for the persons falling under the category of self-employment/fixed wages.

25. It is legally significant to note the dictum laid down by the Constitution Bench

of Apex Court in Central Board of Dawoodi Bohra Community and Anr. (Supra). The Apex Court held as under:

12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

26. While considering the case of Santosh Devi, the Apex Court did not feel to refer the matter to a Larger Bench. Therefore, it can be concluded that there is no contradictions in the finding of Sarla Verma and Santosh Devi, in turn the Apex Court extended the scope and ambit of Sarla Verma through Santosh Devi.

27. In view of above, this court is guided by the legal principles as set out in Reshma Kumari and Rajesh in order to assess the just compensation as it is envisaged in Section 168 of Motor Vehicles Act, 1988. In Reshma Kumari, the Apex Court affirmed the findings of Sarla Verma; and in Rajesh, the Hon'ble Supreme Court has agreed with the dictum of Santosh Devi. Specifically, for the assessment of future prospects in respect of the persons falling under the category of self employment/fixed wages this court is guided by the dictum laid down in Rajesh. In my considered opinion, there is no contradiction in the dictum laid down by the Apex Court in the cases of Reshma Kumari and Rajesh.

7. Therefore, keeping in view the facts noted above and settled law, I do not find any substance in the arguments of the learned counsel on this issue.

8. The issue of multiplier has been dealt with by this Court in the case of Mohd. Hasnain & Ors. Vs. Jagram Meena & Ors. bearing MAC. APP. No. 152/2014, decided on 24.03.2014, wherein held as under:-

21. The maximum value of the multiplier is fixed at "18", which is fairly representing the purchasing capacity of a victim in a stable economy. In the ascertainment of purchasing capacity of the victim, the age of the claimant has no relevance because of the fact that it has no nexus with the assessment of the loss of dependency.

22. Moreover, subsequent to the introduction of Section 163A and the Second Schedule of the Act, the Apex Court in Trilok Chandra, introduced a structural change by increasing the numerical value of multiplier from "16" to "18", whereas it had been fixed at "16" as per Susamma Thomas. Specifically, there was no variation in respect of fundamental premise of "multiplier method" as held in Susamma Thomas. In Trilok Chandra, the apex court has taken the second schedule as a guiding factor.

23. Significantly, the Apex Court in the case of Reshma Kumari and M. Nag Pal has followed the age of the victim as a factor for selecting the multiplier. Specifically, in the selection of multiplier for the age group up to "15" the Apex Court never considered the age of the claimants as a relevant factor. Therefore, this court finds no reason to adopt a different formula for the victim who is above "15" years of age, whereas the relevant factors have been adopted by the Apex Court such as (i) age of the deceased (ii) income of the deceased and (iii) number of dependents. The Apex Court, while formulating the relevant factors for the assessment of loss of dependency, the age of the claimants never considered as a factor. Finally, in the assessment of dependency, the courts/tribunals are computing the purchasing capacity of the deceased; not the claimants. Therefore, I am of the considered opinion that the age of the victim is the proper factor for selecting the correct multiplier.

9. Admittedly, age of the deceased was 17 years on the date of the accident and taking note of the same, the learned Tribunal has applied the multiplier of 18 appropriately.

10. Therefore, keeping in mind the view taken by this Court in the aforementioned case and the facts and circumstances of this case, I find no merit in the instant appeal.

11. Accordingly the same is dismissed in limine.

12. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company and the compensation with upto date interest in favour of the respondents/claimants in terms of the award dated 15.03.2014 passed by the learned Tribunal on taking necessary steps by them.

CM. No. 9530/2014 (for stay)

With the dismissal of the appeal itself, the instant application has become infructuous. The same is accordingly dismissed.