
(2014) 06 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 97/2005

New India Assurance Co. Ltd.

APPELLANT

Vs

Santosh and Others

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 147, 163-A, 166

Citation : (2015) 2 ACC 921 : (2015) 1 CDR 518

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Jagdish Vyas, Advocates for the Appellant; Abhishek Mirdha and Sunil Mehta, Advocates for the Respondent

Judgement

Sandeep Mehta, J.—The instant Misc. appeal has been preferred by the appellant New India Assurance Company Limited against the judgment and award dt. 16.9.2004 passed by the learned Motor Accident Claims Tribunal, Nagaur in MAC. Case No. 6/2003 whereby compensation to the tune of Rs. 11,22,000/- was awarded to the respondents claimants upon the death of Sangram Ram along with interest @ 5%. The appellant Insurance Company has approached this Court seeking reduction in the quantum of compensation awarded to the respondents.

2. Facts in brief:

The respondent Sangram Ram was proceeding on a motor cycle No. RJ 21-535 on 20.11.2002 at about 6.30 P.M. between Bhadana and Amarpura. A tractor No. RJ 10 R. 1855 being driven in a rash and negligent fashion by its driver Dhanna Ram collided with the motor cycle causing the death of Sangram Ram at the spot.

3. The respondents No. 1, 2 and 3 being the legal representatives/dependents of Sangram Ram filed a claim application u/S. 166 of the Motor Vehicles Act praying for total compensation of Rs. 26,77,774/-. It was averred in the claim application

that Sangram Ram was aged 22 years at the time of accident. He was working as Helper in the Public Health and Engineering Department, Nagour and was drawing a salary of Rs. 4923/- per month. The claimants averred that they suffered total loss of income because of the death of Sangram Ram and accordingly the claim was filed seeking compensation under the head of loss of income and under various other heads.

4. The respondent Insurance Company filed a written statement raising a plea that the claim was highly exorbitant. The driver of the tractor was not having licence of appropriate category to drive the tractor. It was also pleaded that rash and negligent driving of the motor cycle by the deceased was a contributory factor in the accident. A trolley was attached with the tractor contrary to the insurance policy and thus there, was breach of the conditions of the insurance policy. The learned Tribunal framed following issues for consideration.

5. The claimants examined three witnesses in support of their case. No evidence was led on behalf of the non-claimants. The learned Tribunal, on the basis of the oral, documentary evidence and the pay certificates of the deceased held his salary to be Rs. 4923/- per month which was rounded off to Rs. 5000/- per month. The Tribunal accepted the plea raised by the claimants that the deceased had a long tenure of service to go, and thus 1000% rise in pay and emoluments was added to the income by applying future prospects. Thereafter the average monthly income of the deceased till he reached the age of superannuation was assessed at Rs. 7500/- from which 1/3rd was deducted towards personal needs and requirements of the deceased himself. The age of the deceased at the time of death was held to be 38 years. Multiplier of 18 was applied for calculating the loss of income which was assessed at Rs. 10,80,000/-. The respondent wife was awarded Rs. 20,000/- towards loss of consortium. Rs. 2000/- was awarded for funeral expenses. Out of the total compensation, the claimant No. 2 being the minor daughter of Sangram Ram was awarded Rs. 4,00,000/- (Rs. Four Lacs only) and the claimant No. 3 being the mother was awarded Rs. 1,00,000/- (One Lac only) inclusive of the award under the head of loss of love, affection and service. Thus total compensation to the tune of Rs. 11,22,000/- was awarded to the claimants.

6. The appellant Insurance Company has approached this Court by way of this appeal seeking reduction in the award.

7. Mr. Jagdish Vyas, learned counsel for the appellant vehemently contended that the learned Tribunal committed a grave error in accepting the gross salary of the deceased to be Rs. 4923/- without making any deduction therefrom. As per him, the age of the deceased on the date of accident as per the documentary evidence i.e. his service record was 36 years. Thus as per him, the appropriate multiplier to be applied in the light of Sarla Verma's case would be 15 instead of 18 as done by the Tribunal. He further urged that the claimant No. 1 i.e. Santosh, the widow of the deceased admitted in her cross examination that she was granted compassionate appointment in the Water Works Department in

place of her husband and was drawing a salary of Rs. 5000/- p.m. Thus, he contended that the gross salary of the deceased should not have been accepted for assessing the award towards loss of income and proportionate deduction from the salary was required looking to the fact that the respondent Santosh had been granted compassionate appointment in place of her husband (the deceased). He further contended that the formula adopted by the learned Tribunal for assessing the rise in income by future prospects is unjust.

8. Mr. Vyas relied on the decision rendered by the Hon''ble Supreme Court in Bhakra Beas Management Board Vs. Smt. Kanta Aggarwal and Others, in support of the contention that when one of the dependents gets compassionate appointment subsequent to the death of the victim, the award has to be assessed by deducting the salary received by the dependent pursuant to such appointment from the income of the deceased. Thus, he prayed that the appropriate deduction be directed in the award passed by the learned Tribunal.

9. Per contra Mr. Abhishek Mirdha, learned counsel for the claimants-respondents No. 1 to 3 opposed the submissions advanced by the learned counsel for the appellant. He relied on the decision rendered by the Hon''ble Supreme Court in the case of Vimal Kanwar and Others Vs. Kishore Dan and Others, and the decision rendered by this Court in the case of Metri Sharma (Smt.) & Ors. vs. Rakesh Kumar & Ors., reported in 2014 (1) DNJ (Raj.) 230 and urged that the ratio of Bhakra Beas Management Boards case does not apply to the present case as the Supreme Court was dealing with an entirely different set of facts while deciding that case. He urged that rather than reducing the award, this Court should consider enhancing the interest of 5% awarded by the learned Tribunal by exercising powers under O. 41 Rule 33 C.P.C. He urged that the interest of 5 % applied by the Tribunal on the award is unjustly low and deserves to be enhanced to 12 % from the date of filing of claim application.

10. Mr. Sunil Mehta, learned counsel appearing for the respondents No. 4, 5 and 6 owners and driver of the vehicle in question supported the submissions advanced by the learned counsel for the appellant.

11. I have considered the arguments advanced at the bar. Perused the record and the case law cited at the bar.

12. The first issue which calls for consideration of this Court is regarding the reduction in claim on the ground of the claimant No. 1 Santosh having gained compassionate appointment in the P.H.E.D. Department in place of her husband. Smt. Santosh, in her testimony before the learned Tribunal admitted this fact in reply to a question put to her by the learned counsel for the Insurance Company. Much stress was placed by Mr. Vyas, learned counsel for the appellant on the decision rendered by the Hon''ble Supreme Court in Bhakra Beas Management Board''s case in support of this argument.

13. I have carefully and respectfully gone through the judgment relied upon by the learned counsel for the appellant in the case of Bhakra Beas Management

Board (supra). The issue involved before the Hon"ble Supreme Court in that case was whether the compensation sought by the claimant on the ground of the accidental death of her husband should be reduced while computing the compensation as she was granted compassionate appointment in place of her husband. In that case, the peculiar facts were that the deceased was travelling in a vehicle of Bhakra Beas Management Board. The claim application was filed under the Fatal Accidents Act against the Bhakra Beas Management Board. By the time, the claim application was filed and decided, the claimant had been granted compassionate appointment by Bhakra Beas Management Board itself. Thus, relief in that case was essentially sought against an institution which had already appointed the claimant on compassionate grounds in place of the deceased. Essentially, it was a case of dual pecuniary advantages being sought from the same institution i.e. the Bhakra Beas Management Board one by filing the claim and the other by compassionate appointment. Thus, the Hon"ble Supreme Court in the peculiar facts of that case ruled in the Board"s favour.

14. In the case at hand, the application u/S. 166 of the Motor Vehicles Act was filed seeking the relief of compensation by enforcing the Insurance Company"s statutory liability (as defined under the Motor Vehicles Act) in terms of the insurance contract. Merely because the claimant-wife was given appointment on compassionate basis, the contractual obligations and liabilities of the insurance company would not be wiped off or diluted in any fashion. This Court in the case of Metri Sharma (supra) considered the issue in detail and after placing heavy reliance on the later decision rendered by the Hon"ble Supreme Court in the case of Vimal Kanwar (supra) and while dealing with the judgment of Bhakra Beas Management Board (supra), observed as under:--

"11. The issues of deduction raised are no more res integra. In Vimal Kanwar (supra) Hon"ble Supreme Court while dealing with the said issues held and observed as under:--

"19. The first issue is "whether provident fund, pension and insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction?"

The aforesaid issue fell for consideration before this Court in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, . In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one"s death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:

"(37) Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the

tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy amount is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc., though all are pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction? When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which, there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act? The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as periphery advantage liable for deduction? Compassionate appointment can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case the employee dies in harness, i.e., while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one death and has no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee

while in service but it is not necessary that it should have a correction with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as pecuniary advantage that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

12. So far as the judgment of Hon"ble Supreme Court in the case of Bhakra Beas Management Ltd. (supra) is concerned, the issue before the Court in a fatal accident case was whether the benefits which claimant receives on account of death of her husband have to be deducted while computing the compensation and, the Court observed that the benefits, which the claimant receives on account of death or injury have to be duly considered. The law laid down by Hon"ble Supreme Court in the case of Vimla Kanwar (supra) takes into consideration the fact as to whether the compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" and is liable for deduction and on consideration, it has been held that the same cannot be said to be pecuniary advantage so as to come within the periphery of Motor Vehicles Act and the said amount was not liable for deduction for determination of compensation under the Motor Vehicles Act."

15. Thus it is clear that the judgment rendered by the Hon"ble Supreme Court in the case of Vimal Kanwar (supra) answers the issue raised by the learned counsel for the appellant-Insurance Company to the fullest, and beyond all manner of doubt. It was in unequivocal terms held by the Hon"ble Apex Court in the Vimal Kanwar's case that the salary received pursuant to compassionate appointment would not be covered within the meaning of "pecuniary advantage" when compensation is assessed under, the Motor Vehicles Act under the head of statutory liability.

16. The case at hand also reveals a different set of facts as well. The claim application was filed u/s. 166 of the Motor Vehicles Act seeking compensation from the owner, driver and the insurer of the offending vehicle. The statutory liability of the insurer in such circumstances is defined u/S. 147 of the Act and is generated from the insurance contract. The Insurance Company charges premium from the vehicle owner to issue the insurance policy as required. The mere fact that one of the claimants received compassionate appointment subsequent to the accident would not in any manner effect the contractual liability which the Insurance Company incurs making it responsible to indemnify the insured and the third parties under the insurance policy in the event of an accident. Therefore, the argument advanced by Mr. Vyas, learned counsel for the appellant seeking reduction in the award on the ground of the claimant Santosh Devi having been granted compassionate appointment in place of her husband Shri Sangram Ram is not fit to be accepted and is hereby rejected.

17. The second question which arises for consideration is regarding the quantum

of compensation awarded to the claimants. The quantum has been challenged on the basis of the multiplier applied by the Tribunal, The Tribunal applied the multiplier of 18 for calculating the loss of income caused to the claimants. Challenge was also made to the addition made by the Tribunal in income of the deceased by future prospects.

18. The date of birth of late Shri Sangram Ram as admitted from the record was 12.4.1967. Thus, he was between 36-41 years of age on the date of accident. The Hon"ble Supreme Court in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, considered in detail, the issue of multiplier and held as below:--

"34. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a cross-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The Courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in Sarla Verma (supra) for the selection of multiplier in claim applications made u/S. 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma (supra) is followed, there is no likelihood of the claimants who have chosen to apply u/S. 166 being awarded lesser amount on proof of negligence on the part of the driver, of the motor vehicle than those who prefer to apply u/Sec. 163-A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Sec. 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma (supra), should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made u/S. 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma (supra), should be followed.

40. In what we have discussed above we sum up our conclusions as follows:

(i) In the application for compensation made u/S. 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in column (4) of the table prepared in Sarla Verma (supra) read with para 42 of that judgment.

(ii) in case where the age of the deceased is upto 15 years, irrespective of the Sec. 166 or section 163-A under which the claim for compensation has been made, multiplier of 15 and the "assessment as indicted in the second schedule subject to correction as pointed out in column (6) of the table of Sarla Verma

should be followed.

(iii) As a result of the above, while considering the claim application made u/S. 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunal to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma 17 for determination of compensation in cases of death.

(v) while making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the judgment in Sarla Verma.

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma (supra), subject to the observations made by us in para 38 above.

(vii) the above propositions, mutatis mutandis shall apply to the pending matters where above aspects are under consideration."

(Emphasis supplied)

19. Thus, there is no doubt about the proposition that the multiplier has to be applied as per the table formulated by the Hon"ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . As the deceased was 36 years of age at the time of accident, the appropriate multiplier applicable would be 15 and not 18 as done by the learned Tribunal.

20. The learned Tribunal adopted a different methodology for calculating rise in income of the deceased by future prospects. An addition of 100% was made in the income and then the same was averaged looking to the length of remaining service. The resultant position emerging from the method of calculation adopted by the learned Tribunal generated an average rise of 50% in the income of the deceased. The effective 50% rise in income by future prospectus as applied by the learned Tribunal is appropriate in the light of law laid down by the Hon"ble Supreme Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, as the deceased was in Government Service and was 36 years of age at the time of his death.

21. Now, comes the question regarding rate of interest to be awarded on the amount of compensation. The learned Tribunal awarded interest 5% on the award which is improper. In the opinion of this Court a minimum interest @ 7.5% should have been applied by the learned Tribunal while awarding compensation. Thus, exercising the Suo motu powers of this Court under O. 41 Rule 33 C.P.C., the interest awarded deserves to be enhanced to 7.5% even though the claimants have not filed either an appeal or a cross objection.

22. The deduction of 1/3 made by the learned Tribunal towards personal needs and expenditure is proper looking to the number of claimants i.e. 3.

23. In view of what has been discussed above and looking to the age of the deceased at the time of the accident, the following computation table deserves to be approved for evaluating the modified quantum of compensation awardable to the appellants:--

24. Accordingly, the appeal is allowed in part. The impugned award passed by the learned Judge, M.A.C.T. Nagaur is modified and the respondent claimants No. 1 to 3 are held entitled in all to Rs. 9,42,000/- as compensation along with interest at the rate of 7.5% from the date of claim. The mode of distribution of the remaining amount if any amongst the claimants is left to the Tribunals discretion.

Record be sent back.

No costs.