
(2015) 04 BOM CK 0095
In the Bombay High Court
Case No : First Appeal No. 453 of 2001

Nitadevi and Others

APPELLANT

Vs

National Insurance Company Limited and Others

RESPONDENT

Date of Decision : 18-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2016) 1 ALLMR 818

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : S.N. Bhattad, for the Appellant; D.N. Kukday, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Chandurkar, J.—This appeal filed under Section 173 of the Motor Vehicles Act 1988 seeks enhancement in the amount of compensation as awarded by the Motor Accident Claims Tribunal, Nagpur.

2. In an accident that occurred on 29-11-1994, the husband of the appellant No. 1 and the father of appellant Nos. 2 to 4 suffered fatal injuries resulting in his death. Said accident occurred when the deceased was traveling in a Van from Raipur to Nagpur when it was dashed by a truck coming from the opposite direction. Both the vehicles were insured with the respondent No. 1 Insurance Company. The present appellants, therefore, filed petition under Section 166 of the said Act seeking total compensation of Rs. 12,04,000/-on various counts.

3. The claim was opposed by the opponent in said proceedings on various counts. It was, however, not in dispute that both the vehicles were duly insured with the respondent No. 1 Insurance Company.

4. In support of the claim, the claimant No. 1 widow examined herself vide Exhibit-21. She stated that her husband was earning an amount of Rs. 8000/-per month from various sources and was also paying income tax. In her cross

examination, she stated that appellant No. 2 her son started giving an amount of Rs. 5000/-for household expenses after the death of her husband.

5. The Claims Tribunal after considering the entire evidence on record came to the conclusion that the total income of the deceased was Rs. 6500/-per month. The Tribunal thereafter took into account the fact that the amount of Rs. 5000/-was being paid by the deceased for household expenses. The loss of dependency was taken as Rs. 1,500/-per month in view of the fact that appellant No. 2 was contributing an amount of Rs. 5000/-per month for household expenses. Considering the age of the deceased as 49 years, a multiplier of 13 was taken and amount of Rs. 2,34,000/-came to be granted for loss of dependency. Further, amount of Rs. 20,000/-was granted under various other heads and hence, total compensation of Rs. 2,54,000/-came to be granted by the Tribunal. Being aggrieved by the quantum of compensation, the original claimants have filed the present appeal.

6. Shri S.N. Bhattad, learned Counsel appearing for the claimants submitted that the Claims Tribunal was not justified in considering the loss of dependency at Rs. 1,500/-per month. According to him, the Tribunal having found that the income of the deceased was Rs. 6,500/- per month, the loss of dependency ought to have been calculated by taking said figure into consideration. Merely because the widow had stated in her cross examination that an amount of Rs. 5000/-was being contributed by her son per month, same would not be a reason to deduct said amount while calculating the loss of dependency. The learned Counsel relied on various decisions in support of the aforesaid contention.

[1] Rukmani Devi and Others Vs. Om Prakash and Others, (1991) ACJ 3 .

[2] New India Assurance Company Ltd., Chandrapur vs. Vandana wd/o Pradip Ramteke and others 2012(6) Mh.L.J. 444.

[3] Sakharibai Hasanali Makani and Others Vs. Girish Kumar Rupchand Gadia and Others, (1997) 1 ACC 668

[4] United India Insurance Co. Ltd. Vs. Mohd. Ashique and Others, (1998) ACJ 589 .

[5] Shanti Devi Chouhan Vs. Ramjivan Agrawal and Others, (1999) ACJ 1375 .

[6] M.P. State Road Transport Corporation Vs. Sushilabai and Others, (1998) ACJ 744 .

[7] Santosh Devi Vs. National Insurance Company Ltd. and Others, (2012) ACJ 1428 : AIR 2012 SC 2185 : (2012) 4 SCALE 559 : (2012) 6 SCC 421 : (2012) AIRSCW 2892 : (2012) 3 Supreme 197 .

[8] National Insurance Co. Ltd. Vs. Ramesh Kumar and Others, (1999) ACJ 1305 .

[9] Vimal Kanwar and Others Vs. Kishore Dan and Others, (2013) 2 ACC 752 : (2013) ACJ 1441 : (2013) 6 AD 568 : AIR 2013 SC 3830 : (2013) 259 CTR 420 :

(2013) 8 JT 234 : (2013) 171 PLR 776 : (2013) 2 RCR(Civil) 945 : (2013) 6 SCALE 705 : (2013) 7 SCC 476 : (2013) 7 SCC(L&S) 759 : (2013) 216 TAXMAN 300 .

He laid specific emphasis on the decision of the Supreme Court in Vimal Kanwar (supra) to urge that the Supreme Court has held that entitlement for compassionate appointment cannot be termed as a pecuniary advantage that comes under the periphery of the said Act. He also submitted that the Tribunal was not justified in granting a sum of Rs. 20,000/-on various other heads especially when specific claim in that regard had been made in the petition filed under Section 166 of the said Act. He, therefore, submitted that the entire amount of compensation as prayed for deserves to be granted.

7. Shri D.N. Kukday, learned Counsel appearing for the respondent No. 1 opposed aforesaid submissions. He submitted that the Tribunal was justified in considering the amount of loss of dependency at Rs. 1,500/-per month. He referred to the income tax returns filed on behalf of the deceased and contended that the Tribunal had rightly considered said evidence while adjudicating the total amount of compensation. He further stated that there was no evidence whatsoever in respect of future prospects for increase in the amount of earnings of the deceased. He also submitted that the amount of Rs. 20,000/-granted on various other counts was justified and it was only a recent trend to grant higher amount on various other heads. He submitted that as the accident had occurred in the year 1994, the amount of compensation granted was just and proper. In support of his submissions, the learned Counsel placed reliance on the following decisions:

[1] Shashikala and Others Vs. Gangalakshamma and Others(2015) 2 ACC 76 : (2015) ACJ 1239 : (2015) 2 RCR(Civil) 510 : (2015) 3 SCALE 668 .

[2] United India Insurance Company Limited Vs. Anumita Paul, (2015) 1 ACC 628 : (2015) ACJ 117 .

[3] Bijoy Kumar Dugar v. Bidyadhar Dutta and Ors.

[4] The New India Assurance Co. Ltd. Vs. Smt. Alpa Rajesh Shah Master Urvil Rajesh Shah Kasturben Mulchand Shah Ramkrishna S. Ghawte, (2013) 6 ABR 1066 : (2014) ACJ 1747 : (2014) 4 ALLMR 172 : (2014) 1 BomCR 755 : (2014) 2 MhLj 17

[5] United India Insurance Co. Ltd. vs. G. Rajeshwar and Anr. IV (2009) ACC 368.

[6] Ponnumany alias Krishnan and Another Vs. V.A. Mohanan and Others, (2008) ACJ 1338 : AIR 2008 SC 2014 : (2008) 4 JT 452 : (2008) 151 PLR 426 : (2008) 4 SCALE 158 : (2008) 4 SCC 717 : (2008) AIRSCW 2654 .

[7] State of Haryana and Another Vs. Jasbir Kaur and Others, (2003) ACJ 1800 : AIR 2003 SC 3696 : (2003) 1 JT 601 Supp : (2003) 135 PLR 414 : (2003) 6 SCALE 113 : (2003) 7 SCC 484 : (2003) 2 SCR 245 Supp : (2003) 2 UJ 1527 :

(2003) AIRSCW 4198 : (2003) 6 Supreme 206 .

[8] New India Assurance Company Ltd. Vs. Yogesh Devi and Others, (2012) ACJ 702 : AIR 2012 SC 945 : (2012) 114 CLT 305 : (2012) 2 JT 265 : (2012) 2 SCALE 409 : (2012) 3 SCC 613 : (2012) 2 TAC 1 : (2012) AIRSCW 1519 : (2012) 2 Supreme 284 .

He, therefore, submitted that there was no reason whatsoever to interfere with the impugned judgment.

8. The point that arises for determination is whether a case has been made out for enhancing the amount of compensation.

9. I have considered respective submissions and I have gone through the records of the case. In support of the claim, the appellant No. 1 was examined vide Exhibit-21. She stated that the deceased was earning sum of Rs. 8000/-per month out of which Rs. 1,500/-was being kept for personal expenses. She further stated that her husband was the only person who was earning in the family. In her cross examination, she admitted that the income which her late husband used to earn was being earned by appellant No. 2 after his demise. She further stated that appellant No. 2 was giving an amount of Rs. 5000/- per month for household expenses. Various documents were placed on record including the income tax returns for the years 1994-95 and 1995-96 at Exhibits 32 and 31. No other witness was examined on behalf of the claimants. Similarly, the respondents also did not lead any evidence.

10. After considering the evidence on record, the Tribunal came to the conclusion that there was no cross examination as regards the quantum of income and, therefore, the amount of Rs. 6500/- was considered as the monthly income. From said amount, Rs. 1500/-was deducted towards the amount for personal avocation. The Tribunal, therefore, recorded a finding that loss of dependency was Rs. 6500/-per month.

The Tribunal thereafter took into account the other evidence on record wherein the appellant No. 1 has stated that after the death of her husband, her son was giving an amount of Rs. 5000/-per month to the family and on that basis calculated the amount of compensation.

11. The question, therefore, is whether the Tribunal was justified in deducting the amount of Rs. 5000/-from the total amount of loss of dependency on the ground that said amount was being contributed by the appellant No. 2 after the accident. According to the learned Counsel for the appellants, no such deduction was permissible in view of the fact that the amounts earned by the appellant No. 2 after the accident were on the basis of his efforts and the contribution of the deceased could not have been set off in such a manner. In Vimal Kanwar (supra), the Supreme Court observed that grant of compassionate appointment had no correlation with the accidental death of the victim and the same could not be termed as pecuniary advantage coming under the periphery of the said Act. In

said case, while calculating the amount of compensation, the amount of salary that was received after being appointed on compassionate basis was held to be not amounting to pecuniary advantage for the purposes of deduction. After excluding such income, the Supreme Court proceeded to adjudicate the amount of compensation.

12. The decision of the Supreme Court that is relied upon by the learned Counsel for the respondent No. 1 in the case of New India Insurance Company Ltd. (supra) considered the case where the deceased was owner of three vehicles and agricultural land. As per the evidence on record, the deceased was contributing Rs. 35,000/- per month being amount of an income from plying said vehicles. Considering the aspect of loss of dependency, the Supreme Court in para 11 of its judgment noted that three Mini buses that were owned by the deceased continued with the family and the only difference was that the services of a manager were required to be engaged after the death of the owner thereof. It held that the amount required for engaging the services of a manager was the amount of loss to the claimants. Similar view as aforesaid has been taken by the Calcutta High Court in United India Insurance Co. Ltd. (supra). It was observed therein that the contribution which the deceased was making if not available would be the loss of dependency and no part of the income which has not been affected in any manner by the death of the victim can be part of loss of dependency.

13. In Supreme Court in case of Rukhmini Devi (supra) held that the benefits being derived from the partnership business were not liable to be reduced on account of death of one of the partners. Similar view is taken by the Madhya Pradesh High Court in M.P.S.R.T.C. (supra) wherein it is observed that deduction due to induction of the wife in the partnership firm was illegal as a tortfeasor cannot be given benefit of this amount when it came into the hands of the claimants.

14. From the aforesaid, it is clear that the earlier view which was taken by the High Courts of Madhya Pradesh and Himachal Pradesh with regard to manner of considering the loss of dependency is somewhat distinct from the manner in which the Supreme Court has viewed said aspect in New India Assurance Company Limited. In said decision in clear terms it has been held that actual loss to the claimants would be the quantum of amount which the family has ceased to receive after the accident in question. Similar view has been taken in respect of income from agricultural land wherein the amount required to be spent for looking after the agricultural land is treated as loss of dependency to that extent. Hence, the said law as laid down by the Supreme Court will have to be followed.

15. In the light of aforesaid position, if the case in hand is examined, the evidence on record indicates that the total income that has been taken into consideration by the Tribunal is Rs. 6500/- per month. The admission of appellant No. 1 regarding appellant No. 2 contributing a sum of Rs. 5000/-per month has then been taken into account to calculate the loss of dependency at

Rs. 1500/-per month. The actual loss to the total contribution of Rs. 6500/-was, therefore, taken at Rs. 1,500/-by the Tribunal. Considering the recent decision of the Supreme Court in New India Assurance Co. Ltd. (supra) said approach cannot be said to be contrary to law. The observations in the decision in the case of Vimal Kanwar (supra) that compassionate appointment did not have co-relation with an accidental death and an employee who dies in harness even in normal course could result in one of the members of the family being considered for compassionate appointment cannot be made applicable to the facts of the present case. Hence, said finding as recorded by the Tribunal regarding loss of dependency does not call for any interference whatsoever.

16. As regards the aspect of future prospects and increase in the amount of earning, the Supreme Court in Bijoy Kumar Dugar (supra) has specifically held that while considering said factor, the burden is on the claimant to show future prospects of the deceased. In absence of evidence in that regard, there cannot be enhancement in the amount of earnings of the deceased. This approach has also been considered by the Division Bench in New India Assurance Co. Ltd. (supra). In the present case, in absence of any such evidence on record, compensation cannot be granted on account of future prospects of the deceased.

17. It is, however, to be noted that so far as compensation on various conventional heads are concerned, the Tribunal has awarded only an amount of Rs. 20,000/-to the claimants. It is to be noted that the Supreme Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 has held that an amount for loss of consortium at Rs. 1,00,000/-is required to be granted. Similarly, amount of Rs. 1,00,000/-towards the loss of love and affection and Rs. 25,000/-towards funeral expenses is also found reasonable. Though it is submitted on behalf of the appellants that the same is a recent trend and such amounts cannot be awarded as accident had occurred in the year 1994, said submission cannot be accepted. It is to be noted that in the claim petition itself said amounts were claimed towards the loss of consortium as well as for funeral rites. As held by the Supreme Court in Rajesh and others (supra), it is the duty of the Tribunal/Court to award just and reasonable compensation. Hence, considering the aforesaid position of law, enhancement towards loss of consortium, loss of love and affection and for funeral expenses is required to be granted. On these counts, the award as passed by the Tribunal is required to be partly modified. In the facts of the present case, I am inclined to consider grant of amount of Rs. 1,00,000/-towards loss of consortium, Rs. 1,00,000/-towards loss of love and affection and Rs. 25,000/-towards funeral expenses.

18. In view of aforesaid, the following order is passed:

(1) It is held that the amounts granted towards the loss of dependency being Rs. 2,34,000/-are legal, just and proper.

(2) The appellants would be entitled for an amount of Rs. 2,05,000/-on the counts of loss of consortium, loss of love and affection and for funeral expenses. This is after considering amount of Rs. 20,000/-already awarded by the Tribunal. Thus, total compensation granted is Rs. 4,59,000/-. The amount of enhanced compensation shall also carry interest @ 9% per annum in terms of the impugned award.

(3) The first appeal is partly allowed in aforesaid terms. No costs.