

(2015) 01 KL CK 0111
In the High Court Of Kerala
Case No : M.A.C.A. No. 1665 of 2012

Orental Insurance Co. Ltd.	Vs	APPELLANT
K.N. Santhakumari and Others		RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : (2015) 01 KL CK 0111

Hon'ble Judges : P.V. Asha, J.; T.R. Ramachandran Nair, J.

Bench : Division Bench

Advocate : George Cherian (Thiruvalla), for the Appellant; Mahesh V. Ramakrishnan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T.R. Ramachandran Nair, J.—In this appeal filed by the Insurance Company, the main question raised is with regard to the adoption of multiplier and the multiplicand. Respondent 1 to 3 claimed compensation on account of the death of the breadwinner of the family, Shri C.V. Balakrishnan, in a motor vehicle accident occurred on 2.12.2002. The accident occurred near B.K.M. Hospital, Payyannur. He was hit by an autorickshaw bearing registration No. KI 13/D 9754 while he was standing on the extreme western side of Payyannur Bye-pass road. The autorickshaw came from the opposite direction.

2. Evidence was let in by the claimants and Exts.A1 to A15 have been marked and oral evidence was given by examining P.W.1.

3. The accident is not in dispute and the finding of negligence is also not in dispute. The deceased was aged 49 years as on the date of accident, going by the date of birth available in the attested copy of the SSLC Book, Ext.A9 which is dated 10.12.1952. He was working as a Superintendent in the Kerala State Electricity Board and it was claimed that he was having a monthly income of Rs. 15,635/- as salary. Ext.A14 issued by the Accounts Officer, Vydyuthi Bhavan was

produced in evidence and it was supported by a statement given by the Deputy Chief Engineer, Electrical Circle, Kasaragod.

4. The Tribunal has discussed the relevant details in paragraph 12 of the award. For the month of December, 2002 his salary is shown as 17,918/-, out of which HRA of Rs. 540/- and MA of Rs. 35/- were deducted by the Tribunal and the balance amount was fixed as Rs. 17,343/-. Ext.A15 issued by the Executive Engineer, Electrical Circle, Kasaragod dated 23/12/2003 was also considered by the Tribunal and going by the same, the gross salary of the deceased as on 1/12/2002 is shown as Rs. 15,636/-. Finally, Rs. 15,000/- has been fixed as monthly income. Reckoning the number of dependents, one third was deducted for personal expenses.

5. The multiplier adopted is 13 and the multiplicand arrived at by adopting Rs. 15,000/- as monthly salary, is Rs. 1,80,000/- and after deducting one third for personal expenses, it stood at Rs. 1,20,000/-.

6. Learned Senior Counsel for the insurance company submitted that the deceased was at the age of 49 and therefore the adoption of multiplier at 13 for the multiplicand at Rs. 1,20,000 is not justified. It is submitted that the retirement age being 55, the salary he would have been earning at the said rate would be only upto the said age. Therefore, for the period upto the age of retirement alone the multiplicand can be calculated at the same rate. Thereafter, he will not be earning any salary, but will be getting pension which will be at a reduced rate. Therefore, it is submitted that the multiplier adopted for the entire period at the same multiplicand cannot be accepted.

7. Learned counsel for the respondents submitted that the concept of split multiplier cannot be adopted on a routine course, going by the decision of the Apex Court in Puttamma and Others Vs. K.L. Narayana Reddy and Another, . It is further submitted that the salary as on the date of accident will have to be taken as the deceased died after suffering head injuries in the accident. Our attention is also invited to the decision of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as well as Saraladevi and others v. Divisional Manager, M/s. Royan Sundaram Alliance Insurance Co. Ltd. and another (2014 AIAR (Civil) 909). It is submitted that since split multiplier cannot be adopted, the multiplicand arrived at is perfectly justified. Apart from the same, learned counsel submitted that the assessment of the Tribunal on certain other heads is not reasonable and he also sought enhancement of the amounts, viz. Loss of consortium which is awarded only at Rs. 8,000/- and loss of love and affection awarded only at Rs. 10,000/- and it is submitted that going by the decision of the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, , at least Rs. 1 Lakh each should have been allowed under these heads. It is submitted that for loss of estate also nothing is granted.

8. As far as the multiplier adopted is concerned, it is 13. Then the question is whether the multiplicand could be assessed by taking the monthly salary for the

entire period. That the deceased would have retired from service at the age of 56, is not disputed. He had completed 49 years of age at the time accident. Therefore, after seven years, he would have attained the age of superannuation. There is no evidence before the Tribunal that he will get any employment on an equal salary and nothing has been pointed out before us also. Therefore, after the retirement definitely he will not be getting the same amount by way of pension. Then, how the multiplier will have to be worked out, is the moot question.

9. As far as arriving at just compensation in fatal accident cases is concerned, the legal position is well settled. In paragraph 12 of the judgment in Sarla Verma's case (supra), the Apex Court relied upon the principles discussed in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and going by paragraph 10 of the said judgment, we will have to ascertain the net income of the deceased available for the support of himself and his dependents, deduct the personal expenses and arrive at the net income which will be saved for the benefit of the dependents.

10. As regards the general principles as far as fixing of compensation is concerned, we find that there is a detailed discussion in paragraph 12 of Sarla Varma's case (supra). Therein the principles stated in an earlier decision of the Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, have been considered in detail. Paragraph 9, 10 and 13 of the Susammas' case (supra) discussed the details of the essential principles and we extract the same below:

"9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

10. The matter of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of year's purchase."

"13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the

multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

11. Going by the same, it can be seen that in paragraph 9, the Supreme Court was of the view that various imponderables will have to be considered e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. Significantly, in *Sarala Varma* (supra), in paragraph 45, the Hon'ble Supreme Court, while considering the method for computation of compensation, it has been observed as follows:

"45..... As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many." 12. In the judgment relied upon by the learned counsel for the respondents in *Puttamma's* case (supra), in paragraph 32 the Apex Court considered the question whether split multiplier could be applied. It was held that Act, 1988 does not envisage application of split multiplier. In paragraph 34 it was held that in absence of any specific reason and evidence on record, the Tribunal or the Court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in the case of *Sarla Verma's* case (supra) as affirmed in the case of *Reshma Kumari and Others Vs. Madan Mohan and Another*, .

13. The multiplier method, therefore, involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate method. (paragraph 13 of *Susamma Thomas's* case (supra) and paragraph 45 of *Sarla Verma's* case (supra).

14. The salary of the deceased extends upto the date of retirement and therefore, thereafter he will be getting the pension at a reduced rate. The pension amount can be taken at the rate of 50% of the salary. If that be so, the retirement being a definite event, we will have to balance both components. According to the learned Senior Counsel for the appellant, the multiplicand as now arrived at by the Tribunal is spread over to the entire period. According to us, to arrive at a balance, a proper multiplicand can therefore be fixed. Considering the date of birth of the deceased, the Tribunal found that he had

completed 49 years. As per the statement accompanying Ext.A14, salary for the month of 12/2002 is Rs. 17,343/-. In Ext.A15, the gross salary as on 1/12/2000 is shown as Rs. 15,636/-. The Tribunal again made some other deductions which is not clear from the award. Therefore, we will be justified in taking the sum of Rs. 15,636/- as the amount of salary. Since the claimants are three in number, 1/3rd will have to be deducted for personal expenses. After deduction of 1/3rd for personal expenses, the balance will be Rs. 10,424/-. Since the retirement age being 56, such amount will be spread over to 7 years and the total amount will be Rs. 8,75,616/-. An average of 50% can be the pension amount, going by the relevant rules which will make it to Rs. 7,818/-. After deducting 1/3rd for personal expenses, the balance will be Rs. 5,212/-. The multiplier being 13, it will be spread over to 6 years and the total amount will be Rs. 3,75,264/-. Therefore, the dependency compensation by taking the multiplier as 13, will be Rs. 96,221/- per year. The deceased would have been entitled for normal increments and other benefits including pay revisions during his period of service and even after he become a pensioner also, there will be scope for increase. We are of the view that a uniform percentage of increase can be taken reasonably and we fix it at 20%. The contribution being Rs. 8,018.46 per month, 20% addition will have to be made for future increase and we therefore fix the monthly contribution at Rs. 9,622.15 and adopting the multiplier of 13, the dependency compensation payable will be Rs. 15,01,055/-. If this method is taken, we do not find that there will be a split multiplier as contended by the learned counsel for the respondents. In Puttamma's case (supra), the Apex Court held that in exceptional cases there can be split multiplier.

15. Herein, the age of retirement being specified, the claimants cannot expect the deceased to earn the same amount of salary after retirement. Such being the case, a balancing of these two elements will have to be required to arrive at the correct multiplicand. The same will not cause any prejudice to the claimants also.

16. Even though learned counsel for the respondents relied upon Saraladevi's case (2014 AAIR (Civil) 909) to contend that the split multiplier cannot be arrived at, on examination of various aspects, it is seen that therein the Tribunal, after arriving at the multiplicand, deducted 1/4th towards personal expenses which was varied by the High Court as 1/3rd. The Apex Court held that the deduction ought to be 1/4th. The finding of the Tribunal on negligence was also set aside. We find that there is no discussion therein with regard to adoption of split multiplier. Even though learned counsel for the respondents submitted that the Apex Court accepted the method adopted by the Tribunal and not that of the High Court, herein, even going by the decision in Puttamma's case (supra), such circumstances can be considered and the date of retirement being a certain eventuality as far as the deceased is concerned, the same will have to be reckoned.

17. Learned counsel for the claimants submitted that the grant of compensation on other heads is only at a reduced level which requires enhancement. It is

submitted that even though the claimants have not filed any appeal or cross objection, it is well settled that this Court can enhance the compensation even without any cross objection and reliance is placed on the decision of the Apex Court in Mahant Dhangir and Another Vs. Madan Mohan and Others, wherein Order 41 Rule 33 C.P.C. has been explained. As regards the power of this Court is concerned, we are of the view that Rule 33 of Order 41 C.P.C. is attracted, since this Court is hearing an appeal. This legal position has been upheld in Velunni v. Vellakutty (1989 (2) KLT 227) by a Division Bench. Apart from that, we are considering the question of arriving at the just and fair compensation also. Therefore, we will have to consider all the aspects together. The Tribunal has granted only an amount of Rs. 9,000/- towards funeral expenses, Rs. 8,000/- for loss of consortium of wife, Rs. 5,000/- each to the children towards loss of love and affection and Rs. 3,000/- towards loss of estate. Towards medical expenses, the amount covered by the bills, viz. Rs. 16,900/- has been granted. The compensation has been arrived at in the following manner:

18. In the light of the decision of the Apex Court in Rajesh's case (supra), we will be justified in granting an amount of Rs. 1 Lakh towards loss of consortium and another sum of Rs. 1 Lakh towards loss of love and affection for the children. Towards loss of estate also, an amount of Rs. 1 Lakh is liable to be granted. Towards funeral expenses an amount of Rs. 25,000/- is liable to be granted.

Accordingly, the compensation is refixed in the following manner:

(Rupees Eighteen Lakhs Four thousand nine hundred and fifty-five only)

The appeal is accordingly disposed of. The insurance company is directed to deposit the entire amount of compensation with interest at 9% from the date of petition, less the amount already deposited before the Tribunal, within a period of three months. No costs.