(2018) 05 GAU CK 0127

In the Gauhati High Court

Case No : MACApp. 294 of 2013

Oriental Insurance Co. Ltd. APPELLANT

Vs

Abdul Samad And 9 Ors. RESPONDENT

Date of Decision : 22-05-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 168
Code Of Civil Procedure, 1908 — Order 41 Rule 33

Citation : (2018) 05 GAU CK 0127

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : S. Dutta, M Choudhury, H Gogoi, H. Das

Final Decision : Dismissed

Judgement

1. Heard Mr. S. Dutta, learned counsel for the appellant and Mr. H. Das, learned counsel for the respondents.

2. This appeal by the Insurance Co. is filed against the judgment and award dated 29/09/12 passed by MACT, Goalpara in MAC Case No. 17/2007.

3. One Sajahan Ali, son of the claimant No. 1 died in a motor vehicle accident, involving the vehicle bearing registration No. AS-01/E-7105, owned by

the respondent No. 9 and insured with the appellant. The parents of the deceased filed an application praying for compensation and the learned

tribunal awarded a compensation of Rs. 8,19,000/- with interest @ 8% from the date of filing the claim petition. The death of the victim Sahajan Ali

involving the vehicle bearing registration No. AS-01/E-7105 and the appellant being the insurer of the said vehicle at the relevant time and the age of

the deceased being 25 years were not disputed.

4. Aggrieved by the award, the Insurance Co. preferred the instant appeal for

reduction of the award.

5. The contention of the learned counsel for the appellant Insurance Co. is that the deceased was a bachelor and the claim petition was filed by his

parents, and as such, deduction of income towards personal expenses ought to have been 50% of the income, whereas, learned tribunal erroneously

deducted 1/3 of the income towards personal expenses. Further contention of the learned counsel is that the claimant failed to adduce sufficient

evidence to prove the income of the deceased and as such, the learned tribunal ought to have assumed the notional income of the deceased. However,

the learned tribunal assumed the income of the deceased as Rs. 5,000/- which was not proved by the claimant by adducing evidence.

6. It is no doubt true, that the claimant did not adduce any documentary evidence in respect of income of the deceased. However, the claimant

adduced oral evidence stating that the deceased was working as a labourer for loading and unloading of coal and used to earn Rs. 5,000/- to Rs.

6,000/- per month. This evidence of the claimant, that the deceased was earning Rs. 5,000/- to Rs. 6,000/- per month was not disputed. Since the

deceased was engaged as a labourer in an unorganised sector, he could not be expected to produce a documentary evidence in respect of income. In

Sayed Sadiq & Ors.-VS- Divisional Manager, United India Insurance Co. Ltd. reported in (2014) 2 SCC 735, where the deceased was working as a

coolie, the Apex Court observed that â??the appellant was working as a coolie and therefore, the court cannot expect him to produce a documentary

evidence to substantiate his claim. In absence of any other evidence contrary to the claim made by the claimant in our view, in the facts of the present

case, the tribunal should have accepted the claim of the claimant.â??

7. In the instant case, the claimant adduced candid evidence that the deceased was working as a labourer for loading and unloading of coal and used

to earn Rs. 5,000/- to Rs. 6,000/- per month and such evidence with regard to occupation of the deceased remained uncontroverted. Having

considered the nature of work and the ground realities, the claim of the claimant that deceased was earning Rs. 5,000/- to Rs. 6,000/- per month can

by no stretch of imagination be held to be absurd. Therefore, in absence of any contrary evidence, by accepting the income of the deceased as Rs.

5,000/-, on the facts and circumstances of the case, the learned tribunal did not commit any irregularity.

8. So far the question of deduction of income towards personal expenses of the deceased is concerned, evidently the deceased was a bachelor and as

per the decision of the Apex Court in Sarla Verma & Ors. â?"VS- Delhi Transport Corporation and Ors. reported in AIR 2000 9 SC 3104, deduction

towards personal expenses ought to have been 50% of the income of the deceased. However, the learned tribunal deducted 1/3th of the income

towards personal expenses of the deceased. Learned counsel for the claimant also fairly conceded that the deduction on account of personal expenses

in the instant case should have been 50% of the income of the deceased. At the same time, learned counsel for the claimant also submits, that while

assessing the income and loss of dependency, learned tribunal did not take into consideration the future prospects and therefore, urged this Court for

enhancement of the award by adding 40% of income as future prospects to the income of the deceased.

9. Learned counsel, Mr. Dutta for the Insurance Co. strongly resisted the above submission of the learned counsel for the claimant. Relying on the

decision of the Apex Court in Ranjana Prakash and Ors. â?"VS- Divisional Manager reported (2011) 14 SCC 639, Mr. Dutta submits that in an

appeal by the Insurance Co. for reduction of compensation, the court cannot enhance the compensation in absence of cross objection or a counter

appeal.

10. The Apex Court Ranjana Prakash and Ors. â?"VS- and Ors. â?"VS- Divisional Manager(supra) held in paragraph 8 as under :-

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is

to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the

compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the

owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court

will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously

increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the

claimants seeking enhancement of compensation.â??

11. The learned counsel for the appellant placing reliance on the decision of the Apex Court in National Insurance Co. ltd. VS- Suwala Dutta Saikia

and Ors. reported in 2017 (2) GLT 39 submits, that in case where the tribunal had omitted to grant relief to the claimants, to which they were

otherwise entitled under the law, the court should grant such relief, in order to award a just and fair compensation. Learned Single Bench observed

that â??interpreting Section 168 of the MV Act, 1988, the Supreme Court has observed in paragraph 12 in the case of Jitendra Khimshankar Trivedi

(Supra) that in the cases where the tribunal had omitted to grant relief to the claimants to which they were otherwise entitled under the law, it would

not only be proper but also obligatory for the court/tribunal to award a just and reasonable compensation. But in cases where the tribunal had awarded

some compensation on a particular head, in the absence of a cross appeal preferred by the claimant, the Court cannot enhance the amount of

compensation on the said head by invoking jurisdiction under Order XLI Rule 33 CPC on the ground that the amount is inadequate. That is because

inadequacy of any amount awarded by the tribunal would point at an erroneous decision of the tribunal which can be corrected only in exercise of

appellate jurisdiction of a superior court/tribunal.â??

12. In Ranjana Prakash & Ors.-VS- Divisional Manager & Anr. (supra), though the Apex Court held that in an appeal filed by the insurance co. for

reduction of compensation, it is not permissible to enhance compensation in absence of cross objection or a counter appeal, in paragraph 6 of the

judgment in Ranjana Prakash & Ors.-VS- Divisional Manager & Anr. (supra), the Apex Court observed that though in an appeal filed by the

insurance co. for reduction of compensation, the clamant cannot ask for enhancement on other grounds, but the claimant can certainly defend the

award even without filing a cross objection, pointing out to other error and omission committed by the tribunal in the award. The above proposition in

Ranjana Prakashâ??s case cannot be better expressed than quoting para 6 of the judgment, where the Apex Court observed as under :-

â??6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of future prospects and add 30% to the annual income of

the deceased. But the claimants were not aggrieved by Rs.23,134/- being taken as the monthly income. There was therefore no need for them to

challenge the award of the Tribunal. But where in an appeal filed by the owner/ insurer, if the High Court proposes to reduce the compensation

awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or

omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an

appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason,

30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently

challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an

appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of

any cross-appeal or cross-objections.

13. In the instant case, apparently the tribunal did not award any future prospects to the income, to which the claimant was otherwise entitled, as per

the law laid down by the Apex Court in National Insurance Co. Ltd. â?"VS- Pronoy Setty and Ors. reported in (2017) 14 SCC 663. Had the tribunal

added future prospects to the actual income of the deceased, even after deduction of 50% of the income towards personal expenses, the award would

have been more than what was granted by the tribunal after deducting 1/3rd of the income of the deceased. Keeping in view this aspect of the matter,

that the tribunal failed to award any future prospects, to which the claimant was entitled and the observation of the Apex Court in para 6 as

reproduced above, I am not inclined to disturb the award or reduce the quantum of award granted by the tribunal for the reason ventilated by the

Insurance Co. Accordingly, the appeal is dismissed.

14. Send back the LCR.

