
(2016) 01 KAR CK 0076
In the Karnataka High Court
Case No : M.F.A. No. 102237/2014 (MV)

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mahadev Genu Yellurkar and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 173(1)

Citation : (2016) AAC 837 : (2016) 1 AirKarR 808 : (2016) ILRKarnataka 2843 : (2016) 3 KCCR 2297

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Preeti Shashank, Advocate, for the Appellant; B.M. Patil, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. This is an Insurance appeal against the judgment and award dated 17.06.2014 made in M.V.C. No. 875/2013 on the file of the I Addl. Senior Civil Judge & Addl. MACT, Belgaum, awarding compensation of Rs. 33,15,500/- to the respondents - parents of the deceased.

The facts of the case are:

2. It is the case of the respondents before the Tribunal that son of the claimants in M.V.C. No. 875/2013 namely Sham Mahadev Yallurkar was riding his motor cycle from Udyambag towards Desur on Belgaum-Khanapur road. When he came near the spot of the accident near Desur cross, from opposite side an autorickshaw bearing No. KA-22/A-2238 came in a rash and negligent manner, dashed the bike of the deceased, he sustained fatal injuries. He was immediately shifted to KLE Hospital and he was in ICU Ward for two days, while under treatment, he succumbed to the injuries. After conducting the postmortem, the body was handed over to the parents. The deceased was aged about 23 years old at the time of accident and he was serving in Army as a Soldier and drawing

salary of Rs. 25,000/- per month and he was maintaining his old parents. Due to the sudden death of the deceased, the claimants have lost their only son and they have suffered mentally and financially. Therefore, the claimants sought for compensation of Rs. 30,00,000/-.

3. The appellant and respondent No. 3 were the respondents before the Tribunal, filed separate objections, denied the petition averments, age, occupation and income of the deceased and contended that the deceased Sham due to his own rash and negligent driving, attempted to overtake the vehicle, as such, he dashed the autorickshaw. Thereby the accident was occurred. Therefore, the claim petition was not maintainable etc.

4. Based on the pleadings, the Tribunal framed the following issues:

"1. Whether petitioners prove that Sham Mahadev Yallurkar died in RTA occurred on 08.04.2013 at about 15:30 hours on Belgaum-Khanapur Road, near Desur Cross, Desur on account of actionable negligent driving of the Rickshaw bearing No. KA-22/A-2238?

2. Whether the respondent No. 2 proves that the petition is bad for non-joinder of necessary parties?

3. Whether petitioners are entitled for compensation? If so, what is the quantum?

4. What order or award?"

5. In order to establish the case, the 1st claimant/father examined as P.W. 1 and another as P.W. 2, marked the documents Exs. P-1 to P-14. The respondents have not examined, except producing Exs. R-1 to R-4.

6. After considering the entire material on record, the Tribunal allowed the claim petition in part and awarded compensation of Rs. 33,15,500/- with interest at 9% per annum from the date of petition till realization. Hence, the present appeal is filed by the Insurance Company.

7. I have heard the learned counsel for the parties to the lis.

8. Smt. Preeti Shashank, learned counsel for the appellant mainly contended that the impugned judgment and award passed by the Tribunal, taking the multiplier 18, applicable to the age of the deceased at 23 years, who is a bachelor is erroneous and contrary to law. The Tribunal ought to have taken multiplier 11, applicable to the younger parents (mother aged 52 years). Therefore, the impugned judgment and award passed by the Tribunal is contrary to law. She further contended that the compensation granted under the head loss of dependency requires to be reduced by adopting the multiplier of 11. Therefore, she sought to set aside the impugned judgment and award passed by the Tribunal.

9. Per contra, Shri B.M. Patil, learned counsel for the respondents sought to justify the impugned judgment and award by relying upon the dictum of the

Hon"ble Supreme Court in the case of Munna Lal Jain and another v. Vipin Kumar Sharma and others reported in , (2015) 6 SCC 347 and sought for dismissal of the appeal.

10. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

11. In view of the rival contentions urged by the learned counsel for the parties, the only question that arise for consideration in the present appeal is:

"Whether the Tribunal is justified in passing the impugned judgment and award by applying the multiplier 18, taking the age of the deceased?"

12. The facts with regard to the accident, age and occupation are not in dispute. The only point raised by the learned counsel for the appellant in this case is that the Tribunal has committed error in applying the multiplier of 18 taking the age of the deceased as 23 years, who was a bachelor and when the claim petition was made under Section 166 of the Motor Vehicle Act, the said issue is no more res integra, in view of the dictum of the Hon"ble Supreme Court in the case of Munna Lal Jain and another v. Vipin Kumar Sharma and others reported in , (2015) 6 SCC 347, wherein it is held as follows:

"9. The deduction ordinarily in the case of a bachelor at 50% was approved recently by a three-Judge Bench decision in Reshma Kumari and others v. Madan Mohan and another, , (2013) 9 SCC 65, holding that the standard fixed in Sarla Verma (supra) on the aspect of deduction for personal and living expenses... "must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out". Preceding paragraph-41 reads as follows:

"41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants."

10. In the case before us, there are no such exceptional circumstances or compelling reasons for deviation on the basis of evidence and therefore deduction of 50% towards the personal and living expenses is not to be disturbed.

11. As far as future prospects are concerned, in Rajesh and others v. Rajbir Singh and others, , (2013) 9 SCC 54, a three-Judge Bench of this Court held that in case of self employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

The deceased being of the age of 30 years, 50% is the required addition.

12. The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:

"36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma."

13. xxxx

14. The multiplier, in the case of the age of the deceased between 26 to 30 years is 17. There is no dispute or grievance on fixation of monthly income as Rs. 12,000.00 by the High Court."

13. In view of the admitted facts and the law laid down by the Hon''ble Supreme Court in the Munna Lal Jain''s case, the question raised in the present appeal has to be answered in the affirmative holding that the Tribunal is justified in applying the multiplier of 18, taking the age of the deceased and granted compensation as follows:

14. Admittedly, in the present appeal, except the loss of dependency, the Insurance Company has not challenged the compensation awarded in respect of other heads. The Tribunal considering the entire material, both oral and documentary evidence on record has come to the definite conclusion that the age of the deceased has to be taken for computation of multiplier, same is in accordance with law and in accordance with the dictum of the Hon''ble Supreme Court stated supra.

In view of the aforesaid reasons, the appellant has not made out any ground to interfere with the impugned judgment and award passed by the Tribunal while exercising the appellate powers under the provisions of Section 173(1) of the Motor Vehicles Act, 1988. Accordingly, the appeal is dismissed.

The amount deposited by the appellant before this Court shall be transmitted to the Tribunal forthwith.