

(2004) 02 KAR CK 0054
In the Karnataka High Court
Case No : M.F.A. No. 649 of 2004

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Yashoda M and Others

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

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

Citation : (2006) ACJ 628

Hon'ble Judges : S.R. Nayak, J; Ram Mohan Reddy, J

Bench : Division Bench

Advocate : B.V. Nagarathna, for the Appellant; N. Gopalakrishna, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The insurer of the motor vehicle involved in the accident being aggrieved by the quantum of compensation awarded, as excessive, has filed this appeal u/s 173(1) of the Motor Vehicles Act, 1988 (for short "the Act") calling in question the judgment and award dated 20.8.2003 passed in M.V.C. No. 4154 of 2000 on the file of the Motor Accidents Claims Tribunal, Court of the Small Causes, Mayohall Unit, Bangalore, (SCCH-20), (for short "the M.A.C.T.")

2. The fact that deceased C. Sridhar, aged 40 years as on the date of accident and death was serving as a mechanic in the establishment of Bangalore Metropolitan Transport Corporation, on a monthly salary of Rs. 5,588, died in an accident that occurred on the intervening night of 177 18.11.2000 involving the motor vehicle being a trailer lorry bearing registration No. KA 01-8211 is not in dispute. The fact that the dependants of the deceased, being the widow, his two minor children and the aged parents claimed compensation of Rs. 12,00,000 in a petition u/s 166 of the Act, numbered as M.V.C. No. 4154 of 2000, in which the owner of the offending vehicle arraigned, as respondent No. 1, though served with notice remained absent and was placed ex parte, while the insurer, respondent No, 2, the appellant herein appeared and contested the claim by

filing its statement of objections, are also not in dispute.

3. The M.A.C.T., in the premise of the pleadings of the parties, framed issues, recorded evidence of claimant No. 1, the widow as PW 1, as also an eyewitness as PW 2 and marked 11 documents as Exhs. P1 to P11. On behalf of the respondents, no oral or documentary evidence was tendered. M.A.C.T., appreciating the evidence both oral and documentary, laid before it by claimant, recorded a finding of actionable negligence on the driver of the trailer lorry and taking the monthly income of the deceased as Rs. 5,588, applied the mathematical formula laid down in the judgment of the Supreme Court in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and assessed loss of dependency at Rs. 9,38,784 to which was added a sum of Rs. 3,000 for loss of consortium, Rs. 3,000 towards loss of love and affection and Rs. 3,000 for funeral expenses; totalling to Rs. 9,47,784 as compensation with interest at the rate of 6 per cent per annum from the date of petition until realisation. Being aggrieved by the quantum of compensation awarded towards loss of dependency, as excessive, the insurer has preferred this appeal.

4. The grievance of the appellant, as contended by its counsel are three-fold. Firstly, that the method adopted by the M.A.C.T. in arriving at future monthly loss of income of Rs. 8,382 is contrary to the judgment of the Apex Court in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . Secondly, that M.A.C.T. ought to have taken the future monthly loss of income at Rs. 4,030 and applying multiple "14" ought to have awarded compensation of Rs. 6,77,040 for loss of dependency. Thirdly, that M.A.C.T. was not justified in not effecting statutory deductions towards income tax and professional tax to the multiplicand of Rs. 5,588.

5. The finding of actionable negligence is not in controversy between the parties in this appeal. Hence, there is no necessity to review the said finding.

6. Having heard the learned counsel and perused the impugned judgment and award, the only question for decision making is whether the M.A.C.T. is justified in awarding Rs. 9,38,784 towards loss of dependency in the facts and circumstances of the case and evidence on record?

7. Before proceeding to answer the question, it is useful to notice the judgment of the Supreme Court in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , which the M.A.C.T. followed while determining compensation towards loss of dependency. The relevant portion at pp. 587-88 is extracted below:

Adopting the same scientific yardstick as laid down in the aforesaid judgment, the computation of compensation in the present case can almost be subjected to a well settled mathematical formula. Deceased in the present case, as seen above, was earning gross salary of Rs. 1,543 per month. Rounding it up to figure of Rs. 1,500 and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and

performance in the military service spread over 7 years and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death, i.e., up to Rs. 3,000 per month had he survived in life and had successfully completed his future military career till the time of superannuation. Average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely, Rs. 1,500 per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs. 3,000 per month and dividing that figure by two. Thus, the average gross monthly income spread over his entire future career, had it been available, would work out to Rs. 4,500 divided by 2, i.e., Rs. 2,200. Rs. 2,200 per month would have been the gross monthly average income available to the family of the deceased had he survived as a breadwinner. From that gross monthly income at least 1/3rd will have to be deducted by way of his personal expenses and other liabilities like the payment of Income Tax, etc., that would roughly work out to Rs. 730 p.m. but even taking a higher figure of Rs. 750 p.m. and deducting the same by way of average personal expenses of the deceased from the average gross earnings of Rs. 2,200 p.m. balance of Rs. 1,450 which can be rounded off to Rs. 1,500 p.m., would have been the average amount available to the family of the deceased, i.e., his dependants, namely, appellants herein. It is this figure which would be the datum figure per month which on annual basis would work out to Rs. 18,000. Rs. 18,000, therefore, would be the proper multiplicand which would be available for capitalization for computing the future economic loss suffered by the appellants on account of untimely death of the breadwinner.

8. In the context of the facts of this case, what is not disputed is that the deceased was serving as a mechanic in the Bangalore Metropolitan Transport Corporation drawing a monthly salary of Rs. 5,588 and that he was aged 40 years as on the date of accident and death. That the deceased had a bright future and would have been promoted to the post of "Foreman", as was stated by the claimant, in her deposition, is not seriously contested.

9. The M.A.C.T., having kept in mind the future prospects of the deceased in the fairly stable employment in the Bangalore Metropolitan Transport Corporation, spanning over a further period of 18 years until his superannuation, as also the imponderables, adopted the mathematical formula laid down by Apex Court as noted supra. The monthly income of the deceased as on the date of death was Rs. 5,588 and the gross monthly income would have doubled than what he was earning on the date of the untimely death, i.e., the salary would be Rs. 11,176. M.A.C.T. arrived at average of the gross future monthly income by adding the gross monthly income of Rs. 11,176 and the actual gross income at the time of death, i.e., Rs. 5,588 and dividing that by 2. Thus the average gross monthly income spread over his entire future career worked out to Rs. 8,382. From this gross monthly income, 1/3rd equivalent to Rs. 2,794 is deducted towards

personal expenses of the deceased and other liabilities, like payment of income tax, etc., being from out of Rs. 8,382, the balance of Rs. 5,588 would have been the average amount available to the claimants. On annual basis, this is calculated to be Rs. 67,056 and applying the multiple "14", the loss of dependency is assessed at Rs. 9,38,784. The method of the assessment adopted by the M.A.C.T. is in accordance with the mathematical formula laid down by the Apex Court in the aforesaid cited decision.

10. The contention of the learned counsel for the appellant while admitting the method adopted to be correct, is that the M.A.C.T. having held that the deceased would have earned Rs. 6,500 at the time of superannuation ought to have taken the said sum while arriving at the gross future monthly income. In other words, the sum of Rs. 6,500 was to be added to Rs. 5,588, the gross income at the time of the death, would be Rs. 12,088 which when divided by 2, would be Rs. 6,044. To this, deduction of 1/3rd for personal expenses of the deceased, if effected, the average amount available to claimants would be Rs. 4,030 and on annual basis the amount would be Rs. 48,360, applying multiple "14", the loss of dependency would be Rs. 6,77,040. This specious contention of the learned counsel cannot be accepted for three reasons. The M.A.C.T. in its judgment and award has nowhere held that the deceased, had he served the organizations for another period of 18 years and at the time of superannuation, would have drawn Rs. 6,500 as salary, per month. Secondly, the deceased having earned Rs. 5,588 per month as on the date of accident, i.e., 17/18.11.2000 cannot by any stretch of imagination, even assuming he is not promoted to a higher post, would have earned only Rs. 6,500, i.e., Rs. 912 more per month at the end of another 18 years of service. The contention of learned counsel is irrational and unbelievable. In para 14 of the impugned judgment and award, M.A.C.T. noticed that the claimant No. 1 in her evidence testified that the deceased while serving as a mechanic in B.M.T.C. was drawing Rs. 6,500 though this was proved to be incorrect in view of the salary certificate at Exh. P11. In this view of the matter, the contentions raised by the learned counsel for the appellant deserves to be rejected.

11. Deduction of 1/3rd towards personal expenses of the deceased, would also take care of the payments towards income tax and professional tax, as is observed by the Apex Court in the judgment cited above while laying down the mathematical formula in assessing the loss of dependency in identical situation.

12. In the result and for the foregoing reasons, we are of the considered opinion that the impugned judgment and award is well merited, fully justified on the materials available on record and not shown to suffer from any infirmity or vitiated on account of any perversity to call for a different conclusion at our hands and interfere with the verdict.

The appeal is dismissed as one without any merit.

The Registry is directed to transmit the sum of Rs. 25,000 in deposit, forthwith to

the M.A.C.T.