

(2020) 01 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 78 Of 2013

Oriental Insurance Company

APPELLANT

Vs

Soma Devi & Others

RESPONDENT

Date of Decision : 03-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 279, 337

Motor Vehicles Act, 1988 — Section 158(6), 163A, 166, 166(4), 168

Code Of Civil Procedure, 1908 — Order 41 Rule 33

Citation : (2020) 01 SHI CK 0021

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Lalit K. Sharma, G.R. Palsra, Bodh Raj

Final Decision : Disposed Of

Judgement

Anoop Chitkara, J

1. Challenging the grant of compensation to the mother of a young man, aged twenty-one years, who lost his life, when the car owned by the first respondent, and driven by the second respondent, met with an accident with his bike, resulting into his death, the Insurance Company (third respondent), upon whom the Motor Accident Claims Tribunal placed the entire liability under the Motor Vehicles Act, 1988, has come up before this Court by filing present appeal seeking discharge of its obligation.

2. The gist of the facts, leading to this appeal, traces its origin to an FIR No. 219 dated Jun 20, 2010, registered under Sections 279, 337 of IPC in the file of Police-Station-Balh, District- Mandi, HP, based on complaint filed by second respondent Jai Ram, against Harish Kumar (Deceased), the driver of the Motorcycle, for driving rashly and negligently on a public way and hitting the car driven by Jai Ram.

3. Jai Ram, the driver of the car, narrated to the Police that on Jun 19, 2010, he

was driving the car bearing registration No. HP33B-2444. When he reached near Bhangrotu Bridge, then a little ahead, a motorcycle bearing registration No. HP34A-9526 came from the side of Ner Chowk. The bike was coming at a very high speed. It came towards the side of his car and hit it from the driver's side. Due to the impact of the accident, the motorcycle, along with its driver and the pillion rider, fell. Both the riders received injuries. On hearing the sound of impact and the commotion, the people from nearby locality came for rescue and took the injured to the Zonal Hospital, Mandi, HP. Keeping in view the serious condition of the victim, the Hospital, referred him to I.G.M.C. hospital at Shimla. On the way to Shimla, when he reached Bilaspur, the injured breathed his last.

4. Based on this information, the Police registered the First Information report and investigation ensued. After that, the Police got the postmortem examination of deceased in Civil Hospital, Bilaspur, on Jun 20, 2010, at 11:30 A.M. As per the report of the postmortem, Ext. PW-4/A, the cause of death, was the cumulative effect of accidental injuries and trauma.

5. After a few months, Smt. Soma Devi, the mother of the deceased, filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation to the tune of Rs. Fifteen lacs. At point 6 of the petition, she claimed that the monthly income of her deceased son was Rs. 10,000/-. She further contends that the date of birth of his son is Jan 21, 1989. Thus, on the date of the accident, the age of the deceased comes out as 21 years and 5 months, which has to be rounded to 21 years.

6. The complainant examined PW-2 Rahul Sood, to prove that her son Harish Kumar was working in a firm M/S Sidharth Communications, owned by him. PW-2 Rahul Sood tendered in evidence a salary certificate Ext. PW-2/A. In cross-examination, he stated that he did bring along the records of salary. However, he admitted that he maintains a register of wages. Furthermore, he did not even tender in evidence any statement of accounts to establish withdrawal of salary.

7. In the claim petition, she added the driver of the car, Jai Ram, as the 2nd respondent No.2, who appeared as RW-1, and filed his affidavit RW-1/A. He tendered in evidence, his Driving License, Registration Certificate of the vehicle, and insurance policy Mark-B. The second respondent also examined police official HC Prem Singh to prove the FIR, wherein the investigation concluded that the accident had taken place due to rash and negligent driving of the driver of the motorcycle bearing registration No. HP34A-9526 when he turned towards the wrong side and dashed against the car bearing registration No. HP33B-2444. The 3rd respondent, i.e., the owner of the car, tendered in evidence the Insurance Policy, i.e., Ext. RA.

8. Vide impugned award dated Aug 31, 2012, passed in the Claim Petition No. 68 of 2010, titled Soma Devi v. Dev Raj & others, the Motor Accident Claims Tribunal (1), Mandi, HP, awarded compensation in favor of the claimant; however, burdening the Oriental Insurance Company Limited, with the claim, under

vicarious liability, arisen out of insurance policy issued by it, indemnifying the owner of the car against all the claims.

9. The Tribunal held that the claimant could not prove the salary certificate, due to the non-production of the register of wages and the account statement. Due to the deficiency of evidence qua employment, the Tribunal presumed the earning of the deceased at the rate of Rs. 3500/- per month, treating him as an unskilled worker, in an unorganized sector. Consequently, the Tribunal awarded total compensation of Rs. 4,00,000/-, including loss of estate, love, affection, and funeral charges.

10. Challenging the said award, the Insurance Company has come up before this Court seeking discharge of its liability, because it was the driver of the motorcycle who was at fault, and the burden for enforcing the insurance claim would arise, only if the driver of the car, insured under the policy, was negligent while driving the car and not otherwise.

11. I have heard Dr. Lalit Kumar Sharma, Advocate, for the Insurance Company, and counsel for the respondents.

DISCUSSIONS AND REASONING:

12. Dr. Lalit Kumar Sharma, Advocate, contends that this accident had led to the registration of an FIR, in the file of Police Station-Balh, District Mandi, HP, against the driver of the motorcycle, who died in this accident. He further contended that it has come in the evidence of RW-2 HC Prem Singh, of Police Station- Balh, in the Investigation concluded that Harish Kumar, was rash and negligent while driving his bike, and drove it in the wrong lane and hit the car, which on seeing the dangerous driving of the bike, had been stopped by its driver. Based on this report, Dr. Lalit claims that since the driver of the car was not at fault, as such, the Insurance company is not liable for vicarious liability to settle any claim arisen out of the policy issued by it indemnifying the owner of the car.

13. This contention, on its face value, looks terrific and catchy but has extensive and deep fault lines. A bare perusal of FIR reveals that in the accident, the driver of the car did not sustain any injury. After the local people took the injured of the motorcycle to the hospital, he went to the Police Station and reported the matter. Thus, the FIR contains a one-sided version, coming from the mouth of the driver of the car. The driver was on his way to Chandigarh Airport to drop the daughter of the owner of the car. The Police did not investigate her. Undoubtedly, she must be away for some time, but still, the Police could have investigated her by making a phone call or on a video call, through skype, which was widely in use. The crucial point which makes this entire investigation as shady reveals from one other but the Statement of Jai Ram RW-1, the driver of the car.

14. In National Insurance Co Ltd v. Rattani, (2009) 2 SCC 75, Supreme Court holds,

8. We are not oblivious of the fact that ordinarily an allegation made in the first

information report would not be admissible in evidence per se but as the allegation made in the first information report had been made a part of the claim petition, there is no doubt whatsoever that the Tribunal and consequently the appellate Courts would be entitled to look into the same.

15. What clinches the issue is the joint reply to the claim petition filed by the owner of the car and its driver. In response to paragraph No. 8, the respondent specifically pleaded that the accident took place due to rash and negligent driving of the driver of the motorcycle and hit his bike with the stationary car. In paragraph No.4 of the reply, the respondents further clarified that on seeing the bike coming towards the wrong side, the driver reduced the speed of the car and then brought it to grinding halt after that bike hit the car.

16. This position is an improvement over FIR, wherein the fact that the driver of the car reduced the speed of the car and made the stationary is missing. As such, on the face of it, this stand is not credible.

17. Even otherwise, it will be the atrocity of justice if the statement of the driver is taken as gospel truth when the other person could explain her stand, being no more. If the Insurance Company wanted to prove this fact, then the burden was upon it to examine the surviving occupant of the motorcycle, to establish this fact.

18. In *Mangla Ram v. Oriental Insurance Co. Ltd.*, (2018) 5 SCC 656, Supreme Court holds,

33. In other words, we are inclined to hold that there is no tittle of evidence about the motorcycle being driven negligently by the appellant at the time of accident. The respondents did not produce any such evidence. That fact, therefore, cannot be assumed. Resultantly, the argument of the respondents that the appellant did not possess a valid motorcycle driving licence at the time of accident, will be of no significance. Thus, we hold that there is no legal evidence to answer the issue of contributory negligence against the appellant.

19. I have also perused the Insurance Policy in force. The second respondent, the driver, has also proved his driving license being valid and genuine. Given above, there is no illegality or infirmity in the award, and on the other hand, the same is well reasoned. This Court affirms the same, however, with the following modifications.

20. In *National Insurance Company Limited v. Pranay Sethi and Ors*, (2017) 16 SCC 680, a Constitutional bench of Supreme Court holds,

59. In view of the aforesaid analysis, we proceed to record our conclusions:-

59.1. The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma*, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what

has been held by another coordinate Bench.

59.2. As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

21. In Sarla Verma v. Delhi Transport Corporation, 2009 (6) SCC 121, Supreme Court holds,

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor

would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

40. The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims under Section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163A of MV Act (with appropriate deceleration after 50 years):

Age of the deceased

Multiplier scale as envisaged in Susamma Thomas

Multiplier scale as adopted by Trilok Chandra

Multiplier scale in Trilok Chandra as clarified in Charlie

Multiplier specified in second column in the Table in II Schedule to MV Act

Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation)

(1)

(2)

(3)

(4)

(5)

(6)

Upto 15 yrs

-

-

-

15

20

15 to 20 yrs.

16

18

18

16

19

21 to 25 yrs.

15

17

18

17

18

26 to 30 yrs

14

16

17

18

17

31 to 35 yrs.

13

15

16

17

16

36 to 40 yrs.

12

14

15

16

15

41 to 45 yrs.

11

13

14

15

14

46 to 50 yrs

10

12

13

13

12

51 to 55 yrs.

9

11

11

11

10

56 to 60 yrs.

8

10

09

8

8

61 to 65 yrs.

6

08

07

5

6

Above 65 yrs.

5

05

05

5

5

41. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163A of MV Act. In cases falling under Section 166 of the MV Act, Davies method is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

22. Accordingly, the award needs to be tested in the touchstone of the directions issued by the Constitutional bench, which leads to the following conclusion:

23. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income, is to be considered, where the deceased was below the age of 40 years.

(1) Heading

(2) Calculations in Rupees

(3) Amount in Rupees

(4) Reference

A.

Income

3500/- per month.

(Evidence)

B.

Addition 40%

1400/-

(Para 59.4. Pranay Sethi).

C.

Total income= (A+B)

3500+1400= 4900/-

D.

Contribution to the mother = 50% (C÷2)

4900÷2=2450/-

(Para 32 Sarla Verma)

E.

Personal and living expenses of the bachelor= 50% (C÷2)

4900÷2=2450/-

(Para 32 Sarla Verma)

F.

Net income= (CF)

4900÷2 = 2450/-

(Para 32 Sarla Verma)

G.

Age of the deceased at the time of death is taken as 21 years. Date of birth- 21-01-1989 Date of accident 20-06-2010 Multiplier of 18

(Para 40, aged 21 to 25 years, column 4 -Sarla Verma).

H.

Multiplier- F x 12 (months) x 18

2450x12x18= 5,29,200/-

5,29,200

I.

Loss of estate

15,000/-

15,000

Para 59.8. Pranay Sethi). (Accident date prior to 31-10- 2017 date of decision of Pranay Sethi- as such no increase of 10%)

J.

loss of consortium

40,000/-

40,000

(Para 59.8. Pranay Sethi).

K.

funeral expenses

15,000/-

15,000

(Para 59.8. Pranay Sethi).

L.

GRAND TOTAL

5,99,000

M

INTEREST FROM THE DATE OF PETITION

@ 6 % per annum

Date of Petition- 27 Aug 2010

24. Since, as per the details mentioned in Para 26 of the award, total lumpsum compensation was awarded as Rupees Four lacs, which is less than when calculated above. Although there is neither any appeal against the award nor

cross-objections, but still this Court needs to test whether the award was just. In the claim petition, the claimant had claimed an amount of Rs. 15 Lacs, whereas what she got was around one fourth of it. Therefore, to award just compensation is the spirit behind the Motor Vehicles Act, 1988 and as such this Court is inclined to award just compensation by modifying the impugned award, primarily for the reason that the claimant is apparently a poor lady, not aware of her legal rights, and belongs to an underdeveloped region of Himachal Pradesh.

25. In *Panna Lal v. State of Bombay*, AIR 1963 SC 1516, a Constitutional Bench of Supreme Court holds,

[12] Even a bare reading of O. 41 R. 33 is sufficient to convince any one that the wide wording, was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondents as "the case may require". In the present case, if there was no impediment in law the High Court could therefore, though allowing the appeal of the State by dismissing the plaintiff's suits against it, give the plaintiff a decree against any or all the other defendants. who were parties to the appeal as respondents. While the very words of the section make this position abundantly clear the illustration puts the position beyond argument.

26 In *Nagappa v. Gurudayal*, (2003) 2 SCC 274, three-member bench of Supreme Court holds, at page 282,

21. For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition.

27. In *Ramla v. National Insurance Co. Ltd.*, (2019) 2 SCC 192, Supreme Court holds,

5. Though the claimants had claimed a total compensation of Rs 25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles

Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty-bound to award just compensation. [See the judgments of this Court in (a) Nagappa v. Gurudayal Singh [Nagappa v. Gurudayal Singh, (2003) 2 SCC 274: 2003 SCC (Cri) 523] , (b) Magma General Insurance Co. Ltd. v. Nanu Ram [Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130] , (c) Ibrahim v. Raju [Ibrahim v. Raju, (2011) 10 SCC 634: (2012) 3 SCC (Civ) 1053 : (2012) 1 SCC (Cri) 120]].

28. In view of the provisions under Order 41 Rule 33 of CPC, even if Cross Objections/Cross Appeals are not on the file of this Court, on the ground of awarding just compensation, the nothing can deprive the claimant of her lawful entitlement of just, fair and adequate compensation.

29. The Tribunal has awarded interest at the rate of 7.5% per annum. In my view, there is a trend of falling interest rates and these are likely to fall unless we catch up the global rates of interest, which are quite low. The prevalent interest rates are around 5%. As such, it shall be appropriate if the rate of interest on the compensation amount is reduced from 7.5% per annum to 6% per annum, retrospectively, i.e. from the date of the filing of the petition. The interest already accrued on fixed deposits, shall be adjusted in the light of this modification.

30. Consequently, this Court modifies the compensation to the calculations mentioned in column no. 3 of paragraph 23. Thus, the total compensation amount is increased to Rs. 5,99,000/- and the interest is reduced to 6% per annum, from the date of filing of the petition, i.e., from 27 Aug 2010.

31. In case, the claimant does not apply for release of the amount within 100 days from today, then the Registry shall inform the claimant about this verdict, and ask her to furnish her bank details. In case the non-claimants take this matter to the Hon'ble Supreme Court, then release is to be made as per the orders and directions of the Hon'ble Supreme Court. Registrar Judicial to pass appropriate orders for release of all amount, along with interest, less taxes if any.

32. In view of the above, the appeal is disposed of in the aforesaid terms. The pending applications, if any, are also disposed of accordingly.