(2015) 02 GAU CK 0093

In the Gauhati High Court

Case No : MAC Appeal No. 19 of 2007

Pravabati Goswami (Sarma) and Others — APPELLANT

Vs

Nabiruddin Ahmed and Others — RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Citation : (2015) 3 GLT 678

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : D. Mazumder, N.K. Bhatra and S.K. Sanganeria, for the Appellant; A.J. Saikia, D. Thakur and N. Nath, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rumi Kumari Phukan, J—The appellants herein have challenged the judgment and award dated 27.09.2006, passed by the learned Member, MACT, Kamrup, in MAC Case No. 507 of 2005 (Old No. MAC 2689/04), awarding a sum of Rs. 3,21,500/- along with interest @ 6% per annum in favour of the claimants. The facts of the case, as set out by the appellants, is that on 15.09.2004, at about 9.30 AM, while Late Ashok Sarma was proceeding home on his bicycle, the offending vehicle, bearing registration No. AS-14/A-5477, driven in a rash and negligent manner, came from the same direction and knocked him from behind on the road as a result of which he sustained serious injuries and, subsequently, succumbed to his injuries.

2. At the time of the accident, the deceased was 48 years old and his monthly income was about Rs. 7000/- per month at the time of his death and he was the sole earning member of the family.

3. The opposite party No. 1, i.e. owner of the vehicle, and the opposite party No. 2, i.e. driver of the offending vehicle did not contest the case, the case proceeded ex-parte against them. The opposite party No. 3, i.e. the insurance company, who is the insurer of the offending vehicle, contested the case by filing

a written statement. The opposite party No. 3 also denied the statement of the appellants regarding the age, occupation and monthly income of the deceased. Apart from denying the allegation of rash and negligent driving of the offending vehicle, the opposite party No. 3 also wanted the claimants to produce and prove documents, such as, registration certificate, insurance policy, etc. as well as the driving licence of the driver in support of the claimants'' contention that the driver of the offending vehicle was having a valid driving licence at the time of the accident The opposite party No. 3 also contended that the compensation claimed is highly excessive and exaggerated and prayed for dismissal of the claim petition.

4. Upon the pleadings, the learned Tribunal had framed the following issues:-

1) Whether on 15.09.2004 the vehicle, bearing registration No. AS-14-A-4577 was driven in a rash and negligent manner and knocked down the deceased Ashok Sarma and whether the deceased died in the said accident?

2) Whether the claimants are entitled to get compensation, if so, what will be the just compensation and from whom payable?

5. At the conclusion of the trial, the learned Tribunal awarded an amount of Rs. 3,21,500/- as compensation payable to the appellants. The learned Tribunal also held the appellants entitled to interest on the compensation amount at the rate of 6% per annum, from the date of filing of the claim petition till realization.

6. Being aggrieved with the award, the claimants have preferred the appeal on the ground that the learned Tribunal completely ignored the contention of the appellants with regard to the monthly income of the deceased as Rs. 7000/- per month and, according to the appellants, by making 1/3rd deduction as personal expenses of the deceased and by adopting the multiplier of 13, the amount of compensation ought of have been at least Rs. 7,28,000/-. Thus, the appeal has been preferred by the appellants for enhancement of the impugned award.

7. Let us discuss the limited point of enhancement raised in the appeal. According to the learned counsel for the respondents, there is no irregularity or illegality committed by the Tribunal while deciding the compensation by the Tribunal. On the other hand, the learned counsel for the appellant has vehemently contended that the learned Tribunal, without assigning any reason, has discarded the positive evidence given by the witnesses that the deceased used to earn around Rs. 5000/- per month by way of tuition and, thus, the total income of the deceased was Rs. 7,000/- per month including the monthly salary of Rs. 2,200/-. Thus, the learned Tribunal has erred while calculating income as well as in choosing of multiplier and has assessed the compensation in wrong manner. So, the appellants are entitled to compensation at an enhanced rate as has been mentioned above.

8. In pursuance of the submissions of the rival parties, I have considered the evidence on record as well as perused the impugned order of award. It is evident

that there are two supporting witnesses to the claim of the appellants that the deceased used to take tuition up to Class-X standard. P.W. 3, who was a student of Anandaram Baruah Higher Secondary School, has specifically stated that she and her other group of students, 11 in numbers, used to pay Rs. 750/- per month to the deceased as tuition fee. If it is calculated, Rs. 750/- x 11 = Rs. 8,250/- will be the total income from tuition. Again as per P.W. 4, his younger brother was also a student, used to pay Rs. 250/-, per month, as tuition fee to the deceased. Both these witnesses were not at all cross-examined except the fact that they has no proof of paying tuition fee to the deceased. The learned Tribunal, however, accepted about the factum of tuition fee of Rs. 750/- per month as stated by P.W. 3 but has not discussed other aspects of tuition fee paid by other students. Even if roughly calculated, it can be found that at least both the student used to pay Rs. 1,000/- per month and from that aspect it can be held that the deceased received at least Rs. 3,000/- per month from private tuition from various students. The learned Court below has assessed the amount of Rs. 3,000/- per month as the income of the deceased (Rs. 2,200.00 + Rs. 750.00). At least, on the basis of the above evidence, we can hold his monthly income as Rs. 5000/- including his salary. It is to be noted that in case of private tuition generally no receipt is issued against such tuition. So, the question of production of proof of receipt of such tuition fee does not arise.

9. The Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 and 2013 (3) TAC 697 (SC) : Rejesh & Ors. Vs. Rajvir Singh & Ors., has issued the guidelines for assessing compensation by applying appropriate multiplier on the basis of which the prayer of the claimants for enhancing the compensation is to be considered.

10. In Sarala Verma''s case, the Hon''ble Supreme Court has laid down the ratio to be followed by the all Tribunals uniformly to avoid inconsistency by the Tribunal while assessing the compensation. It has been categorically held that lack of uniformity and inconsistency among the decisions of Tribunals in awarding compensation has been a matter of great concern and, therefore, emphasis has been laid down for awarding just compensation.

11. Regarding deduction to be made towards personal and living expenses of the deceased, it has been held that where the deceased was married, the deduction towards personal and living expenses should be 1/3rd, where the number of dependent family members is 2 to 3, 1/4th, where the number of dependent family members is 4 to 6 and 1/5th where the number of dependent family members exceeds six.

12. Section 163A and the Second Schedule in terms do not apply to determination of compensation in applications under Section 166. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the

deceased. If the deceased is a bachelor, dies at the age of 45 and his dependants are his parents, the age of the parents would also be relevant in the choice of the multiplier. Thus, the Apex Court has set forth the formula as mentioned in the Column (4), below paragraph 40 of the judgment.

13. Regarding choosing the multiplier for assessing the compensation on the dependency, the learned Tribunal has taken the multiplier as 13, which is appropriate as per Sarla Verma''s case (supra). So, there is nothing to interfere on this aspect. Further, the Hon''ble Apex Court has held that future prospects of the deceased person should also be considered. In that regard, it has been categorically held that there should be 50% hike in the salary in the case of deceased person below 50 years of age. It has been held further in the case that those above 50 years of age, there should be no addition of 50% hike in the salary for future prospects.

14. In Rajesh & Ors. Vs. Rajbir Singh & Ors., reported in 2013 (3) TAC 697 (SC), it has been held that:

"for adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award at least rupees one lakh for the loss of consortium."

Further, in paragraph 21, it has been held thus:-

"21............The head ''Funeral Expenses'' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of ''Funeral Expenses'', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs. 25,000/-."

15. In Rajesh (supra), it has been held that it has now become settled law that the Court should not succumb to niceties or technicalities in such matters. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim. Thus, it has been awarded in the above mentioned case as below.

The deceased (who was 33 years working as clerk in the school having a widow and 3 children), his monthly salary of Rs. 9520/- 50% of income towards future prospects and after 1/4 deduction towards personal expenses, loss of dependency worked out to Rs. 10,710/- per month applied multiplier by 16 and loss of dependency calculated at Rs. 20,56,320/-. Awarding an amount of Rs. 1,00,000/- towards loss of consortium and further awarded Rs. 1,00,000/- for loss of care and guidance of minor children and Rs. 25,000/- towards funeral expenses and awarding interest @ 7.5% from the date of filing the petition till realization.

16. In the instant case, the deceased was a teacher aged about 48 years, was an Assistant Teacher in Charia M.E. School and he left 5 dependents behind him, i.e., his mother, wife and three minor children.

17. On the basis of the above proposition set forth by the Hon''ble Apex Court, the learned counsel for the appellant has contended that having regard to the family of the deceased consisting of 5 family members, including herself, and as entire family is dependent on him, deduction of amount towards personal expenses should be 1/4th.

18. As we found the deceased the sole earning member of the family and there is scope to hold about future prospect as has been held in the above case law, reported in 2013 (3) TAC 697 (supra). The deceased had monthly salary of Rs. 2,200/- and by adding 50% of his income towards future prospect, his monthly income will be assessed at Rs. 3,300.00 (Rs. 2,200 + 1,100).

19. In respect of consortium, the Hon''ble Apex Court, in the above referred case, further held as follows:

"In the legal parlance, consortium is the right of the spouse to the company, care, help, comfort, guidance and society, solace, affection and sexual relation etc. The non-pecuniary head of damage has not been properly understood by our Court. By loss of consortium, the Courts have made attempt to compensate the loss of spouse. It would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts should award Rs. 1,00,000/- for loss of consortium."

20. Considering all above, the amount of compensation can be calculated as mentioned below:

21. The amount will carry interest @ 9% per annum from the date of the filing of the petition till realization.

22. In the result, the Appeal is allowed. The impugned judgment and Award of the learned Tribunal is set aside. The claimants shall be entitled to a total compensation Rs. 7,55,000.00 with interest @ 9% per annum from the date of filing this petition till realization. The amount already paid to the appellants is to be adjusted. Send back the LCR.

