(2022) 09 BOM CK 0065

In the Bombay High Court

Case No : First Appeal No.1153 Of 2008

Purushottam APPELLANT

Vs

Asha And Others RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Citation : (2022) 09 BOM CK 0065

Hon'ble Judges : M.S. Jawalkar, J

Bench : Single Bench

Advocate : R.V. Kalia, Anita Mategaonkar

Final Decision : Allowed

Judgement

M.S. Jawalkar, J

1. Heard learned Counsel for the appellant and learned Counsel for the respondent No.2.

2. Present appeal is filed by the original petitioner for enhancement of compensation. The wife of the petitioner/appellant met with an accident on 14/03/2003 when she was traveling in auto and the said auto was hit by truck bearing No. MP-04-K-4980. He claimed compensation of Rs.3,00,000/- though he is entitled for just compensation. However, the learned Tribunal passed an award of Rs.1,82,000/-. It is vehemently submitted that the learned Tribunal committed grave error in holding the notional income of deceased Vandana as Rs.15,000/- per annum as per second schedule of Section 163-A. The awarded amount is totally contrary to the judgment of Apex Court. The learned Counsel for the appellant relied on following judgments :

1. National Insurance Company Limited Vs. Pranay Sethi and others 2017 ACJ 2700 the judgment by bench assisting of five judges.

2. Lata Wadhwa and others Vs. State of Bihar and others 2001 (8) scc 197.

3. Kirti and others Vs. Oriental Insurance Company Limited (2021) 2 SCC 166.

4. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (6) SCC 121.

3. As against this, learned Counsel for respondent Insurance Company supported the judgment. However she submits that the learned Tribunal erred in holding truck driver only responsible for the accident without considering the panchanama.

Their application for adding auto driver is also not considered, specifically when the auto rikshaw was carrying more passenger than its capacity.

4. I have heard both the parties at length. The learned Counsel for the appellant fairly conceded that looking to the age of deceased instead of multiplier 17, the learned Tribunal ought to have applied multiplier of 16. She relied on Sarla Verma (supra) judgment wherein for the age group of 31 to 35 the multiplier is given as 16. In support of her contention the notional income of Rs.15,000/- per year is contrary to the judgments passed by the Apex Court, she relied on Lata Wadhwa (supra) judgment. The learned Tribunal ought to have held notional income of deceased as to Rs.36,000/- per annum. She relied on Lata Wadhwa (supra), wherein the Hon'ble Apex Court in paragraph No. 10 held as under:

10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be re-calculated, taking the value of services rendered per annum to be Rs.36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000/- instead of Rs.25,000/- given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000/- per annum and multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000/- per annum. In their case, therefore, the total amount of compensation should be

re-determined, taking the value of services rendered at Rs.20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs.50,000/- towards the conventional figure.

5. The learned Counsel for the appellant claims that claimant is entitled for grant of future prospect also. She relied on the point of grant of future prospect on Kirti and another (supra). The Hon'ble Apex Court in this matter held as under in paragraph Nos. 40 and 41:

40. When it comes to the second category of cases, relating to notional income for nonearning victims, it is my opinion that the above principle applies with equal vigor, particularly with respect to homemakers. Once notional income is determined, the effects of inflation would equally apply. Further, no one would ever say that the improvements in skills that come with experience do not take place in the domain of work within the household. It is worth noting that, although not extensively discussed, this Court has been granting future prospects even in cases pertaining to notional income, as has been highlighted by my learned brother, Surya Kant, J., in his opinion in Hem Raj v. Oriental Insurance Company Limited; Sunita Tokas v. New India Insurance Co. Ltd.

41. Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:

41.1. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

41.2 Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.

41.3. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

41.4. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

41.5. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.

6. The further contention of the appellant is that very meager amount is granted towards funeral expenses and loss of estate and consortium. She relied on the

judgment of Pranay Sethi (supra) wherein Hon’ble Apex Court in paragraph No. 61 sub clause 8 given reasonable figures as under:

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

…..

…..

(iv) 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.

(viii) 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.

7. As such the learned Tribunal failed to consider the principle laid down by the Apex Court in respect of arriving at notional income of the person and also the amount towards conventional heads and totally erred in arriving at a conclusion that deceased notional income would be Rs.15,000/-.

8. Relying on IInd Schedule of Section 163-A which is merely a guiding chart. It is not amended since long, now the said schedule is deleted. Tribunal ought to have considered that due to change in circumstances, raise in cost of living the notional income ought have to be held reasonable. So far as, contention of respondent that the auto driver was negligent and he contributed to negligence. However, the learned Tribunal rightly held that the petition is not bad for non-joinder of necessary party as offence was registered against the truck driver only. Moreover, there is no evidence laid by respondent – Insurance Company nor there is no challenge to the finding recorded by the Tribunal by the Insurance Company. As such, there is no substance in the ground raised by the respondent-Company.

9. In view of the judgments referred above, the award passed is patently erroneous to the extent of grant of compensation. Therefore, it needs to be modified. The appellant is entitled for amount of compensation as under :

The notional income would be Rs.36,000/- per year, after deduction of 1/3rd as deceased would have spent that much amount on her own if she would have been alive, the amount comes to Rs.24,000/-. If multiplier of 16 is applied as per judgment of Sarla Verma it comes to Rs.3,84,000/-.

10. As held in Kirti and another (supra) the principle of future prospect is made equally applicable in case of non earning victims. The deceased was between the age group of 31 to 35 years.

The claimant is entitled for 40% of future prospects. The claimant is also entitled for Rs.15,000/- towards funeral expenses, Rs.15,000/-towards loss of estate, amount of Rs.25,000/- towards consortium.

As such, the appellant is entitle for total amount of compensation of Rs.5,92,600/-. Accordingly, I proceed to pass the following order.

ORDER

1) The appeal is allowed.

2) The claimant is entitled for Rs.5,92,600/- (Five Lakh Ninety Two Thousand Six Hundred only).

3) The respondent Nos. 1 and 2 are jointly and severally made liable to pay the amount of Rs.5,92,600/- along with proportionate costs and future interest @ 7.5% per annum from the filing of petition till its realization within a period of two months.

4) After deposit of the said amount, the appellant/petitioner is entitled to receive the same. The claimant to pay deficit court fees on enhanced compensation. With these modifications in award, the appeal is disposed of.