(2015) 01 KL CK 0012

In the High Court Of Kerala

Case No : M.A.C.A. No. 1319 of 2012

Pushpa Latha and Others APPELLANT

Vs

S. Syam and Others RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Citation : (2015) 01 KL CK 0012

Hon'ble Judges : P.V. Asha, J.;T.R. Ramachandran Nair, J.

Bench : Division Bench

Advocate : J. Om Prakash, for the Appellant; A.R. George, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The appellants before this Court are the wife and children of deceased Shri Sathya Rajan. He was involved in an accident on 10.3.2006 while travelling in a motor cycle KL2P 7278 through Thattamala - Koottikkada road. The accident occurred near Dr. Viswan''s Hospital when a private bus which was coming in great speed hit the motor cycle. He sustained serious injuries and succumbed to the injuries on the same day. Even though he was immediately taken to Sankers Hospital, Kollam and thereafter to District Hospital, Kollam, he died on the way to the hospital.

2. The Tribunal found, on the evidence adduced by the parties, that the driver of the offending vehicle was totally negligent.

3. What is involved is only the adequacy of the quantum of compensation. The deceased was working as Junior Telecom Officer and aged 54 at the time of accident. In paragraph 9 of the award, after considering the fact that he had service of 4 years remaining, the Tribunal took his monthly income as Rs. 20,000/-. After deducting 1/3rd for personal expenses, the contribution was assessed at Rs. 6,40,000/- during the period of service. By reckoning the average pension at 50%, viz. Rs. 10,000/- per month, it was held that the legal

heirs are entitled to compensation towards dependency at Rs. 7,12,000/- by taking the multiplier as 9. Accordingly, the total compensation is arrived at Rs. 7,40,000/-. The table given below will show the way in which the Tribunal granted the compensation:

4. Learned counsel for the appellants submitted that the method of calculation of multiplicand is not correct. Apart from the same, it is submitted that for funeral expenses Rs. 25,000/-, for loss of estate Rs. 1 lakh, for loss of consortium Rs. 1 lakh and for loss of love and affection also Rs. 1 lakh are liable to be granted in the light of the decision of the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, and other decisions. It is further submitted that for the entire period of 9 years, the multiplicand will have to be properly assessed based on the salary as on the date of death. According to the learned counsel for the appellants, split multiplier cannot be adopted.

5. Both sides relied upon the decision of the Apex Court in Puttamma and Others Vs. K.L. Narayana Reddy and Another, . Therein, in paragraph 34 it has been held that "in the absence of any specific reason and evidence on record the Tribunal or the court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , as affirmed in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, ." In the light of the above, learned counsel for the appellants submitted that the method adopted by the Tribunal will result in adopting split multiplier.

6. Learned counsel for the insurance company submitted that the retirement is a definite eventuality as far as a person in service is concerned, under the BSNL and therefore such being an exceptional case even going by the decision in Puttamma''s case (supra), the same will be a crucial factor to be considered. It is submitted that the claimants cannot expect contribution at the same rate of salary after the date of retirement of the deceased. What is to be awarded is just and fair compensation.

7. We find that the legal principles for fixing compensation in these aspects have been settled by various decisions of the Apex Court. In our judgment in M.A.C.A. No. 1665/2012 similar question came up for consideration and we extract hereinbelow the following paragraphs from the said judgment:

"10. As regards the general principles as far as fixing of compensation is concerned, we find that there is a detailed discussion in paragraph 12 of Sarla Varma''s case (supra). Therein the principles stated in an earlier decision of the Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, have been considered in detail. Paragraph 9, 10 and 13 of the Susammas'' case (supra) discussed the details of the essential principles and we extract the same below:

"9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

10. The matter of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of year''s purchase."

"13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

13. Going by the same, it can be seen that in paragraph 9, the Supreme Court was of the view that various imponderables will have to be considered e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. Significantly, in Sarala Varma (supra), in paragraph 45, the Hon''ble Supreme Court, while considering the method for computation of compensation, it has been observed as follows:

"45......As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay sales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many." 8. In this case also, the situation being that the deceased was aged 54 and he had service only for six years (the retirement age under the BSNL being 60) the said eventuality will have to be considered in arriving at the correct multiplicand. The age of the deceased being between 51 to 55, the correct multiplier as per Smt. Sarla

Verma and Others Vs. Delhi Transport Corporation and Another, , will be 11 which we adopt.

9. There is some dispute regarding the monthly income taken at Rs. 20,000/-. Going by Ext.A9 copy of the income-tax return for the year 2004-2005, the gross salary shown is Rs. 3,00,966/-. It is submitted that in the light of the decision of the Apex Court in National Insurance Company Ltd. Vs. Indira Srivastava and Others, the permissible deduction will be income tax and profession tax. The income tax payable is Rs. 36831/- and the profession tax payable is Rs. 1,500/- and therefore, the total deduction will be Rs. 38,331/-. By deducting the said amount, the net salary will be Rs. 2,62,635/- per year and the monthly salary will be Rs. 21,886/- instead of Rs. 20,000/-. One third will have to be deducted for personal expenses and after deducting 1/3rd, it will be Rs. 14,591/- per month. Therefore, the contribution which can be claimed for 6 years will be Rs. 10,50,552/-, rounded off to Rs. 10,50,550/-. After retirement, it will be reasonable to take 50% of salary towards pension. Thus, the total contribution for 5 years will be Rs. 6,56,588/-. After deducting 1/3rd of the same, the amount will be Rs. 4,37,725/-. Therefore, the total amount as to the dependency contribution will be Rs. 14,88,277/- and the multiplicand therefore will be Rs. 1,35,298/- annually. The total compensation towards dependency can be arrived at by taking a uniform multiplicand which we consider as just and fair.

10. For funeral expenses, we grant an amount of Rs. 25,000/-, for loss of consortium an amount of Rs. 1 Lakh is granted and for loss of love and affection also Rs. 1 lakh is granted and for loss of estate we grant an amount of Rs. 50,000/-. For pain and suffering no amount was granted and we award Rs. 10,000/- which will be reasonable. Accordingly, the total compensation will be as follows:

(Rupees Seventeen lakhs seventy-four thousand two hundred and eighty only)

11. The above amount will carry interest at the rate of 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount less the amount already deposited before the Tribunal, within a period of three months.

The appeal is allowed as above. No costs.

