
(2012) 03 GAU CK 0129
In the Gauhati High Court
Case No : MAC Appeal No. 33 of 2001

Samir Bhattacharjee and Another	Vs	APPELLANT
Ganeswar Boro and Others		RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 4 GLT 39

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : J.I. Borbhuiyan, for the Appellant; R. Goswami, for the Respondent

Judgement

Arup Kumar Goswami, J.—Heard Mr. J.I. Borbhuiyan, learned counsel for the appellants. Also heard Mr. R. Goswami, learned counsel appearing for the respondent No. 2. By an order dated 28.9.2011, service on respondent Nos. 1 and 3 was deemed to have been effected. None appeared for respondent Nos. 1 and 3.

2. This appeal u/s 173 of the Motor Vehicles Act, 1988 has been preferred for enhancement of the compensation awarded to the present appellants by judgment and order dated 28.3.2001 in MAC Case No. 100 of 1998. By the said judgment, the appellants were awarded a sum of Rs. 4,00,000/- inclusive of no fault liability with simple interest thereon @ 9% per annum from 30.3.1998, that is, the date of petition till realisation of amount and the United India Insurance Company Ltd. was directed to pay the awarded amount within a period 30 days.

3. The claim petition came to be filed on account of death of Chitra Bhattacharjee, the wife of the appellant No. 1 and mother of the appellant No. 2, who died in a vehicular accident on 8.10.1997. The claim petition was filed by the present appellant No. 1 for himself and for and on behalf of the minor daughter Rachita @ Tandra, who was a minor at the relevant point of time.

4. The present appellants and deceased Chitra Bhattacharjee had boarded a Bus

with registration No. AS-01-2777 from Adabari bus stand at Guwahati and as a result of rash and negligent driving, the bus skidded from road and turned turtle and fell into a gorge. As a result of the said accident, Chitra Bhattacharjee lost her life. The deceased was working as Civilian Switch Board Operator under 2 Coy.F.C.S.R. C/0 99 APO at Station Headquarter, Guwahati and her monthly salary, according to the salary certificate, Ext. A, was Rs. 4,489/- and she was due to retire on superannuation on 31.1.2020. The learned Tribunal, taking note of the evidence of PW-3, who was the appellant No. 1, came to a finding that he was the earning member of the family and was not dependent on the earnings of the deceased wife though he had stated that the wife used to contribute about Rs. 3,500/- per month towards running of the house. It was also held that the child alone was entitled to get compensation and the loss of dependency of the child was assessed at Rs. 2,000/- per month. The age of the deceased having been determined as 35 years, multiplier of 16 was adopted. The learned Tribunal came to a conclusion that a sum of Rs. 3,84,000/- would be the just compensation. To that, a sum of Rs. 16,000/- was awarded towards funeral expenses and loss of consortium, thus, awarding, in total, a sum of Rs. 4,00,000/-.

5. J.I. Borbhuiyan, learned counsel for the appellants submits that the award of compensation as granted by the learned Tribunal is, ex-facie, on the lower side and learned Tribunal lost sight of the principles that should govern award of compensation. He submits that the deceased was aged about 35 years at the time of her death and the future prospect of the deceased was totally ignored by the learned Tribunal. He has referred to the judgment of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , to impress upon this Court that an addition of 50% of actual salary of the deceased towards future prospects, should have added when she was having a regular job and was below the age of 40 years. Therefore, he submits that the learned Tribunal ought to have assessed the computation on income at Rs. 6,733.00 (rounded of from Rs. 6733.50), the said figure representing 50% addition to Rs. 4,489/-, being the salary at the time of death. On the said basis, the income of the deceased would be Rs. 80,802/- per annum. The learned counsel further submits that these material aspects of the matter having been totally overlooked by the learned Tribunal, the compensation is liable to be suitably enhanced.

6. Mr. R. Goswami, learned counsel appearing for the Insurance Company, also submits that the learned Tribunal ought to have taken into consideration the future prospect of the deceased. He also submits in the facts and circumstance of the case, adoption of multiplier of 16 is not admissible and multiplier of 15 should have been applied. He has also submitted that pursuant to the award dated 28.3.2001, the Insurance Company had deposited a sum of Rs. 5,08,750/- on 26.12.2001, being the principal amount of compensation as well as the interest accrued thereon till the date of deposit. The learned counsel further submits that even if this Court is inclined to enhance the compensation, this Court may not grant interest @9% as has been granted by the learned Tribunal

and he submits that interest @ 6% would be just and proper.

7. I have considered the rival submissions of the learned counsel for the parties.

8. In a claim petition for award of compensation on account of death, three facts are needed to be established by the claimant: (a) the age of the deceased, (b) income of the deceased and (c) the number of dependents. In order to arrive at the loss of dependency, additions/deductions that are needed to be made are to be decided by the Tribunal for arriving at the income. Thereafter, deduction is to be made towards personal living expenses of the deceased and finally, a decision regarding choice of the multiplier to be applied with reference to the age of the deceased has to be taken. In calculating the compensation, the actual income of the deceased less income tax should be the starting point. The courts had been confronted with the question as to whether the actual income at the time of death should be taken as income or whether any income should be added by taking note of future prospects. In *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , the Supreme Court had held that the future prospects of advancement in life and career should also be quantified in terms of money to augment the annual contribution to the dependent, otherwise known as multiplicand, and that when the deceased had a stable job, the Court can take note of the prospects of the future and it would be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. In that case, the deceased who was aged about 39 years at the time of death was earning about Rs. 1,032/- p.m. and the Apex Court estimated monthly gross income of the deceased to be Rs. 2,000/- before deducting the personal living expenses.

9. In *Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others*, , the Supreme Court had noted that what would be the percentage of deduction of personal expenditure cannot be put in a straight jacket formula of universal application and that it would depend upon the facts and circumstances of a particular case.

10. In *Sarla Verma (supra)*, the Supreme Court observed that when the deceased was married, deduction towards personal and living expenses of the deceased should be one-third (1/3), where the number of dependent family members is 2 to 3; one-fourth (1/4th), where the dependent family numbers is 4 to 6 and one-fifth (1/5th) where the number of dependent family members exceeds 6. In *Sarla Verma (supra)*, the Supreme Court also laid down how the multiplier should be adopted and accordingly, it has been laid down that for the age group 26 to 30 years, multiplier should be 17; for the age group 31 to 35 years, the multiplier should be 16; for the age group 36 to 40 years, multiplier should be 15; from 41 to 45 years, multiplier should be 14 and from 46 to 50 years, it should be 13. Multiplier of 11, 9, 7 and 5 are to be adopted for the age groups of 51 to 55 years, 56 to 60 years, 61 to 65 years and 66 to 70 years, respectively.

11. In view of the discussions aforesaid, there is no manner of doubt that the learned Tribunal erred in determining just compensation. It has to be accepted that Rs. 80,802 shall be the starting point of computation of income. One-third(1/3rd) will have to be deducted from the said amount to arrive at the loss of dependency and therefore, the amount of Rs. 26,934/- has to be deducted from the amount of Rs. 80,802/- and accordingly, loss of dependency would be Rs. 53,868/- per annum

12. The basis of submission of Mr. R. Goswami, learned counsel for the Insurance Company that the multiplier in the instant case should be 15 and not 16 is based on the fact that the deceased was about 35 years 9 months at the time of accident and therefore, the multiplier assigned for the age group 36 to 40, being 15, should be adopted. Even though the deceased had crossed 35 years, she was not 36 years and therefore, in the considered opinion of the Court, the multiplier of 16 assigned for the age group 30 to 35 has to be applied and therefore, no alteration is required in the choice of multiplier adopted by the learned Tribunal. Accordingly, the claim of a sum of Rs. 8,61,888/- (Rs 53,868/- X 16), will be the just compensation. The learned Tribunal had awarded Rs. 16,000/- towards funeral expenses and loss of consortium, which, according to this Court, is just and fair amount. However, this Court is of the opinion that some amount has to be paid towards loss of estate, on which head no award was given. Considering the matter in its entirety, a sum of Rs. 8,65,000/- is the amount which the appellants are held to be entitled to including loss of estate. Thus, the Insurance Company is made liable to pay Rs. 8,65,000/-. As an amount of Rs. 4,00,000/- has already been paid, the Insurance Company will now make payment of Rs. 4,65,000/-. Having regard to the long pendency of this appeal, this amount of Rs. 4,65,000/- will carry an interest @ 6% from the date of filing of the application before the learned Tribunal, i.e. 30.3.1998, till the deposit is made.

13. Having regard to the long pendency of the appeal, it is directed that the Insurance Company will make the payment alongwith interest within a period of two months from today. The appeal is allowed. No costs.