

(2014) 08 SIK CK 0002
In the Sikkim High Court
Case No : Mac App. No. 09 of 2014

Sangay Bhutia

APPELLANT

Vs

The Branch Manager, National Insurance Company Ltd.

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2015) 1 ACC 526 : (2015) ACJ 2222

Hon'ble Judges : Narendra Kumar Jain, C.J

Bench : Single Bench

Advocate : Ajay Rathi, Advocate for the Appellant; Manish Kr. Jain, Bhushan Nepal and Ashok Pradhan, Advocate for the Respondent

Final Decision : Allowed

Judgement

Narendra Kumar Jain, C.J.—Heard learned counsel for the parties.

2. The claimants/appellants have preferred this Appeal for enhancement of the amount of compensation awarded by the Motor Accidents Claims Tribunal, East Sikkim at Gangtok (for short, "the Tribunal") vide Judgment/Award dated 24.03.2014 in MACT Case No. 20/2013 in respect of death of one Smt. Sabita Pradhan in a motor accident, which took place on 18.01.2013.

3. Learned counsel for parties have not disputed the facts and findings recorded by the learned Tribunal in the impugned Judgment, that the age of deceased was 42 years and she was working as Demand Clerk on muster roll basis @ Rs. 165/- per day in Energy and Power Department, Government of Sikkim.

4. The only submission urged on behalf of claimants/appellants, by Mr. Ajay Rathi, learned counsel, is that the learned Tribunal failed to award compensation under the head "future prospects". He submitted that even if the deceased was employed on muster roll basis and was getting fixed wages, the claimants were entitled to get compensation on account of "future prospects" also. He submitted that the learned Tribunal has rightly awarded Rs. 5,94,000/- towards loss of earning and he is not disputing this amount of compensation, his limited

grievance is that 30% of this amount should have also been awarded for "future prospects". He submitted that Rs. 1,78,200/- comes as 30% of the said amount, which may now be awarded. In support of his submission, he relied upon a judgment of Three Judges bench of Hon"ble Apex Court in Rajesh and Others Vs. Rajbir Singh and Others,

5. Mr. Manish Kr. Jain, learned counsel appearing on behalf of respondents-Insurance Company did not dispute the facts of the case. He also admitted that the vehicle in question is insured with respondents-Insurance Company. His only submission is that in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , in paragraph 24, the Hon"ble Apex Court specifically held that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. He submitted that in Sarla Verma's case (supra), the Hon"ble Apex Court did not award any compensation under the head "future prospects" where deceased was self-employed or was getting only fixed wages. He, therefore, submitted that learned Tribunal was absolutely right in not awarding the amount of compensation under this head.

6. I have considered the submissions of learned counsel for the parties. As already mentioned above, there is no dispute in the present case about age and income of the deceased and also that the vehicle in question was insured with the respondent-Insurance Company.

7. The only issue involved in the present case is as to whether there should be addition in the income, looking to the future prospects, where deceased, who died in motor accident, was getting fixed wages on muster roll basis.

8. The Three-Judges bench of Hon"ble Apex Court in Rajesh & Ors. vs. Rajbir Singh & Ors. (supra) considered its earlier various judgments including the judgment delivered by Two-Judges bench of Hon"ble Apex Court in Sarla Verma's case (supra) relied upon by learned counsel for respondents. The Hon"ble Apex Court considered the question as to whether in the case of self-employed or persons with fixed wages, the compensation under the head "future prospects" should be awarded or not. Paragraph 24 of the judgment in Sarla Verma's case is also referred and considered in it and thereafter, it was held that in the case of self-employed or persons with fixed wages, there must be an addition to the actual income of the deceased while computing future prospects. It was also laid down that the actual income should be income after paying the tax, if any. Addition should be 30 % in case the deceased was in the age group of 40 to 50 years. Paragraphs 9 to 12 of the judgment of Rajesh vs. Rajbir Singh (supra) are reproduced as under: -

"9. In a recent decision, in Santosh Devi Vs. National Insurance Company Ltd. and Others, authored by one of us (G.S. Singhvi, J.), Sarla Verma" case (supra) has further been explained with regard to the settled norms, it has been held in Paragraph 11 as follows:

"11. We have considered the respective arguments. Although, the legal

jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio-economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast-changing societal values, the effect of globalization on the economy of the nation and their impact on the life of the people."

10. Consequently, it has been held at paragraphs 14 to 18 as follows:

"14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be have to say that wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts that cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time-to-time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will

be the cases of ordinary skilled and unskilled labour like barber, blacksmith, cobbler, mason, etc.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

(emphasis supplied)

9. From the observation and findings of the Hon'ble Apex Court, as referred above, it is clear that there must be an addition to the actual income of the deceased while computing future prospects irrespective of the fact that deceased was self-employed or on fixed wages. There is no dispute between the parties that deceased was 42 years of age. The learned counsel for the parties have also not disputed that loss of earning has been calculated as per income of the deceased @ Rs. 165/- per day, after deducting 1/3rd amount out of it, for personal expenses and the learned Tribunal awarded Rs. 5,94,000/- towards loss of earning. As per principles laid down by Hon'ble the Apex Court in Rajesh vs. Rajbir Singh (supra), there should be an addition of 30% of this amount for future prospects and the said amount comes to Rs. 1,78,200/-. In view of these circumstances, it is held that claimants/appellants are entitled to get Rs. 1,78,200/- towards "future prospects", in addition to the amount of compensation awarded by the Tribunal vide its judgment dated 24.03.2014.

10. Consequently, the Appeal is allowed. The impugned judgment/award dated 24.03.2014 passed by the Tribunal in MACT Case No. 20/2013 is modified to the above extent and it is directed that the respondents-Insurance Company will also pay Rs. 1,78,200/- towards compensation under the head "future prospects" or addition in the compensation towards loss of earnings, in addition to the amount of compensation assessed/determined by the Tribunal vide impugned judgment. It is needless to mention that the appellants will also get interest on this amount at the rate and from the date, as directed by the Tribunal.

11. No costs.