

(2016) 03 RAJ CK 0115
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 29/2002

Santosh Agarwal and Others	Vs	APPELLANT
Rajasthan State Road Transport Corporation and Others		RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, Section 166, Section 173

Citation : (2016) 2 DNJ 793

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : B.M. Agarwal and M.S. Dhankanwar, for the Appellant; M.R. Pareek, for the Respondent

Final Decision : Partly Allowed

Judgement

Pratap Krishna Lohra, J.—1. Appellants-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act") to assail the impugned judgment and award dated 13.08.2001 passed by the Motor Accidents Claims Tribunal, Anoopgarh (for short "the Tribunal") to the extent of amount of compensation awarded by the learned Tribunal. Essentially, the appellants are aggrieved by the findings and conclusion of learned Tribunal on issue No. 2.

2. Bare necessary facts for the purpose of this appeal are that appellants laid a claim petition against the respondents under Section 140 and 166 of the Act for claiming compensation to the tune of Rs. 14,91,000/- on account of death of Krishan Kumar Goyal @ Krishanlal in a motor accident caused by the vehicle of respondent-Corporation. In order to claim the aforesaid amount of compensation, appellants have pleaded requisite facts in the claim petition besides attributing negligence to the driver of the Corporation vehicle. In the return filed by the respondents, averments contained in the claim petition are disputed and negligence in occurrence of accident is sought to be attributed to the deceased Krishanlal. The amount of compensation is also seriously contested

by the respondents with a specific plea that appellants have projected an unembellished version about the income of the deceased.

3. The learned Tribunal on the basis of pleadings of rival parties framed three issues for determination. For substantiating their claim, appellants examined two witnesses namely AW-1 Santosh Agarwal and AW-2 Mal Singh and 6 documents were exhibited. To counter the evidence of the appellants, respondents also examined two witnesses namely NAW-1 Sohanlal Rana and NAW-2 Amrik Singh.

4. After conclusion of the evidence of rival parties, learned Tribunal heard arguments and by the impugned judgment and award quantified the total amount of compensation to the tune of Rs. 2,87,000/- under different heads.

5. The learned Tribunal decided issue No. 1 & 3 simultaneously and on evaluation of evidence available on record, decided both the issues in favour of the appellants and against the respondents. While advertent to issue No. 2, learned Tribunal assessed annual income of the deceased as Rs. 30,000/- and taking into account his age applied multiplier of 15 to determine compensation for loss of dependency to the tune of Rs. 2,80,000/-. In arriving at this figure, learned Tribunal also deducted one-third income of the deceased for his personal expenses. Besides that, learned Tribunal also awarded Rs. 5,000/- to the first appellant for loss of consortium and Rs. 2,000/- for funeral expenses.

6. Mr. B.M. Agarwal, learned counsel for the appellants submits that while determining quantum of compensation, learned Tribunal has not considered the future prospects of the deceased and, therefore, award to that extent is vulnerable. Learned counsel submits that amount of compensation awarded to the first appellant - spouse of the deceased for the loss of consortium is grossly inadequate and the said amount, therefore, is liable to be enhanced. Learned counsel would contend that learned Tribunal has completely overlooked the plight of the appellant Nos. 2 to 4, all of whom, lost their father inasmuch as no compensation is awarded to these minor kids for deprivation of love, care and affection of their father. Learned counsel has urged that funeral expenses awarded by the learned Tribunal is grossly inadequate. Lastly, learned counsel submits that learned Tribunal has erred in awarding interest on the claim amount from the date of award and not from the date of presentation of claim petition.

7. E converso, Mr. M.R. Pareek, learned counsel for the respondents submits that the evidence and materials available on record has been analysed by the learned Tribunal with forensic approach for quantifying compensation which requires no interference. Learned counsel for the respondents further submits that while awarding interest from the date of award, learned Tribunal has exercised its discretion judiciously which is not liable to be tinkered with in this appeal.

8. I have heard learned counsel for the parties, perused the impugned judgment and award and thoroughly scanned record of the case.

9. At the outset, judicial scrutiny of the impugned judgment and award in this

appeal lies in a narrow compass.

10. Before proceeding to examine the afflictions of the appellants, it would be just and appropriate to observe that learned Tribunal while quantifying the amount of compensation for loss of dependency has committed a mathematical error inasmuch as after presuming the annual income of deceased at Rs. 30,000/- by applying multiplier of 15, it has worked out the total amount as Rs. 4,20,000/- whereas that amount ought to have been Rs. 4,50,000/-. The requisite deductions for personal expenses and future prospects, therefore, also deserve consideration on the aforesaid amount.

11. The concern of the Court is to see whether the learned Tribunal has awarded fair, just and reasonable compensation to the appellants who have lost breadwinner of the family. The law governing the province of compensation under the Act is a social welfare legislation requiring liberal construction to achieve the object of the legislation. It is in that background, the Courts have duly recognised awarding of compensation to the bereaved family for future prospects of deceased. A bare perusal of the impugned order more specifically finding on issue No. 2 would ipso facto reveal that this aspect has been completely eschewed by the learned Tribunal.

12. Now appreciating grievances of appellants in this behalf, suffice it to observe that there is no concrete proof about the monthly income of deceased. Moreover, he was not on a permanent job and admittedly 44 years of age at the time of death. The evidence tendered by the appellants can at the most persuade this Court to hold that deceased was a self-employed person. It is observed by the learned Tribunal in clear and unequivocal terms that although income-tax returns of the deceased were filed but these documents are not exhibited and in view thereof, learned Tribunal has quantified annual income of the deceased to the tune of Rs. 30,000/-. Therefore, considering annual income of the deceased and his age at the time of death, it would be appropriate to make addition upto 30% of the actual income existing at the time of death having regarding to the future prospects of deceased. My this view finds support from a decision of Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.* : , (2009) 6 SCC 121.

13. While dilating on this issue, the Court held,-

"24. In *Susamma Thomas* this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where

the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

14. The Supreme Court in its subsequent verdict in the case of Reshma Kumari & Ors. v. Madan Mohan & Anr.: , (2013) 9 SCC 65 reiterated the same principles.

15. In Rajesh & Ors. v. Rajbir Singh & Ors.: , (2013) 9 SCC 54, Supreme Court has departed from the general rule of awarding 30% even in cases of self-employed person when the deceased victim was below 40 years. However, in case of self-employed deceased above 40 years, the ratio decidendi of Sarla Verma's case is reiterated. The Court held,-

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case 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."

16. The question relating to deduction for personal expenses of the deceased also needs to be addressed in the instant case for the simple reason that learned Tribunal has not cared to examine the number of dependents. Admittedly, in the instant case, all the four appellants were dependents of the deceased. Therefore, by applying the law laid down by Supreme Court in Sarla Verma (supra), one-third deduction for personal expenses of the deceased from his income is per se erroneously made by the learned Tribunal. In the backdrop of facts and circumstances of the instant case and taking into account number of dependents, one-fourth deduction from the income of the deceased is required to be made for determining the compensation.

17. The learned Tribunal while awarding loss of consortium to the first appellant - spouse of deceased has not at all cared to visualise the misery of a spouse who has lost companionship of her husband at the age of 40 years. Loss of life partner at the age of 40 and sufferings of widowhood is irreparable which cannot be compensated in terms of money.

18. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly

understood by our courts. The loss of companionship, love care and protection etc., the spouse is entitled to get, has to be compensated appropriately. Thus, awarding of compensation to appellant under the head of "loss of consortium" is increased from Rs. 5,000/- to Rs. 50,000/-.

19. The appellants Nos. 2 & 4 have been deprived from love, care, affection and guidance of their father, when they were minor, on account of untimely death of their father, which cannot be compensated in terms of money. However, it is really strange that learned Tribunal in the impugned judgment has not addressed on this issue inasmuch as no compensation is awarded to these appellants for loss of love and affection. In the backdrop of facts and circumstances of the instant case, each minor child of the deceased is entitled for a sum of Rs. 25,000/- for loss and love and affection and eventually the compensation for loss of love and affection to the respondent Nos. 2 to 4 is quantified to the tune of Rs. 75,000/- i.e. Rs. 25,000/- each.

20. The learned Tribunal has awarded funeral expenses to the tune of Rs. 2,000/- which is, in the considered opinion of this Court, grossly inadequate. Therefore, considering the fact that deceased Krishanlal left for heavenly abode on 20.12.1997 the amount of funeral expenses is enhanced from Rs. 2,000/- to Rs. 10,000/-.

21. The last grievance of the appellants is pertaining to awarding of interest @ 9% per annum from the date of award. The learned Tribunal has not recorded any specific reason for not awarding interest to the appellants from the date of institution of claim petition. There is no quarrel with the legal position that in claim petitions, interest is required to be awarded normally from the date of institution of the claim petition and departure from this rule is to be resorted in exceptional circumstances namely belated presentation of claim petition. As in the instant case, appellants have laid claim well in time, learned Tribunal is not justified in awarding interest from the date of award and as such the appellants are declared entitled for interest @ 9% per annum from the date of filing of claim petition.

22. Thus, the Court modifies the impugned judgment and award and reassess the quantum of compensation as under:--

23. In view of foregoing discussions, the appeal filed by the appellants is allowed in part and the appellants are declared entitled for enhanced amount of compensation to the tune of Rs. 2,86,750/- as indicated in the foregoing para. The total amount of compensation including the enhanced amount of compensation i.e. Rs. 5,73,750/- (2,87,000 + 2,86,750) would carry interest @ 9% per annum from the date of application. Respondents are directed to ensure payment of enhanced amount with interest to the appellants within a period of two months from the date of receipt of certified copy of the judgment.

24. Costs are made easy.