
(2014) 08 SC CK 0068

In the Supreme Court Of India

Case No : Civil Appeal No. 7158 of 2014 (Arising out of SLP (C) No. 4333 of 2014)

Saraladevi

APPELLANT

Vs

Divisional Manager,Royal Sundaram Alliance Ins. Co. Ltd.

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 3 ACC 898 : (2014) ACJ 2391 : (2014) 4 AJR 628 : (2014) 6 ALD 152 : (2014) 6 ALD(Cri) 152 : (2014) 106 ALR 906 : (2014) 5 AWC 5323 : (2014) 4 RCR(Civil) 194 : (2014) 9 SCALE 431

Hon'ble Judges : V. Gopala Gowda, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

JUDGMENT

V. Gopala Gowda, J.—This appeal has been filed by the Appellants being aggrieved by the judgment dated 12.09.2012 passed in C.M.A. No. 690 of 2011 by the High Court of Madras whereby the High Court reduced the compensation awarded at Rs. 37,33,248/- by the Motor Accidents Claims Tribunal and re-determined at Rs. 15,84,750/-.

2. The necessary relevant facts are stated hereunder to appreciate the case of the Appellants with a view and to ascertain whether the Appellants are entitled for the enhancement of compensation as prayed in this appeal.

The deceased met with an accident on 28.01.2009 on account of rash and negligent driving of the motor vehicle bearing registration No. TN-23-AF-0048, which hit the back side of the deceased's motor cycle. The deceased sustained grievous injuries and succumbed to the same. A post-mortem was conducted on 29.01.2009 and inspection report was filed in CC. No. 55 of 2009 before the Court of Judicial Magistrate No. II, Walajahpet by the Inspector of Police against

the driver of the offending vehicle. The prosecution has failed to prove the case against the driver beyond reasonable doubt, therefore, the learned Judicial Magistrate had acquitted the driver of the vehicle from the charge framed against him vide order dated 31.05.2010.

3. The Appellants - the widow, two daughters and bedridden aged mother of the deceased-Vasanthan approached the Motor Accidents Claims Tribunal, Vellore (for short "MACT") by filing claim petition u/s 166 of the Motor Vehicles Act, 1988 (for short "the Act") claiming compensation of Rs. 45,00,000/- on account of death of their sole bread earner, against the owner as well as the insurer of the vehicle. The said claim petition was registered as M.C.O.P. No. 138 of 2009.

4. The Insurance Company filed its counter statement stating that the accident occurred only due to the negligent riding of the two wheeler by the deceased-Vasanthan and that they are not liable to pay the compensation amount as claimed by the Appellants.

5. The MACT has conducted an enquiry by giving an opportunity to the parties to adduce evidence in support of their respective claim. Three witnesses (PW-1 to PW-3) were examined on behalf of the Appellants and the exhibits were marked as Exs. P-1 to P-15. On behalf of Respondents two witnesses RW-1 and RW-2 were examined and exhibits were marked as Exs. R-1 and R-2. The Tribunal on appreciation of pleadings and legal evidence on record came to the right conclusion and held that the accident occurred due to the negligence of the driver of the offending vehicle. Thereafter, on the basis of legal evidence on record the MACT determined the quantum of compensation. For this purpose, the Tribunal has taken the monthly salary of the deceased at Rs. 50,809/- as per the salary certificate Exh. P-7. Therefore, his annual income was fixed at Rs. 6,09,708/-. The deceased was aged 58 years at the time of the accident and the Tribunal has taken the multiplier as 8. Therefore, the total loss of income of the deceased would be Rs. 48,77,664/-. 1/4th of this amount i.e. Rs. 12,19,416/- was deducted towards his personal expenses as his dependents are four in number. Hence, the loss of dependency of the Appellants was calculated at Rs. 36,58,248/-. For funeral expenses, a sum of Rs. 5,000/- was awarded. For loss of estate Rs. 10,000/- and for loss of consortium to the 1st Appellant, a sum of Rs. 10,000/- was granted. For loss of love and affection, a sum of Rs. 50,000/- was granted to the Appellants. Thus, the Tribunal has assessed the total compensation under different heads as mentioned above and passed an award for a sum of Rs. 37,33,248/- to the Appellants with interest @ 7.5% from the date of petition i.e. 08.06.2009 and further directed the Insurance Company to pay the said amount by indemnifying the owner of the vehicle as the same was insured with it.

6. The insurer i.e. the Royal Sundaram Alliance Insurance Company Ltd. had challenged the correctness of the award passed by the Tribunal in favour of the Appellants by filing an appeal before the High Court of Judicature at Madras seeking for the modification of the compensation awarded in favour of the

Appellants by the Tribunal contending that the same is excessive, urging various grounds in support of its appeal.

7. The High Court, after examining the facts, evidence and circumstances of the case, has held that as per the judgment in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the correct multiplier between the age group of 56-60 should have been 9 since the deceased was 58 years at the time of his death. Further, the High Court held that if the actual salary of Rs. 50,809/- is taken into consideration, the annual loss of income of the deceased works out to Rs. 6,09,708/- and 10% of the amount is liable to be deducted towards income tax deduction. 10% in the sum of Rs. 6,09,708/- comes to Rs. 60,970.80 and the same can be rounded off to Rs. 61,000/-. If so, the balance amount works out to Rs. 5,48,708/- (Rs. 6,09,708/- minus Rs. 61,000/-), rounded off to Rs. 5,49,000/- as the annual income of the deceased. Hence, annual loss of income could be fixed at Rs. 5,49,000/-. For the first two years, the loss of income would be Rs. 10,98,000/- (Rs. 5,49,000/- x 2 years). For the balance 7 years, only 50% annual income has to be taken into consideration as notional income, which comes to Rs. 19,21,500/- (Rs. 2,74,500/- x 7 years). Therefore, the total loss of income works out to Rs. 30,19,500/-. Further, the High Court was of the opinion that 1/3rd amount is liable to be deducted towards personal expenses of the deceased. If this amount is deducted out of the annual income of the deceased, the balance amount works out to Rs. 20,13,000/- which amounts to a total loss of dependency (Rs. 30,19,500/- minus Rs. 10,06,500/-). The High Court further held that there is contributory negligence on the part of the deceased which was assessed at 25% which amount would be Rs. 5,03,250/-. When this amount was deducted out of Rs. 20,13,000/-, the High Court held that the legal heirs of the deceased are entitled to Rs. 15,09,750/- towards loss of dependency.

Thus, the High Court reduced the total compensation and awarded under the following heads:

8. Thus, the High Court while partly allowing the Civil Miscellaneous Appeal of the Insurance Company, directed it to deposit the above said amount with an interest at the rate of 7.5% per annum from the date of the petition, within a period of six weeks before the Tribunal after deducting the amount already deposited.

9. Aggrieved by the impugned judgment and final Order dated 12.09.2012 passed by the High Court, the Appellants filed this appeal before this Court urging various tenable grounds namely, as to whether the High Court was justified in holding that there is a contributory negligence on the part of the deceased contrary to the evidence of the eye witness; whether the High Court was justified in fixing the ratio of contributory negligence as 25% on the part of the deceased on the basis of an erroneous finding; whether the High Court was justified in reducing the amounts awarded by the Tribunal from Rs. 37,33,248/- to Rs. 15,84,750/- and lastly, whether the High Court was justified in deducting

1/3rd amount towards personal expenses of the deceased contrary to the law laid down by this Court in various judgments?

10. In our considered view, the High Court has erred in not considering the principles laid down in the case of Sarla Verma and Ors. (supra) in so far as deduction of 1/4th of the monthly income of the deceased to arrive at the multiplicand and reducing the compensation by adopting the split up multiplier. Further, recording the finding of contributory negligence on the part of the deceased in the absence of evidence on record in this regard rendered the finding erroneous in law and error in law as the same is contrary to the decision of this Court reported in Jiju Kuruvila and Others Vs. Kunjuamma Mohan and Others, . At the time of death, Vasanthan was 58 years old and was earning a salary of Rs. 50,809/- per month i.e. Rs. 6,09,708/- annually. By applying the appropriate multiplier of 8 as laid down under General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the loss of dependency comes to Rs. 48,77,708/-

11. Further, deduction towards personal expenses of the deceased out of the annual income would be 1/4th as held by this Court in the case of Sarla Verma and Ors. (supra), the relevant portion of the judgment reads thus:

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

The High Court failed to follow the above judgment and committed an error in law in deducting 1/3rd amount towards personal expenses of the deceased. Therefore, as per the above judgment the deduction ought to be 1/4th only as correctly calculated by the Tribunal. Thus, after deducting 1/4th i.e. Rs. 12,19,416/- towards personal expenses; the loss of dependency would be Rs. 36,58,248/-. Further, we affirm the sum granted by the Tribunal as Rs. 5,000/- for funeral expenses, under the head of loss of estate at Rs. 10,000/-, loss of consortium at Rs. 10,000/- and Rs. 50,000/- for loss of love and affection of the deceased.

12. Further, the High Court has erred in not following the decision of Rajesh and Others Vs. Rajbir Singh and Others, by awarding only Rs. 10,000/- for loss of consortium, instead of Rs. 1,00,000/-. Towards loss of estate, the High Court awarded Rs. 10,000/- instead of Rs. 1,00,000/-. Therefore, to this extent there is loss caused to the Appellants in not being compensated correctly under different heads such as, loss of consortium, loss of estate, and loss of love and affection.

Further, as per *Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association and Ors.* (2011) 14 SCC 481, the Appellants are entitled for 9% interest per annum on the compensation awarded from the date of filing of the application till the date of payment. Thus, there will be a difference of 1.5% interest amount payable on the total compensation awarded by both the Tribunal and the High Court as they have awarded at 7.5% interest. Therefore, if the less awarded difference of interest amount @ 1.5% by both the Tribunal and the High Court is taken into consideration on the total compensation awarded in favour of the Appellants, it would take care of the amount that was required to be deducted towards income tax out of the gross salary of the deceased for determining the compensation under the heading of loss of dependency.

13. Since, the High Court has erred in not correctly awarding compensation under the above heads and having regard to the facts and circumstances of the case, we affirm the Award of the Tribunal and the same is restored.

Therefore, the determination of compensation under the loss of dependency under other heads as indicated in the following paragraph is perfectly legal and valid as the said compensation is just and reasonable keeping in view the monthly income at Rs. 50,809/- as per the documentary evidence (Ex. P-7), the salary certificate.

14. In the result, the impugned judgment and order of the High Court is liable to be set aside and accordingly set aside and the Award of the Tribunal is affirmed. Therefore, the Appellants shall be entitled to compensation under the following heads:

Thus, the total compensation payable to the Appellants/claimants will be Rs. 37,33,248/- with interest @ 7.5% per annum from the date of filing of the application till the date of payment. The apportionment of the compensation in favour of the Appellants is as per the Award of the Tribunal.

15. Accordingly, we allow this appeal in the above terms. The Respondent-Insurance Company shall either pay the compensation by way of demand draft/ drafts in favour of the Appellants or deposit the same with interest as awarded by the Motor Accidents Claims Tribunal within six weeks from the date of receipt of the copy of this judgment, after deducting the amount already deposited.