
(2016) 04 GAU CK 0004
In the Gauhati High Court
Case No : MAC App. No. 9 of 2015

Sh. Laldaihzauva

APPELLANT

Vs

Lalnunsangi

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, Section 173

Citation : (2016) 4 GauLR 708

Hon'ble Judges : Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. Lalfakawma, Advocate, for the Respondent; Mr. C. Lalramzauva, Mr. A.R. Malhotra, Mrs. K. Lalramnghaki, Ms. K. Lalrindiki, and Mr. Lalpianfela Chawngthu, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

Michael Zothankhuma, J. :- Heard Mr. A.R. Malhotra, learned counsel appearing for the appellant. Also heard Mr. Lalfakawma, learned counsel appearing for the respondent No. 2 (Insurance Company).

2. The appellant by way of this appeal has challenged the quantum of compensation paid to the appellant/claimant in the judgment and award dated 27.7.2015 passed in MACT Case No. 5/2013 by the learned MACT, Aizawl, wherein the claimant was awarded Rs. 4,35,000 along with 9% interest p.a. w.e.f. date of filing the petition.

3. The appellant's counsel submits that the claimant Laldaihzauva s/o Lalkailuaia of Bawngkawn, Aizawl Vengthlang preferred a claim under section 166 of the M.V. Act on 22.11.2013 for the death of his daughter-in-law Vanrokimi 22 years in a motor vehicular accident on 20.7.2012 around 12:00 midnight at Stone Quarry at 2 Kms from Keifang (Champhai Road) while running towards Aizawl from Champhai and rolled down about 250 .meters from the main road involving vehicle B/R No. MZ01/E-7105 ZK Travels (Aizawl to Champhai Night Bus). As a

result 17 passengers died on the spot and one passenger Steven Lalmuanpuia, 9 years died in the Sub-District Hospital, Saitual on the following day. The deceased Vanrokimi was one of the passengers who died on the spot. The accident vehicle belonged to the respondent No. 1 Lalnunsangi w/o Lalrozama of Bawngkawn Chhim Veng which was driven by Johny Zonunmawia (24) s/o of Lungtiawi of Khawbung, an employee of the opposite party. The vehicle involved in the accident was insured with the New India Assu. Co. Ltd. under policy No. 53060431120100000455 with validity from 3.6.2012 to 2.6.2013. The claimant filed the case under section 166 of Motor Vehicles Act, 1988 against the vehicle owner and the Insurance Company.

The appellant's counsel also submits that the respondent No. 2 contested by filing written statement and stated amongst others that the accident vehicle was pushed down the cliff by a landslide and rolled down about 250 meters from the main road and the owner nor the driver could have foreseen such unfortunate incident taking place in spite of taking all possible care and diligence and no negligent driving on the part of the driver.

4. The appellant's counsel submits that even though the evidence of the appellant was to the effect that the deceased Vanrokimi, who was the daughter-in-law of the claimant, was a tailor, the MACT has taken the income of Vanrokimi to be Rs. 3,000 per month, though the income of the deceased was Rs. 7,000 to Rs. 8,000 per month. The appellant's counsel submits that even if the income of the deceased cannot be proved, the minimum wages applicable as per the notification dated 3.6.2011 issued by the State Government would be attracted to this case. The appellant's counsel submits that as per the notification dated 3.6.2011 issued by the Government of Mizoram, Labour, Employment and Industrial Training Department, the minimum rate of wages for a tailor is Rs. 240 per day. The appellant's counsel submits that even if it is assumed that the deceased Vanrokimi has worked for 25 days in a month, the income of the deceased would have been Rs. 6,000 per month.

5. The appellant's counsel submits that learned MACT has not added the future income prospects of the deceased while computing the compensation payable to the claimant/appellant.

The appellant's counsel also submits that the learned MACT should have added Rs. 1 lakh as loss of estate while computing the compensation amount, but has in fact only added Rs. 2,000. He also submits that for funeral expense, the learned MACT should have given Rs. 50,000 and not Rs. 25,000. The appellant's counsel also submits that the learned MACT should have also awarded Rs. 50,000 for loss of love and affection.

6. Mr. Lalfakawma, learned counsel for the respondent No. 2 submits that as per the cross-examination of the appellant/claimant, the deceased Vanrokimi used to stitch clothes at her house and did not have her own shop. The evidence of the claimant is to the effect that Vanrokimi used to earn Rs. 7,000 to 8,000 per

month out of which, she handed over Rs.3.000 for house hold expenses. The said amount of Rs. 7,000 to 8,000 per month was not her profit. Out of the said 7,000 to 8,000, she used to spent money for purchasing cloth and other materials and was repaying her loan for the cost of the sewing machine by way of instalments. The learned counsel for the respondent No. 2 thus submits that the amount claimed by the claimant as being the salary of the deceased could not be taken to be the income of the deceased due to the reasons stated above.

7. I have heard the learned counsels for the parties.

8. The Executive Magistrate, Champhai has issued a certificate stating that the deceased was earning Rs. 7,000 to 8,000 per month as a tailor. However, as the evidence shows that the deceased was never employed by the Executive Magistrate, the certificate of the Executive Magistrate cannot be held to be applicable in determining the monthly income of the deceased Vanrokimi.

9. The next question that has to be decided is as to the income of the deceased. The evidence of the claimant/appellant is to the effect that the deceased Vanrokimi was a tailor. This averment made by the appellant in his evidence has not been rebutted by the respondents. In that view of the matter, this court holds that the claimant is a tailor and earning her income as a tailor. The Apex Court in the case of Neeta, W/o. Kallapa Kadolkar and Others v. Divisional Manager, Maharashtra State Road Transport Corporation, Kolhapur, (2015) 3 SCC 590 has held at para 9 as follows :

"The Tribunal and the High Court even in the absence of the salary slip/certificate ought to have taken the monthly salary of both the deceased at Rs. 12,000 p.m. keeping in view, the Minimum Wages Act, 1948 notification, wherein, the State of Karnataka on the basis of the said notification for the relevant period, had fixed the minimum wage of the carpenters in their report, which is a skilled job in Zone II and the deceased were working in the aforesaid Zone, at Belgaum District, during the relevant period of their death..."

10. In view of the fact that the State of Mizoram has fixed the minimum wage of tailor in the notification dated 3.6.2011 as a Skilled Grade-II at Rs. 240 per day, this court holds that the deceased Vanrokimi is deemed to be earning Rs. 240 per day. Keeping in view that Sunday is a holiday in the State of Mizoram, the deceased Vanrokimi has to be deemed to be working 25 days in a month, which would mean that the deceased Vanrokimi has been earning Rs. 6,000 per month. However, in view of the evidence of the claimant/appellant to the effect that the deceased use to spend money for purchasing cloth and other materials, besides, paying the loan for buying the sewing machine, the sum of Rs. 1,500 per month should be deducted from the monthly income of the deceased. Accordingly, the monthly income of the deceased is to be taken at Rs. 4,500 per month after deduction of Rs. 1,500 used for buying materials etc. In view of the fact that the deceased was 22 years at the time of her death, the future income prospects of the deceased should be calculated by adding 50% of her monthly income. The

claimant should also be given Rs. 50,000 as loss of love and affection as per the decision of the Apex Court in the case *Savita v. Bindar Singh*. (2014) 4 SCC 505.

In the case of *M. Mansoor v. United India Insurance Company Ltd.*, (2013) 15 SCC 603, the Apex Court has held that the father of the deceased would be entitled to be awarded Rs. 50,000 on account of loss of love and affection of the death of his child.

11. In respect of the appellant's claim for awarding Rs. 25,000 for funeral expense on the basis of the Apex Court's judgment in the case of *Kalpanaraj v. T.N. State Transport Corp.*, (2015) 2 SCC 764, the Apex Court had awarded Rs. 50,000 as funeral expense and cost of litigation. However, in the present case the issue is with regard to funeral expenses only. The Apex Court in *Rajesh and Others v. Rajbir Singh and Others*, (2013) 9 SCC 54 has awarded only Rs. 25,000 for funeral expenses only. Accordingly, I hold that the learned MACT has correctly awarded Rs. 25,000 as funeral expenses.

12. The question that has to be decided here is whether the appellant/claimant is entitled to be awarded any amount on the basis of loss of estate for the death of His daughter-in-law. The concept of loss of estate has to be understood so as to enable the court's to award some amount on the basis of loss of estate. The Webster Comprehensive Dictionary gives the meaning of estate as follows :

1. One's entire property; a tract of land.
2. Property left after death.
3. Condition or state, social standing, rank, dignity.
4. A class or order of persons in a state.

13. In its broadest sense, estate means the social, civic, or political condition or standing of a person, or class of persons grouped for social, civic, or political purposes.

The concept of loss of estate in a matter relating to motor accident claims would have to be relatable to the loss of property. As such, the loss of property on account of special diet, medicine, conveyance, etc., incurred on the person who met with an accident would also be related to the loss of property. In the case of *Sanjida and Others v. San jay Kumar and Others* [FAO Nos. 6830 and 6804 of 2011 (O&M)], the High Court of Punjab and Haryana held that the loss of estate would mean the estate which a person leaves at the time of his death which could be on account of surplus savings made by the deceased during his lifetime. The High Court of Punjab and Haryana held that loss to the estate need not be merely a conventional head of claim. In a situation where a person is living hand to mouth existence while feeding his family, it would not be conceivable for such a person to leave behind an estate for inheritance larger than what he could have earned. The High Court also held that the awarding of compensation under loss of estate would require some amount of saving and which will accumulate to his

estate for inheritance. A saving that reflects the amount over and above the actual necessities of life for self and dependents could either be invested for further accumulation or even left as it is. In the present case, the learned Tribunal had taken the income of the deceased to be Rs. 3,000 per month. However, as this court has held that the deceased income should be taken to be Rs. 6,000 per month (before deduction for cost of materials, etc.), the amount to be awarded under the head of loss of estate has to be awarded by taking into account the fact whether a sizable estate would have been accumulated by the deceased, if she had not died due to the accident. The further question is whether the claimant is a dependent of the deceased. The claimant in his evidence has stated that his daughter-in-law used to handover Rs. 3,000 every month for the household expenses. In view of the fact that some money has to be spent by the deceased for buying cloth and other materials, which was calculated to be Rs. 1,500 per month, only Rs. 1,500 remains for the personal use of the deceased. Keeping in mind the above fact situation, it cannot be expected of a person having Rs. 1,500 per month for personal expenses to be able to have a sizable estate. Even if future income prospects is to be added, the ratio of the money spent and with the cost of things going up, there not would have been much difference in future with regard to the amount of money the deceased could have utilised for building up an estate vis-a-vis money spent on herself. It has also to be kept in mind that the latest Judgments of the Apex Court with regard to the amount payable for loss of estate cannot be made precedents for each and every case. Various factors have to be seen. The amount of compensation to be awarded for loss of estate will have to be considered having regard to the facts and circumstances of each case. This is clear from the various Supreme Court's judgments given in the year 2015 itself. In the case of Neeta (supra) and Kalpanaraj (supra), the Apex Court had awarded Rs. 1 lakh each for loss of estate. However, in the case of Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar, (2015) 4 SCC 237, the Apex Court has upheld the High Court's Judgment, wherein, Rs. 15,000 was awarded for loss of estate. The deceased in Jitendra Khimshankar Trivedi (supra) was earning Rs. 3,000 per month. In the case of Shashikala v. Gangalakshmama, (2015) 9 SCC 150, the Apex Court had awarded Rs. 25,000 for loss of estate, wherein, the income of the deceased after income-tax was approximately Rs. 15,218 per month. Thus, there is no hard and fast rule that the amount to be awarded under loss of estate has to be as per the latest judgment of the Apex Court. The facts and circumstance of each case would have to be gone into. The appellant/claimant in the present case has not made a claim for loss to the estate even while giving evidence. He has not been able to show that there was loss of estate.

14. This court has to resort to some guess work keeping in mind the ground realities prevailing at the relevant point of time for awarding some amount of Rs. 25,000 should be awarded as loss of estate in the facts and circumstances of the case.

15. While perusing the impugned judgment and award dated 27.7.2015, I find

that the learned Tribunal has taken the multiplier 17 to calculate the amount of compensation payable to the claimant/appellant. In the present case, the claim has been made under section 166 of the M.V Act, 1988 and the deceased is 22 years old. The deceased has no dependent except her father-in-law and her father-in-law's second wife, and the age of the sole claimant/appellant at the time of the accident was approximately 62/63 years old.

Section 168 of the M.V. Act, 1988 requires that an Award should be made determining the amount of compensation which appears to be just. Thus, the compensation to be awarded as in section 168 of the M.V. Act, 1988 has to be just and cannot be used for the purpose of unjust enrichment.

16. As per the decision of the three-judge Bench of the Apex Court in the case of U.P. State Road Transport Corporation and Others v. Trilok Chandra and Others, (1996) 4 SCC 362, the basic principle governing assessment of compensation with regard to ascertainment of the loss of dependent or the multiplicand as has been culled out by the Apex Court in General Manager, Kerala S.R.T.C. v. Susamma Thomas, (1994) 2 SCC 176 was accepted and reiterated. Thus, the Apex Court in Trilok Chandra (supra) held that depending upon the ascertainment of the loss of dependency or the multiplier having regard to the situation of the case, the choice of the multiplier is to be determined by the age of the deceased or that of the claimant, whichever is higher. This basic principle governing the assessment of compensation has thereafter being followed by the Apex Court in numerous other decisions, namely, Ramesh Singh and Another v. Satbir Singh and Another, (2008) 2 SCC 667, P.S. Somanathan and Others v. District Insurance Officer and Another, (2011) 3 SCC 566, Managing Director, TNSTC Ltd. v. K.I. Bindu and Others, (2005) 8 SCC 473, New India Assurance Co. Ltd. v. Charlie and Another, (2005) 10 SCC 720 and U.P. State Road Transport Corpn. v. Krishna Bala and Others, (2006) 6 SCC 249, etc. Also another 3-Judge Bench of the Apex Court in the case of New India Assurance Co. Ltd. v. Smt. Shanti Pathak and Others, (2007) 10 SCC 1 has followed the principle of the choice of multiplier being determined by the age of the deceased or that of the claimant, whichever is higher.

17. In the present case, the sole claimant being 62/63 years old at the time of the death of the deceased, the multiplier to be applied as per the decision of the Apex Court in Serla Verma and Others v. Delhi Transport Corporation and Another should have been 7. The learned Tribunal could not have adopted/ chosen the multiplier of 17, as the decisions of the Apex Court referred to above have clearly laid down the law that the choice of multiplier is to be determined by the age of the deceased or that of the claimant, whichever is higher.

18. It has been submitted by the learned counsels that the learned Tribunal has rightly applied the multiplier of 17 by following the judgments of the Apex Court in Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347. A perusal of the judgment of Apex Court in Munna Lal Jain (supra) shows that the claimant was the father of the deceased and the Apex Court had chosen the multiplier

applicable to the age of the deceased and not the age of the claimant. The Apex Court in *Munna Lal Jain (supra)* had apparently chosen the multiplier applicable to the age of the deceased on basis of another Apex Court judgment in case of *Reshma Kumari and Others v. Madan Mohan and Another*, (2013) 9 SCC 65. The case in *Reshma Kumari (supra)* was that the claimants were the wife and children of the deceased and the question that was to be decided was as to whether the multiplier specified in the Second Schedule should be taken to be the guide for calculation of the amount of compensation payable in a case falling under section 166 of the M.V. Act, 1988.

The Apex Court in *Reshma Kumari (supra)* at para 36 and 37 held as follows :

"36. In *Sarla Verma*, this court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under section 166. It has been rightly stated in *Sarla Verma* that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*.

37. If the multiplier as indicated in Column (4) of the Table read with para 42 of the report in *Sarla Verma* is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a crisscross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in *Sarla Verma* for the selection of multiplier in claim applications made under section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in *Sarla Verma* is followed, there is no likelihood of the claimants who have chosen to apply under section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under section 163A. As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of section 163A or section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in *Sarla Verma* should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under section 166 of the 1988 Act. In all other cases of death where the application has been made under section 166, the multiplier as indicated in

Column (4) of the Table in Sarla Verma should be followed."

19. The Apex Court in the case of Munna Lal Jain (supra) by taking into consideration paragraph 36 of Reshma Kumari (supra) has accordingly chosen the multiplier applicable to the age of the deceased. However, it has to be kept in mind that paragraph 36 of Reshma Kumari (supra), which has been reiterated in Munna Lal Jain (supra) refers to a 2-Judge Bench decision of the Apex Court in Sarla Verma (supra), which is with regard to a claim made by the widow, children, parent and grandfather of the deceased. It was in that context that the multiplier of the age of the deceased was chosen. In the present case however, there is no other claimant except the appellant herein, who is the father-in-law of the deceased. In Sarla Verma (supra), the difficulty arose as to what multiplier should be chosen as the age of the claimant differed greatly from the children of the deceased to the grandfather of the deceased. To avoid confusion and in view of the fact that the wife and children of the deceased were claimants, the Apex Court in Sarla Verma case had taken the age of the deceased to be the determinative factor in choosing the multiplier. However, no such confusion is present in the present case.

20. As stated above, the 3-Judge Bench of the Apex Court in Trilok Chandra (supra) and Shanti Pathak (supra) have held that the choice of multiplier is to be determined by the age of the deceased or that of the claimants, whichever is higher. The Apex Court in Reshma Kumari (supra) and Munna Lal Jain (supra) have not considered a case in which the sole claimant is older than the deceased. The Apex Court in Reshma Kumari (supra) and Munna Lal Jain (supra) have not discussed the earlier judgments of the Apex Court. In any event, the claimants in Reshma Kumari (supra) are the wife and children of the deceased and accordingly the multiplier chosen is not in conflict with the decision of the Apex Court in Trilok Chandra (supra). Though, the Apex Court in the case of Reshma Kumari (supra) has held that in all cases of death where the application has been made under section 166, the multiplier as indicated in Column (IV) of the table in Sarla Verma (supra) should be followed, the Apex Court has not gone contrary to the principles laid down in Trilok Chandra (supra) wherein, it was held that the choice of multiplier is to be determined by the age of the deceased or that of the claimants, whichever is higher. Accordingly, they have not distinguished the facts as it was applicable in the case of Trilok Chandra (supra) and Shanti Pathak (supra). In respect of the decision of the Apex Court in Munna Lal Jain (supra), as the choice of multiplier was determined on the basis of the age of the deceased when the claimant's age is higher, it could be said that the decision has been made "per incuriam", as the earlier decisions of the Apex Court have not been distinguished.

21. In the case of Union of India and Another v. Raghubir Singh, (1989) 2 SCC 754, the Constitution Bench of the Apex Court held at para 28 as follows :

"We are of the opinion that the pronouncement of law" by a Division Bench of this court is binding on a Division Bench of the same or a smaller number of

Judges, and in order that such decision be binding. It is not necessary that it should be a decision rendered by the full court or a Constitution Bench of the court."

22. The Apex Court in the case of *Rattiram and Others v. State of Madhya Pradesh*, (2012) 4 SCC 516 has held at para 26 and 33 as follows :

"26. In *Union of India v. Raghubir Smgli*, the Constitution Bench, speaking through R.S. Pathak, CJ, has held, thus : (SCC p. 778, para 28)

"28. We are of opinion that a pronouncement of law by a Division Bench of this court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the court."

"33. Recently, in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, while addressing the issue of *per incuriam*, a two-judge Bench, speaking through one of us (Dr. Bhandari, J), after referring to the dictum in *Bristol Aeroplane Co. Ltd.* and certain passages from Halsbury's Laws of England and *Raghubir Singh*, has stated, thus : (Siddharam case, SCC p. 743, paras 138-39)

"138. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of Judges of co-equal strength. In the instant case, judgments mentioned in paras 124 and 125 are by two or three Judges of this court. These judgments have clearly ignored the Constitution Bench judgment of this court in *Sibbia* case which has comprehensively dealt with all the facets of anticipatory bail enumerated under section 438 of the Code of Criminal Procedure. Consequently, the judgments mentioned in paras 124 and 125 of this judgment are *per incuriam*.

139. In case there is no judgment of a Constitution Bench or larger Bench of binding nature and if the court doubts the correctness of the judgments by two or three Judges, then the proper course would be to request honorable the Chief Justice to refer the matter to a larger Bench of appropriate strength."

23. The Apex Court in *Munna Lal Jain* (*supra*) has not made any discussion with regard to the choice of multiplier to be applied in a case where the claimant is the parent/father-in-law of the deceased. Also the fact situation in *Reshma Kumari* (*supra*), which was applied in *Munna Lal Jain* (*supra*), is completely different as the claimants are the wife and children of the deceased. Accordingly, in view of the reasons stated above, the choice of multiplier used in *Munna Lal Jain* (*supra*) cannot be said to be the binding precedent for choosing a multiplier for calculating the compensation to be awarded where the claimant is older than the deceased.

24. In view of the reasons stated above, this court is of the view that Superintendent, (Judl.) Gauhati High Court, Aizawl Bench the learned Tribunal

should have taken the multiplier applicable to the age of the claimant, who is 62/63 years old and not the age of the deceased who was 22 years old. However, in view of the fact that no challenge has been made to the multiplier applied by the learned Tribunal in its judgment and award dated 27.7.2015 passed in MACT Case No. 5 of 2013 by any party, by way of an appeal or cross-objection, this court is not interfering with the choice of the multiplier applied by the learned Tribunal. However, the learned Tribunal should keep in mind the fact that the principles governing assessment of compensation with regard to the choice of the multiplier is to be determined by the age of the deceased or that of the claimant, whichever is higher, as the same is still a binding precedent till today. The said principle has not been overruled by a larger Bench of the Apex Court till date.

25. In view of the reasons stated above, the respondent No. 2 is directed to pay compensation to the appellant as follows :

(1)

Loss of income + future income prospects (50%)

= $6750 \times 12 \times 17 \times 23$ = Rs. 9,18,000

(2)

Loss of estate

= Rs. 25,000

(3)

Funeral expenses

= Rs. 25,000

(4)

Loss of love and affection

= Rs. 50,000

Total Compensation Awarded

= Rs. 10,18,000/-

26. The respondent No. 2 is directed to deposit the sum Rs. 10,18,000 with interest @ 9% p.a. from the date of filing, i.e., 15.1.2013 till final payment in the MACT, Aizawl for onward disbursement of the same to the claimant/appellant. Any payment already made shall be deducted by the respondent No. 2 from the above amount.

27. The judgment and award dated 27.7.2015 passed in MACT Case No. 5/2013 by the Member-cum-Presiding Officer, MACT, Aizawl is modified to the extent indicated above. The appeal petition is accordingly allowed to the extent indicated above.