

(2012) 08 AHC CK 0254

In the Allahabad High Court

Case No : First Appeal From Order No. 84 of 1998

Sharad Kumar Singh and Others

APPELLANT

Vs

Kanhaiya Lal Mishra and Others

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2012) 10 ADJ 158 : (2012) 10 ADJ 13 : (2013) 2 ALJ 419 : (2012) 6 AWC 6373

Hon'ble Judges : Rajes Kumar, J;Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Patanjali Mishra and Ratanjali Misra, for the Appellant; Samir Sharma and S.K. Mehrotra, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Anil Kumar Sharma, J.—This is a claimants" appeal for enhancement of compensation awarded by MACT/Additional District Judge/Special Judge, Varanasi vide award dated 28.10.1997 in MAC Case No. 92 of 1995, whereby a sum of Rs. 1,12,800/- along with pendent elite interest @ 12% per annum have been awarded on account of the death of Narendra Pratap Singh in the motor accident. It appears that on 10.12.1994 at 2.30 p.m. when deceased Narendra Pratap Singh was returning home in Metador No. UP 5642 and reached near culvert of village Udaypur, the driver of bus No. UP 65-E/6942 driving the vehicle rashly and negligently dashed with the aforesaid Metador, injuring him and he succumbed to the injuries. The report of the accident was made to the police the same day and case u/s 279, 337, 338 and 304-A I.P.C. against drivers of both the vehicles was registered. The claimants alleged that the deceased was employed as lecturer in Cutting Memorial Inter College, Varanasi and was drawing monthly salary of Rs. 8,000/-. The claimants being legal representatives of the deceased have preferred claim for Rs. 5.0 lacs. It was further alleged that the opposite parties are owners and insurers of both the vehicles involved in the

accident. The opposite parties inter alia pleaded that it was head-on accident between the two vehicles and the widow of the deceased must be getting family pension, so it should be deducted from the compensation, if any, awarded to the claimants. The claimants have examined Ram Ashare Misra PW 1 and Smt. Manorma Singh PW 2 in support of their claim. They have also filed the photocopy of death certificate, certificate of Principal of Cutting Memorial Inter College, Varanasi dated 10.1.1995, post-mortem examination report and bio-data of the deceased as also the copy of FIR, driving license, registration certificate of Metador UPF 5642 and insurance policy. The insurance companies have examined Havaladar Singh DW 1, Kalpnath Singh DW 2 and Krishna Rani Srivastava DW 3 and have filed copies of several documents. The learned Tribunal after analysis of the evidence adduced by the parties has deducted the family pension of Rs. 2,500/- per month which the widow of the deceased was getting from the last drawn salary of the deceased in quantifying the amount of compensation and awarded compensation as stated above and directed the insurer of the bus and owner of the Metador to indemnify the award in equal proportion. Aggrieved the claimants have come up in appeal.

2. We have heard the learned counsel for the appellants and respondent Nos. 3 and 5 and perused the impugned award. The other respondents did not put in appear in spite of sufficient service of notices on them.

3. Learned counsel for the appellants has vehemently argued that the learned Tribunal has erred in deducting a sum of Rs. 2,500/- per month from the pay of the deceased for calculating the compensation, which his widow was getting after his death. Per contra learned counsel for the respondents have supported the award. In this connection reliance has been placed by the learned counsel for the appellants on the cases of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, and Reliance General Insurance Company Ltd. v. Smt. Urmila Devi and others, 2009 (7) ADJ 575 (DB). In the case of Helen C. Rebello (supra) in para-36 of the report, the Hon''ble Court has observed that "family pension is also earned by an employee for the benefit of his family in the form of his contribution in service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two." It is further held that though it is pecuniary advantage receivable by the heirs on account of one's death but it has no co-relation with the amount receivable under the statute occasioned only on account of accidental death. Such an amount cannot come within periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable to deduct. Similarly in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , the Apex Court did not approve the deduction on account of family pension in working out compensation. A division bench of this Court in the case of Reliance General Insurance Company Ltd. (supra) repelling the argument advanced on behalf of the appellant did not give any benefit to the insurance company about family pension and engagement of the wife of the deceased in employment. Moreover

the full Benches of Punjab and Haryana High Court in the case of Bhagat Singh and Sohan Singh Vs. Om Sharma and Others, , the Madhya Pradesh High Court (Indore Bench) in the case of Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another, and Karnataka High Court in the case of Smt. Parwati @ Baby and others v. Hollur Hallappa and others, 1998 (1) TAC 14 (Kant) have taken similar view. Thus in our opinion the family pension being drawn by the widow of the deceased is not liable to be deducted from the amount of compensation awarded to the claimants.

4. Now the question arises as to what should be just and reasonable compensation. It is trite law that compensation in motor accident claim cases should not be a bonanza for the claimants or source of profit nor it should be a pitfall on them. It should be just and fair. The endeavor of the Tribunal should be to place the claimants in pre-accident position with regard to their dependency on the income of the deceased. In the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Hon''ble Supreme Court laid down as under:

In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

The matter of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. That that should be capitalized by multiplying it by a figure representing the proper number of year's purchase.

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

5. Apart from the income and age of the deceased, the other relevant factor in assessing reasonable compensation is, number of claimants and their loss of dependency on the income of the deceased. In the instant case the claimants are widow, daughters and sons of the deceased. The learned Tribunal has not awarded any compensation to the married daughter and major sons of the deceased. Even for one unmarried daughter Km. Savita Singh appellant No. 4 it has been noted that if she had been married now, she would not get any amount of compensation. It has not been shown on behalf of the appellants that she is still unmarried. She was shown to be 19-years" old at the time of filing claim petition on 1.5.1995 and now she must be aged about 36 years. The instant appeal has been filed by two adult sons, wife and daughter Savita Singh only. The Tribunal has awarded compensation to only widow, mother and daughter Savita Singh (with a rider of her marriage) only. The mother of the deceased was aged about 76 years at the time of institution of the claim petition. She may not be alive by now, so she has not been arrayed as appellant in the appeal. So now remains the widow of the deceased who can have the difference of entire amount of compensation. Without deducting family pension of Rs. 2,500/- the loss of dependency of the appellants comes to Rs. 3,440/- i.e. Rs. 41,280/- per annum and applying multiplier of "10" as used by the Tribunal, the amount of compensation comes to Rs. 4,12,800/-. The Tribunal has not awarded any compensation for funeral expenses of the deceased and loss of consortium to the widow of deceased, which as per 2nd Schedule of Motor Vehicles Act are Rs. 2,000/- and Rs. 5,000/- respectively. Thus the widow of the deceased should get Rs. 4,19,800,- compensation in this case. The Tribunal has awarded interest @ 12% per annum, which too is on higher side. Considering the date of filing the claim petition and number of years the claim petition and appeal is pending, it would be just and proper if simple interest @ 8% per annum is awarded on the amount of compensation calculated above i.e. Rs. 4,19,800/-. However the revised rate of interest would be payable from the date of award, if the claimant has not received the compensation as awarded by the Tribunal and if the appellant has received the amount earlier, then revised rate of interest would be applicable from the following day of date of receipt till final payment. In view of the above, the appeal is allowed and Smt. Manorma Singh appellant No. 2 is awarded compensation of Rs. 4,19,800/- together with simple interest @ 8% per annum from the date of award if the appellants have not received the amount of compensation awarded by the Tribunal, otherwise from the next day of receipt of payment till the award is indemnified by respondent No. 1 and 5 in equal proportion as directed by the Tribunal. The entire amount of compensation after making adjustment of previous payment, if any, be paid by demand draft within 6 weeks from today.