
(2008) 04 KAR CK 0002

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 12348 of 2006

Sharada, Kum. Kavitha and Veeresh Swamy

APPELLANT

Vs

Huchappa Chaluvadi and The Branch Manager, United India
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2009) ACJ 1272 : (2009) 2 KarLJ 538

Hon'ble Judges : Chidananda Ullal, J; A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : F.S. Dabali, for the Appellant; Sanjeev V. Hanchate, Suryanarayana M.B. for R1 and A.N. Krishnaswamy, for R2, for the Respondent

Final Decision : Allowed

Judgement

1. Appellants, had filed a claim petition u/s 166 of I.M.V. Act, 1988 claiming compensation of Rs. 16,60,368/- from the respondents due to the death of one Bandayya Swamy in a mad traffic accident. Claim petition was contested by respondents. After holding enquiry u/s 168 of the M.V. Act, Tribunal has passed judgment holding that the deceased has died due to sustaining of injuries in the accident, which occurred on 28.04.2003, due to the rash and negligent driving of tractor and trailer by its driver, that the same was an actionable wrong and the appellants are entitled to be compensated. Consequently it has awarded Rs. 5,59,792/- as compensation with interest. Dissatisfied with the amount awarded, this appeal has been preferred seeking enhancement.

2. Sri F.S. Dabali, learned Counsel appealing for the appellants contended that, Tribunal has erred in computing the income of the deceased at Rs. 5,000/- per month, even though there was no dispute with regard to gross salary of the deceased, who was a Government Servant, drawing Rs. 11,331/- per month, on the date of the accident, proved by production of salary certificate Ex. P 6. He contended that deceased who was working as a driver in the Agricultural

Department of the Government of Karnataka had good prospects of promotions would have fetched higher salary and emoluments, apart from increments and upward revision of pay scales. He contended that, Tribunal has erred in calculating the age of the deceased as 46 years, by relying on the post mortem report Ex. P 4, instead of taking the actual age of the deceased who was a government servant and who was less than 43 years at the time of the accident. He contended that, Tribunal has erred in assessing salary of deceased and by applying the multiplier of 13, which is on lower side. He contended that, the amount awarded under the conventional heads is also on lower side.

3. Per contra, Sri A.N. Krishnaswamy, learned Counsel for the 2nd respondent Insurance Company contended that, Tribunal is justified in reckoning income of deceased which is reflected in Ex. P6 and the age, from the post mortem report, for the purpose of determination of the loss of dependency and Tribunal has awarded just and reasonable compensation. He contended that, Tribunal is justified in taking net income of the deceased in to consideration, in view of the decision of the Apex Court in the case of *Asha and Ors. v. United India Insurance Co. Ltd.* and Anr. 2004 ACJ 533.

4. In view of the rival contentions and on perusal of the record, the point for consideration is:

Whether the Tribunal was justified in taking net income of the deceased for the purpose of determination of "just compensation", envisaged u/s 168 of the M.V. Act 1988?

5. The facts which are not in dispute are that, accident has occurred, the deceased had sustained fatal injuries and has later succumbed. Deceased was a Government Servant and Ex. P 6, is his salary certificate, which shows that deceased was drawing a gross salary sum of Rs. 11,331/- and out of the same, there was deduction of Rs. 6,699/- on account of payment towards loans etc. He was taking himself a net salary of Rs. 4,632/-. Considering the future prospects, Tribunal has assessed income of the deceased as Rs. 5,000/- and after deducting 1/3rd therefrom for personal maintenance of the deceased, Tribunal has held that 2/3rd has to be taken for loss of dependency and considering the age as 46 years has applied the multiplier of 13 and has determined the loss of dependency at Rs. 5,19,972/- (2/3rd of Rs. 5,000/- and Rs. 3332 ? 12 ? 13 Rs. 5,19,792/-). Apex Court in the case of *Asha* (supra), has held as follows:

Lastly it was submitted that the salary certificate shows that the salary of the deceased was Rs. 8,632/-. It was submitted that the High Court was wrong in taking the salary to be Rs. 6,642/-. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards LIC, Society charges and HRA etc. We are unable to accept this submission also. The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents

would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was therefore right in so holding.

6. In the case of National Insurance Co. Ltd. v. Indira Srivastava reported in AIR 2008 SCW 143, the facts were that, respondent's husband R.K. Srivastava was an employee in a company named Gabriel India Ltd. While he was traveling in a motor vehicle, met with an accident, sustained injuries and ultimately, succumbed thereto.

His legal heirs filed a claim petition before the Tribunal and produced the salary certificate showing the gross income as Rs. 8,632/- per month and deduction of Rs. 1,989,85. The Tribunal held, that while computing the income, deduction of conveyance allowance only would fall outside the purview of the income and assessed the income of the deceased at Rs. 20,364/- per month and applied the multiplier of 13 considering the age of the deceased as 45 years, determined the annual income of the deceased at Rs. 2,32,372/-, the total income was worked out to Rs. 30,20,836/- and deducting 1/3rd of the amount on himself from the amount and 2/3rd compensation amount worked out to Rs. 20,13,890/-, was held to be the entitlement of compensation by the legal representatives. In appeal by Insurance Company and claimants, it was held that claimants are entitled to compensation calculated in the case of the deceased at Rs. 19,53,224/-. The Insurance company filed the appeal in the Hon'ble Supreme Court and while deciding the appeal, the Hon'ble Supreme Court has held as follows:

This Court in *Asha* (supra) did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term just compensation was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax.

What would be "just compensation" must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.

In the said decision it was further held as follows:

17. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

7. In the case of *Oriental Insurance Co. Limited v. Jashuben* reported in 2008(2) SCJ 670, the facts were that one Devjibhai Kushalbhai Rathod who was an Assistant in the Oil and Natural Gas Commission, while travelling in a bus met

with a road accident on 23.6.1994 and died. His LR's filed claim petition. The deceased salary and perks in the month of June 1994 was Rs. 6,418/-. But the Tribunal took into consideration the salary which might have been payable to the said deceased as in August 2002, had he continued in service as at Rs. 21,803.80 and by clubbing the income of the deceased which he might have got at the time of his retirement passed the award. After appeal to the High Court, the matter having been carried to the Apex court by the Insurance Company, it has been held as follows:

25. We, therefore, are of the opinion that what, would have been the income of the deceased on the date of retirement was not a relevant factor in the light of peculiar facts of this case and, thus, the approach of the Tribunal and the High Court must be held to be incorrect. It is impermissible in law to take into consideration the effect of revision in scale of pay w.e.f. 1.1.1997 or what would have been the scale of pay in 2002.

8. In the instant case, apart from professional tax of Rs. 100/- per month, there was no other statutory amount of tax payable, which was required to be compulsorily deducted from the salary and emoluments of the deceased. The Tribunal by noticing the other deductions, which were tow aids loans and advances, has taken the income of the deceased at Rs. 5,000/- per month (net income) instead of Rs. 11,231/- per month (gross income). Thus error has been committed by the Tribunal.

9. Tribunal should have taken into consideration, amount that was drawn by the deceased by his employer at the lime of accident, for computation of Iris monthly income. Deductions made towards LIC, society loan, HBA etc., which were voluntary, should not have been taken into consideration. Compulsory deductions are only required to be taken into consideration and deducted. Professional Tax was the only amount that was deducted from the salary income of the deceased. All other deductions from the salary of the deceased were voluntary and not statutory. Hence the Tribunal should have considered monthly income of the deceased at Rs. 11,231/- or annual income at Rs. 1,34,772/- and multiplier of 13 being applicable, should have computed the earning of the deceased at Rs. 17,52,036/- and after deducting 1/3rd towards personal and living expenses on himself, loss to the family i.e., dependency should have been computed at Rs. 11,68,024/- The Tribunal has erroneously computed the loss of dependency or contribution to the family, by the deceased at Rs. 5,19,792/-. There is thus a difference of Rs. 6,48,232/- which has to be awarded. Since the Apex Court in the case of National Insurance Co. Limited v. Indira Srivastava (supra), has held that, decision in the case of Asha (supra) is per incuriam, Tribunal is not justified in considering income of the deceased at Rs. 5,000/- and accordingly assessing the income of the deceased and in computing the loss of dependency to the appellants.

10. For the foregoing discussion, the appeal is allowed in part and to the extent mentioned herein above. Appellants are held to be entitled to an additional

compensation amount of Rs. 6,48,232/-, i.e., in addition to the amount awarded by the Tribunal. The said amount shall carry interest at 6% per annum from the date of petition till the date of deposit. 2nd respondent insurance company is directed to deposit the amount inclusive of interest in the Tribunal within four months from today, under an intimation to the appellants. No costs.

11. Office is directed to draw modified award in terms hereof.