(2017) 08 BOM CK 0054

In the Bombay High Court

Case No : 153 of 2010

Sk. Nasruddin s/o Gulzar, & Ors. — APPELLANT

Vs

M/s. Logistic Projects India Limited, & Anr. — RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 166, Section 166 - Application for compensation

Citation : (2017) 08 BOM CK 0054

Hon'ble Judges : Indira Jain

Bench : SINGLE BENCH

Advocate : Asghar Hussain, Anita Mategaonkar

Judgement

1. This appeal questions the legality, correctness and propriety of the award dated 17.4.2009 passed by the Motor Accident Claims Tribunal, Nagpur in Claim Petition No.3038/2004.

2. The facts giving rise to the present appeal may be stated in nutshell as under :

(i) Appellants are the claimants. Appellant no.1-father, appellant no.2-mother. Appellant no.3-widow, appellant nos.4 and 7-daughters and appellant nos.5 and 6 sons of Sheikh Ashiq, who died in a vehicular accident involving truck bearing no. GJ-12-W-7206, filed an application under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation.

(ii) According to appellants, on 11.7.2004, Sheikh Ashiq with Deorao was proceeding on Luna bearing no.MH-31-AW-9200. Sheikh Ashiq was driving Luna and Deorao was pillion rider. At about 10.00 pm, when they reached near Sangharsha Nagar, Ring Road Chowk, Nagpur, above said truck came in a high speed and gave a dash to Luna from the back side due to which Sheikh Ashiq and Deorao came under the rear wheel of the truck and died on the spot. It is submitted that driver of the truck was driving the vehicle in a rash and negligent manner.

(iii) It is the case of claimants that Sheikh Ashiq was a driver in a travel agency and earning Rs.4,000/- per month. He was aged about 32 years. He was paid daily bhatta of Rs.150/-. Claimants were dependents on him and the entire salary of Sheikh Ashiq was spent on the claimants. They assessed total compensation to Rs.8,41,000/- but restricted the same to Rs.7,00,000/-.

(iv) Another contention of the claimants was that the offending truck was owned by respondent no.1 and insured with respondent no.2 at the time of accident and, therefore, they are jointly and severally liable for payment of compensation.

3. The owner of vehicle remained absent and so petition proceeded ex-parte against him.

4. Respondent no.2-Insurance Company resisted the claim by filing written statement (Exh.19). The factum of insurance of the vehicle with the insurer is not in dispute. Respondent no.2 had not seriously disputed occurrence of accident. According to the insurer, at the time of accident, Sheikh Ashiq and Deorao were chitchatting and they were also responsible for causing accident. The submission is that accident was the result of contributory negligence on the part of Luna driver and the truck driver. Regarding income, age and dependency, defence of insurance company is of total denial.

5. On the basis of the rival pleadings, tribunal framed issues at Exh.22. Claimants examined AW-1 Sheikh Nasruddin s/o Gulzar and AW-2 Mohd. Kayub s/o Wali Mohd. Sk. in support of their claim. Respondent/insurer did not lead the oral evidence. Considering the oral and documentary evidence adduced by the parties, tribunal came to the conclusion that accident was the result of rash and negligent driving of truck by its driver and applicants are entitled to Rs.3,29,500/- towards compensation with interest at the rate of 7.5% per annum from the date of application i.e. 9.9.2004 till its realization. Being dissatisfied with the quantum of compensation awarded by the tribunal, claimants have preferred this appeal.

6. Heard Shri Asghar Hussain, learned counsel for appellants and Ms. Anita Mategaonkar, learned counsel for respondent No.2. None appeared for respondent no.1 though duly served.

7. On going through the record, pleadings of the parties, reasons recorded by the tribunal and the impugned judgment and award, following points arise for determination in the present appeal :

(i) Whether appellants prove that compensation awarded by the tribunal is inadequate and not just and fair compensation.?

(ii) Whether accident was the result of contributory negligence as stated by the insurer.?

(iii) Whether interference is warranted in the judgment and award passed by the tribunal.?

8. Needless to state that basically three factors are to be established by the claimants for assessing compensation in case of death viz. (i) age of deceased, (ii) income of deceased and (iii) number of dependents. The issue regarding loss of dependency is further required to be determined on the basis of (i) additions/ deductions to be made for arriving at the income, (ii) deductions to be made towards the personal living expenses of the deceased and (iii) multiplier to be applied with reference to age of the deceased.

9. So far as occurrence of accident is concerned, it can be seen from the evidence of AW-1 Sk. Nasruddin, father of deceased, that on 11.7.2004, his son Sheikh Ashiq was proceeding on Luna with Deorao and at about 10.00 pm near Sangharsha Nagar, Ring Road Chowk, Nagpur, Truck bearing No.GJ-12-W-7206 came in a rash and negligent manner in a high speed and gave a dash to the Luna driver Sheikh Ashiq. He stated that both fell down and died on the spot. Admittedly, AW-1 Sk. Nasruddin is not an eyewitness to the accident. His evidence is substantiated by police papers. Copy of first information report, spot panchanama (crime details form), inquest panchanama, postmortem report and form AA clearly indicate that accident occurred due to rash and negligent driving of the truck by its driver. Respondent no.2-insurer has not seriously disputed the police papers and also the occurrence of accident. In this premise, finding recorded by the tribunal that accident occurred due to rash and negligent driving of truck is in consonance with the evidence and material placed on record.

10. So far as plea of contributory negligence raised by the insurer is concerned, it is evident from the police papers that crime is registered only against the truck driver. From the spot panchanama, it can be seen that the truck driver was solely responsible for causing the accident. Respondent no.2-insurer did not examine the driver of truck to prove that Luna driver contributed to the accident. In the absence of any evidence to the contrary, police papers would prevail and on the basis of police papers, defence of respondent no.2-insurer regarding contributory negligence has to be negatived.

11. The next question relates to quantum and the extent of liability of the respondents to pay compensation. AW-1 Sk. Nasruddin stated in the evidence that his son Sheikh Ashiq was a heavy vehicle driver and was employed in a transport company Tajdar Goods Garage. He stated that Sheikh Ashiq was required to go on long distance tour. He was getting Rs.4,000/- per month and daily bhatta of Rs.150/- per day. Salary certificate (Article-A) was produced by the witness in support of his evidence.

12. The claimants examined AW-2 Mohd. Kayyub to prove the salary certificate of the deceased. AW-2 was running transport business and his father was owner of Tajdar Goods Garage. It is stated by AW-2 that Sheikh Ashiq was driver working with them on truck No.CG-04-ZC-3886 and his salary was Rs.4,000/- per month. According to AW- 2, in addition to salary, Sheikh Ashiq was paid bhatta of Rs.150/- per day for duty outside Nagpur. Relying upon evidence of AW-1 and AW-2, learned counsel for appellants submitted that monthly income

of the deceased considered by the tribunal as Rs.2,500/- is on too lower side and the tribunal ought to have considered Rs.6,000/- per month as salary for heavy vehicle driver.

13. In this connection, learned counsel placed reliance on the judgment of the Hon''ble Supreme Court in Minu Rout and another .vs. Satya Pradyumna Mohapatra and others, 2013 (4) T.A.C. 840 (S.C.). In this case before the Hon''ble Supreme Court, deceased was a driver on a car. The Hon''ble Supreme Court observed that post of driver is a skilled job and tribunal ought to have taken salary of the deceased at Rs.6,000/- per month.

14. In the present case, AW-1 Sk. Nasruddin has filed driving licence of Sheikh Ashiq at Exh.31. The learned counsel for respondent no.2 relied upon (i) Nemappa .vs. Bhimanna and another, 2017 ACJ 556 (ii) Oriental Insurance Company Limited .vs. Khushboo Devi and others, 2013 ACJ 2797 and submitted that if a driving licence is restricted to a specific vehicle, then the person will not be competent to drive other vehicle then mentioned in the licence. The driving licence indicates that Sheikh Ashiq was authorized to drive LMV car and three wheeler auto-rickshaw. So far as heavy motor vehicle like truck is concerned, licence though mentions transport vehicle above 7500 kgs does not give relevant details and it is not possible from licence (Exh.31) to infer that Sheikh Ashiq was authorized to drive heavy vehicle like truck. In this situation, monthly income of Sheikh Ashiq, as deposed by both the witnesses needs to be considered is Rs.4,000/- per month and not Rs.2,500/- per month, as taken by the tribunal.

15. So far as daily bhatta is concerned, there is no evidence to indicate that deceased was going on duty on long tour and in the absence of such evidence, this court is not inclined to consider bhatta as source of income of the deceased. It appears from the reasons recorded by the tribunal that future prospects of the deceased have not been considered at all. On quantum, future prospects and compensation under various other heads, learned counsel for the appellant relied upon :

(1) Mohd. Ameeruddin and another .vs. United India Insurance Company Limited and another, [2011 ACJ 13]

(2) Minu Rout and another .vs. Satya Pradyumna Mohapatra and others [2013 (4) TAC 840 (SC).

(3) Vimal Kanwar and others .vs. Kishore Dan and others [2013 ACJ 1441]

(4) Kalpana Raj and others .vs. Tamil Nadu State Transport Corporation [2014 (2) TAC 744 (SC).

(5) Neeta and others .vs. Divisional Manager, Maharashtra State Road Transport Corporation, [2015 ACJ 598]

(6) Asha Verman and others .vs. Maharaj Singh and others [2015 (2) TAC 299 (SC).

(7) Surti Gupta .vs. United India Insurance Company and another [2015 (3) TAC 5 (SC).

(8) The Judgment of the learned Single Judge of this court in First Appeal No.624/2005 dated 25.7.2017 and

(9) In First Appeal No.1060/2007 dated 23.5.2017.

16. So far as loss of dependency is concerned, it is already stated above that salary of Sheikh Ashiq is to be taken as Rs.4,000/- per month. It is not in serious dispute that deceased was 32 years old at the relevant time. As he was below 40 years, 50% of actual salary of the deceased towards the future prospects is to be taken in the instant case. This would bring actual income of the deceased to Rs.4,000 + Rs.2,000 = Rs.6,000/- per month.

17. Coming to the dependency, learned counsel for the appellants submitted that if unit method is to be applied, then at the most 1/5th deduction towards the personal expenses of the deceased from the actual income needs to be considered. In support of submission, learned counsel placed reliance on the decision of the Hon''ble Supreme Court in Sarla Verma (Smt) and others .vs. Delhi Transport Corporation and another, (2009) SCC 121. In case of Sarla Verma, Their Lordships of the Hon''ble Apex Court held that where the number of dependents is 2 and 3, deduction towards the personal and living expenses of the deceased should be 1/3rd, where number of dependents 4 to 6, deduction towards personal expenses of the deceased as 1/4th and where number of dependents exceeds, six deduction should be 1/5th.

18. In the present case, in all there are seven dependents. This fact is not controverted by the insurer. Considering the number of dependents, 1/5th deduction towards personal expenses of the deceased would be appropriate in the light of the judgment of the Hon''ble Apex Court in case of Sarla Verma.

19. If deduction of 1/5th towards personal and living expenses of the deceased is considered, this would bring the annual income to Rs.6,000 - 1,200 = Rs. 4,800 x 12 = 57,600/-. So far as multiplier is concerned, as deceased was 32 years old at the time of accident, multiplier of 16 is to be applied as per the second schedule. This brings the dependency to Rs.57,600/- x 16 = Rs.9,21,600/-.

20. In the backdrop of the judgments relied upon by the learned counsel for appellants for loss of consortium, amount of Rs.1,00,000/- needs to be awarded to the widow. Children are entitled to amount of Rs.1,00,000/- each towards love and affection. Funeral expenditure sanctioned by the Hon''ble Apex Court is also Rs.25,000/-. The grant of amount at lesser rate by the Tribunal, in the present case, is thus unsustainable, in view of the law laid down by the Hon''ble Apex Court in the catena of judgments.

21. In the light of the above, this court on evaluation of the evidence and material placed on record finds that appellants would be entitled to receive compensation as follows :

(1) Monthly net income .. Rs.4,000/-

(2) 50% future prospects .. Rs.2,000/-

Rs.6,000/-

(3) 1/5 deduction towards personal living expenses .. (-) Rs.1,200/-

....

Rs.4800x12

Rs.57,600x16.

(4) Total loss of dependency .. Rs.9,21,600/-

(5) Loss of consortium .. Rs.1,00,000/-

(6) Loss of love and affection for children .. Rs.4,00,000/-

(7) Loss of estate for all respondents .. Rs.1,00,000/-

(8) Funeral expenses .. Rs. 25,000/-

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Total amount of Compensation : Rs.15,46,600/-.

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22. The Hon''ble Supreme Court has clarified that interest which is to be calculated on the amount of compensation is 9% from the date of filing of the application under Section 166 of the Motor Vehicles Act. Accordingly (i) appellants are entitled to receive total compensation of Rs.15,46,600/- along with interest at the rate of 9% per annum from the date of application that is 9.9.2004 till its actual realization; (ii) The amount already received by the appellants shall be deducted from the total amount found due and payable to them and (iii) The exercise of calculating the compensation due and payable shall be completed within a period of three months and balance amount thereafter found payable shall be paid to the claimants within next three months.

23. First Appeal No.153/2010 is allowed in above terms. No costs.

