
(2016) 07 KAR CK 0038
In the Karnataka High Court
Case No : M.F.A. No. 9119 of 2008

Smt. Ayesha Begum

APPELLANT

Vs

Saradarulla Khan

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2016) ILRKarnataka 4592

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Smt. Suguna R. Reddy, Advocate, for the Appellants; D. Vijay Kumar, Advocate, for the Respondent No. 2; Served and unrepresented, for the Respondent Nos., 3, 4 and 5; Notice to R1 - Held sufficient, for the Respondent No. 1

Final Decision : Dismissed

Judgement

B.S. Patil, J.—Appellants are the wife and daughter of late Rahamathula who died in a motor vehicle accident that occurred on 13.10.2000. He was aged about 28 years at the time of his death. He was working as a coolie in a sawmill and was allegedly earning Rs. 4,000/- per month. He left behind his parents, 1st wife and her child, 2nd wife and he child. Father of deceased who was one of the claimants before the Tribunal died during the pendency of the claim petition. Two separate claim petitions were filed. One by present appellants in M.V.C No. 81 of 2005 and another by mother of deceased, 2nd wife and her child impleading the present appellants also as appellants in M.V.C. No.28/2001.

2. Claim petition filed by present appellants was dismissed they were parties in the connected claim petition with liberty to then to urge their rights. So far as other claim petition is concerned, appellant No.1 herein was examined as P.W. 12 and the so called 2nd wife-respondent No.3 herein was examined as P. W.6.

3. The Tribunal has found that there was no evidence on record to establish that claimant was working in a saw mill and was earning Rs. 4,000/- per month. It

has held that income of deceased, keeping in mind the year of accident could be taken at Rs. 3,000/-. Applying multiplier of 16 and deducting 3rd towards personal expenses and by adding 50% towards future prospects, loss of dependency has been worked out at Rs. 5,76,000/- (Rs. 3,000/- x 12 x 16). Claimants were held entitled for Rs. 3,000/- towards funeral expenses; Rs. 20,000/- towards loss of consortium to 1st and 3rd claimant; Rs. 30,000/- towards loss of love and affection and another sum of Rs. 10,000/- towards loss of estate. Thus, totally a sum of Rs. 6,39,000/- has been awarded along with interest at 6% per annum.

4. Learned Counsel for appellants submits that deduction made it 3rd towards personal expenses is illegal inasmuch as deceased had left behind his mother, appellants 1 and 2 apart from his 2nd wife and a minor child born out of the said wed lock. It is urged that deduction could not have been more than 3th. It is also urged that having regard to the age of deceased who was found to be 28 years, multiplier of 17 ought to have been adopted instead of 16.

5. It is next contended that amount awarded towards traditional beads is highly inadequate having due regard to the judgment of the Apex Court in the case of Rajesh and others v. Rajbir Singh and others 2013 ACJ 1403.

6. Learned Counsel appearing for respondents submit that Tribunal was indeed not justified in adding 50% of the income of deceased towards future prospects as deceased was not employed in a secured job and there was no evidence to show that he had steady income. he urged urges that if the same is disallowed, compensation would be far less than what has been awarded even if the amount awarded under traditional heads is to be increased. They also support the deduction of 3rd contending that dependency of 2nd wife and her child cannot be taken note of.

7. Having heard the Learned Counsel for both parties, I find that indeed in a matter like this, the approach of the Court could bet find out whether just and reasonable compensation has been awarded having due regard to different recognised heads under w compensation is normally awarded.

8. So far as award of compensation by adding 50% toward future prospects lengthy arguments have been addressed by Learned Counsel for appellant and the Learned Counsel for respondent" Insurance Company. Let me now deal with this question.

9. Smt. Suguna Reddy, Learned Counsel For The Appellant Contends That This Court Is Required To Follow The Judgment of The Apex Court Rendered By Three Hon"ble Judges In The Case of Rajesh and others v. Rajbir Singh and others(supra) wherein the Apex Court while referring to Sarla Verma"s Case Has Held That In Case of Self Employed Persons With Fixed Wages, Where The Deceased Victim Was Below" 40 Years, There Must Be An Addition 50% To The Actual Income of The Deceased With Regard To "future Prospects" After Deducting The Tax Payable; Addition Should Be 30% in Case The Deceased Was

In The Age Group of 40-50 Years. It Is Her Contention That Even Though In Reshma Kumari and other v. Madan Mohan and another 2013 AIR SCW 3120, a Bench Consisting of Equal Number of Judges (Three Hon'ble Judges) Had Held That While Making Addition To Income For Future Prospects, The Tribunal Shall Follow Judgment of Sarla Verma's Case As Rajesh's Case Is Later Point of Time, It Is The Ratio Laid Down In Rajesh's Case That Binds this Court And Not The Earlier Judgment Rendered By Equal Number of In Reshma Kumari's Case. In Support of This Contention, Has Placed Reliance On The Two Full Bench Judgments of This Court The Case of Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd., and another ILR 1979 KAR 1401(FB) And M.M. Yaragatti v. Vasant ILR 1987 KAR 1286 (FB), Wherein This Court Has Held That If There Is Any Conflict Between The Decision of Co-Equal Benches The Apex Court, The Later View Should Be Followed.

10. In both the cases decided by the two Full Benches, it has held that if a question of law cannot be reconciled and one of them is by a Larger Bench while the other by a smaller Bench, the decision of the Larger Bench whether it is earlier or later in point of shall be followed by the High Court and other Courts. However, the said Benches of the Apex Court consisted of equal number benches, later of the two decisions shall be followed by the High Court and other Courts.

11. Smt.Suguna Reddy, learned Counsel further contends that even where a matter is referred for the opinion of the Larger Bench, referring to the conflicting views on the point, in an appropriate case, the Court need not wait till the referred matter is finally decided inasmuch as the law as it prevails before the matter was referred required to be followed. In this regard, she has placed reliance the judgment of the Apex Court in the case of Manages, National Insurance Co. Ltd v. Saju P. Paul and another AIR 2013 SC 1064. Attention of the Court is invited to the observation made in paragraphs 23 and 25 of the said judgment, wherein the Apex Court while considering the question of pay and recover}" which question had been referred to the Larger Bench, has stated pendency of the consideration of the said question by a Larger Bend did not mean that the amount already deposited by the Insurance Company cannot be permitted to be withdrawn by the claim; because the Insurance Company can recover the amount so paid from the owner by following the procedure as laid down by the Apex Cow in the case of Challa Bhara Thamm A. In support of the same proposition, Smt. Suguna Reddy has referred to another judgment of the Apex Court in the case of State of Maharashtra and other another v. Sarva Shramik Sangh, Sangli and others, (2013) 16 Scc 16. She has rightly invited the attention of the Court paragraphs 24 to 27 of the said judgment to contend that mi because the larger question regarding the scope and ambit of definition of "industry" had been referred for reconsideration, decision rendered by the Apex Court in Bangalore Water Supply And Sewerage Board v. A. Rajappa, (1978)2 SCC 213cannot be ignored as it was the law which presently held the field. Indeed while accepting this position of law, Learned Counsel has placed reliance

on the Judgment of The Apex Court In The Case of State of Orissa v. Dandasi Sahu (1988)4 SCC 12.

12. Therefore, it is contended by Learned Counsel for the appellants that the law regarding award of "future prospects" as has laid been laid down by the Apex Court in Rajesh's case holds the field as it is the latest judgment on the point and is binding on this Court.

13. Smt. Suguna R. Reddy, Learned Counsel for the appellants has further urged that the Apex Court in the case of Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210 has referred to all the relevant cases namely Reshma Kumari and others v. Madan Mohan and another, Santosh Devi v. National Insurance Co., Ltd., and others Smt. Sarla Verma And Others V. Delhi Transport Corporation And Another and Rajesh And Others v. Rajbir Singh And Others while practically applying the principle involved in the expression "exceptional and extraordinary circumstances" dealt with in Reshma Kumari's case. while reiterating the view taken in Sarla Varma's Case.

14. Sanjay Verma's case pertained to claim by self employed person for determining the loss of income by adding future prospects. The Apex Court has held that in case of loss of income account of an accident resulting in total disability of the victim who was aged about 25 years "having steady income" as evidenced by the income tax returns, addition of 50% of the income to the earning of the claimant would be justified. She has also invited the attention of the Court to other three judgments of the Apex Court in the case of Munna Lal Jain and Another v. Vipin Kumal Sharma and others (2015)6 SCC 347, decided on 15.5.2015. wherein also reference has been made to the decisions rendered in Reshma Kumari, Santosh Devi and Rajesh, while holding in paragraph No. 10 that as far as future prospects were concerned, deceased being of the aged 30 years, 50% had to be added to his income. It is therefore contended by her that in the light of two later judgments of the bench consisting of three Judges of the Supreme Court where both the views were referred and compensation has been awarded by including future prospect this Court is bound to follow the ratio laid down in the later judgments of the Supreme Court and award compensation by including future prospects.

15. Sri A.N. Krishna Swamy and Sri B.C. Seetharama Learned Counsel who have addressed their arguments on this point in favour of the Insurance Companies have contended that as the question regarding award of compensation by including future prospects has been referred to a Larger Bench of the Apex Court in the two judgments in the case of National Insurance Company Limited v. Pushpa And Others, (2015)9 SCC 166 vide order dated 2.7.2014 and also in the case of Shashikala and others v. Gangalakshamma and another, (2015) 9 SCC 150 and the Apex Court has not chosen to award any compensation under the said head by including future prospects, this Court cannot award compensation under the said head unless the controversy is fully and finally decided by the larger Bench of the Apex Court where the matter is pending.

16. Sri A.N. Krishna Swamy, Learned Counsel has further tended that RAJESH case cannot be a precedent because it has not referred to the earlier judgment of the bench consisting of equal number of judges in Reshma Kumari's case and in this regard, he has placed reliance on the judgment of the Apex Court in the case of Union of India and others v. S.K. Kapoor (2011) 4 Scc 589. Attention of the Court is invited to paragraph No.9 of the said judgment wherein it is held as under:-

"It may be noted that the decision in S.N. Narula case was prior to the decision in TV. Patel case. It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in S.N. Narula case was not noticed in T.V. Patel case, the latter decision is a judgment per incuriam. The decision in S.N. Narula case was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.

17. It is also contended by Sri A.N. Krishna Swamy, Learn Counsel that the principle underlying determination of compensation the motor accident claim is to ensure that just and fair compensatiton is awarded to the victims. Therefore, as the matter is now seized by the Larger Bench of the Apex Court, this Court may decide the compensation payable based on other well established principle: reserving liberty to the claimants to reopen the matter and see" modification of the judgment by including future prospects, in case the Supreme Court finally holds that claimants would be entitled for addition of future prospects to the income.

18. Upon hearing the Learned Counsel for both parties, I find that the issue with regard to addition of certain percentage of income towards future prospects while determining the compensation has no doubt, referred to a Larger Bench for consideration as adverted to above, it is also evident that while deciding Rajesh's case, the three judges bench of the Apex Court had no occasion to refer to Reshma Kumari's case, which was also decided by a bench consisting of equal strength as the same was not brought to the notice of the later bench. But, subsequently, in at least two decisions rendered by the Apex Court consisting of three Hon"ble Judges in Munna Lal Jain And Another v. Vipin Kumar Sharma And Others (2015) 6 SCC 347 and Sanjay Verma v. Haryana Roadways (supra), the Apex Court has dealt with this aspect of addition of certain percentage of income towards future prospects. In the light of this fact, it is not open for this Court to say that because the matter has been referred to the Larger Bench in National Insurance Company Limited v. Pushpa and others (supra) and Shashikala And Others v. Ganga Lakshmmamma and another (supra), this Court has to lay off its hands and not award compensation under the head future Prospects. Once The Earlier Judgments of Tire Apex Court In The Cases of Reshma Kumari And Rajesh Are Found Referred To And Examined By The Subsequent Judgments In Sanjay

Verma And Munna Lal Jain, wherein also the bench strength was three Hon''ble Judges, this Court is bound to follow the principles laid down in the subsequent judgments. The rule of precedent mandates that this Court cannot ignore the ratio laid down in the subsequent judgments, wherein the earlier conflicting view has been referred to and decided on the contentious issue.

19. It is true, in Munna Lal Jain's Case though reference has been made to the earlier three Judge judgments in Reshma Kumari's and Rajesh's cases with regard to future prospects, the Court has not examined the divergent views in both the cases and has not formed its own opinion, but in Sanjay Verma's case decided on 29.1.2014 by the bench consisting of three Hon''ble Judges, the Apex Court has made specific reference to the two different views! expressed in Reshma Kumari and Rajesh's cases and has awarded compensation even as against the head future prospects. It is useful to refer to observations made in paragraphs 13 to 16, which are extracted here under

"13. The view taken in Santosh Devi has been reiterated by a Bench of three Judges in Rajesh and Others v. Rajbir Singh by holding as follows: (Rajesh case, SCC.p.61, paras 8-9)

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

9. In Sarla Verma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

14. Certain parallel developments will now have to be taken note of. In Reshma Kumari v. Madan Mohan, a two - Judge Bench of this Court while considering the following questions took the view that the issue(s) needed resolution by a larger Bench (SCC.p. 425, para 10)

"(1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?

(2) Whether for determination of the multiplicand, the Act provides for any

criterion, particularly as regards determination of future prospects?"

15. Answering the above reference a three-Judge Bench of this Court in *Reshma Kumari v. Madan Mohan* (SCC p. 88. para 36) reiterated the view taken in *Sarla Verma* to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances. Though the expression "exceptional and extraordinary circumstances" is not capable of any precise definition, in *Shakti Devi v. New India Insurance Co. Ltd.* there is a practical application of the aforesaid principle. The near certainty of the regular employment of the deceased in a government department following the retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. The said loss of income, accordingly, was quantified at double (the amount that the deceased was earning at the time of his death).

16. Undoubtedly, the same principle will apply for determination of loss of income on account of an accident resulting in the total disability of the victim as in the present case. Therefore, taking into account the age of the claimant (62 years) and the fact that he had a steady income, as evidenced by the income-tax returns, we are of the view that an addition of 50% to the income that the claimant was earning at the time of the accident would be justified."

20. It is thus evident from the judgment rendered in *Sanjay Verma's* case that the expression "exceptional and extraordinary circumstances" referred to in *Sarla Verma's* case in the matter of award of compensation in respect of a person who has fixed salary without provision for annual increments or who are self employ while adding 30% of income towards future prospects has held that the expression exceptional and extraordinary circumstances, is not capable of precise definition. In this regard, the Apex Court (in the case of *Sanjay Verma*) while referring to the case of *Shakti Devi v. New India Insurance Co., Ltd* (2010)14 SCC 575 has held that in practically applying the afore stated principles near certainty of the regular employment of the deceased in a Government department following tire retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. In the facts of the case in *Sanjay Verma's* case, the Apex Court has held that as the victim was a young man of 25 years who had suffered total disability and as he had a steady income, addition of 50% of the income that the claimant was earning at the time of accident towards future prospects was justified.

21. Therefore, it emerges that additional amount towards future prospects is required to be awarded where evidence discloses that victim was young person having potential to earn higher income and was having steady income at the time of accident. Hence, in my view, it cannot be held that merely because the matter regarding award of additional amount towards future prospects has been

referred to the larger Bench, this Court shall not award any compensation under the said head. This Court is required to follow the ratio laid down in Sanjay Verma's case and award the amount under the said head in case where evidence disclosed steady income of the victim at the time of accident.

22. In the ultimate analysis, Courts have to keep in mind that the need to award just and fair compensation and additional amount towards the head future prospects depends on the evidence in each case regarding the age of the victim, his occupation, nature of his employment, the prospects of earning steady and increased income. Therefore, that only in respect of a person, who has an assured job or a government employment, entitlement for award of compensation under the head future prospects would arise. The same can be claimed successfully even by other employees including self employed person both skilled and unskilled provided there is evidence to show that he had a steady income. Therefore, the matter depends on the evidence adduced in each case. Accordingly, the point raised is answered.

23. The above view taken in the matter will be of not much assistance to either of the parties in this case inasmuch as the insurance company has not filed any appeal. The Tribunal has proceeded to add 50% of the income towards future prospects treating him as a collie. There is no evidence regarding steady income of the deceased. As the insurance company has not filed any appeal, this approach of the Tribunal can be taken note of for the purpose of examining whether the claim made by appellants seeking enhancement of compensation is justified. The Tribunal has not awarded reasonable sum under the traditional heads and in the normal circumstances, this Court would have awarded additional amount under the said heads. As the claimants have been awarded certain amount towards future prospects no enhancement under other heads is called for.

24. Hence, I do not find any justification to interfere with the judgment and award passed by the Claims Tribunal to award any additional compensation.

25. This appeal, therefore, being devoid of merit is dismissed.