

(2016) 08 TP CK 0004
In the Tripura High Court
Case No : MAC APP. No. 114 of 2013

Smt. Dhanabi Chakma

APPELLANT

Vs

Sri Birendra Kumar Nath

RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 754

Hon'ble Judges : T. Vaiphel, ACJ.

Bench : Single Bench

Advocate : Mr. D.C. Saha and Mr. P.B. Chakma, Advocates, for the Appellants;
Mr. K. Bhattacharji, Advocate, for the Respondents

Final Decision : Allowed

Judgement

T. Vaiphel, Actg.C.J. - Dissatisfied with the quantum of compensation awarded by the learned Member, Motor Accident Claims Tribunal, Dharmanagar, North Tripura in his judgment dated 7-6-2012 of Title Suit (MAC) No. 66 of 2011, this appeal has been preferred by the appellants for enhancement.

2. The facts giving rise to the appeal may be briefly noticed at the outset. The appellant No. 1 is the wife of the deceased (late Mongal Kanti Chakma), who met with a vehicular accident on 21-1-2011 when he was returning home after visiting Pukzing village; he was knocked down by a speeding TATA Truck (407) bearing registration number TR-02/C-1604, which was driven in a rash and negligent manner. As a result of the accident, he sustained fatal injuries and died on the spot. The deceased is survived by the appellant No. 1 and his two children, namely, the appellant No. 2 and 3, who, as his legal representatives, filed the claim petition for payment of compensation amounting Rs. 24,00,000/- for the death of the deceased. The respondents contested the claim petition and filed their respective written statements denying all the allegations made therein. At the conclusion of the trial, the learned Member by the impugned award awarded the compensation as under:

1.

Pecuniary Loss

-

Rs. 3,60,000/-

2.

Funeral expense

-

Rs. 2,000/-

3.

Loss of consortium

-

Rs. 10,000/-

Total

-

Rs. 3,72,000/-

3. No cross-appeal is filed by the respondents. The Tribunal found that the deceased was 45 years at the time of the accident and that he was a cultivator and a businessman. The Tribunal rejected the Income Certificate produced by the appellants showing the income of the deceased as Rs. 10,000/- per month and determined his income at Rs. 3,000/- per month. On the basis of the income of the deceased so fixed, the impugned award was passed awarding a sum of Rs. 3,72,000/- as compensation to the appellants. Assailing the impugned award, Mr. D.C. Saha, the learned counsel for the appellants, makes three-fold contentions, namely,

(i) the learned Member has completely overlooked the glaring fact that the deceased was running a grocery shop and was a licensed Fair Price Shop Dealer during his lifetime as evident from the copy of the License dated 19-3-2009 with a validity period up to 31-12-2001 vide Ext. 1(Series) and has in the process erroneously assessed his income at Rs. 3,000/- per month; the determination of his income at Rs. 3,000/- per month is, therefore, perverse and cannot be sustained in law.

(ii) the learned Member has acted contrary to the law laid down by the Apex Court in not adding 30% to the annual income of the deceased while computing future prospects when the deceased was 45 years at the time of his death; this has resulted in denying just and fair compensation to the appellants.

(iii) the amounts awarded by the Tribunal with respect to loss of consortium, loss of care and guidance for the minor children and funeral expenses are pittance: the Tribunal has ignored the law laid down by the Apex Court from time to time in this behalf.

4. Mr. K. Bhattacharjee the learned counsel for the Insurance Company refutes the contention of the learned counsel for the appellants by contending that when the appellants are not able to show the income of the deceased with unimpeachable documentary income certificate, the Tribunal has no alternative but to hold that the deceased was earning a sum of Rs. 3,000/- per month; no substantial infirmity in the impugned award can be pointed out by the learned counsel for the appellants to upset the determination of the income made by the Tribunal. He also submits that the impugned award has been passed by the Tribunal after correctly taking all aspects of the matter and the same need not be interfered with.

5. Having given my anxious consideration to the rival submissions made by the learned counsel appearing for the parties and having perused the impugned award together with the materials on record, the first point for consideration is whether the assessment of the income made by the Tribunal is correct or not. The fact that the deceased was running a grocery shop and Government licensed Fair Price Shop is hardly in dispute. The statement to this effect made by PW-1, who is the appellant No. 1 and wife of the deceased, has been corroborated by the evidence of PW-2, who is her co-villager, and Ext-1(Series), which is the copy of the Fair Price Shop License issued by the Government of Mizoram in the name of the deceased. It is interesting to note that the respondents in their cross-examination also do not dispute the claim of the appellants that the deceased was running a grocery shop and a licensed Fair Price Shop. In those circumstances, there can be no difficulty in making rough estimate of the monthly income of the deceased. Just because, the appellants could not produce income certificate, his earning could not be reduced to a mere Rs. 3,000/- per month when it is proved that he was running a grocery shop and Fair Price Shop. Of course, the claim made by the appellants in the claim petition that the deceased was earning Rs. 12,000/- per month cannot be accepted. The Apex Court has an occasion to consider this aspect of the matter in *Sanjay Kumar v. Ashok Kumar*, (2014) 2 SCC 735. That was a case in which the claimant-appellant was stated to be working as a vegetable vendor, but could not produce, like the appellants herein, any documentary evidence to establish the loss of income. For better appreciation of the controversy, the relevant entire paragraphs are reproduced in extenso thus:

"7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the wholesale market or the farmers and then selling

it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the marketplace which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant claimant is still capable to fend for his livelihood once he is brought in the marketplace, we determine the disability at 85% to determine the loss of income.

8. The appellant claimant in his appeal further claimed that he had been earning Rs. 10,000 p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs. 3500 p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganised sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in *Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.*, (2011) 13 SCC 236 : (2012) 3 SCC (Civ) 452 : (2012) 1 SCC (Cri) 825, has held as under:

"13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs. 4500 per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs. 3000 only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs. 100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs. 3000 per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, appellant was working as a coolie and in and around the date of the accident, the wage of a labourer was between Rs. 100 to Rs. 150 per day or Rs. 4500 per month. In our view, the claim was honest and bona fide and,

therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs. 4500 to Rs. 3000 per month. We, therefore, accept his statement that his monthly earning was Rs. 4500."

9. There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs. 6500 per month."

6. The above principle is reiterated by the Apex Court in the subsequent decision in *Sanjay Kumar v. Ashok Kumar*, (2014) 5 SCC 330. In the case at hand, the appellants have proved with documentary evidence that the deceased was running a grocery shop as well as Government licensed Fair Price Shop before the vehicular accident. Under such circumstances, it is not difficult to hold that he, based on ground realities, any standard and the present state of economy, must have earned not less than Rs. 6,000/- per month at the time of the vehicular accident resulting in his death. The next question to be determined is whether the appellants are entitled to get addition to income for future prospects. In view of the decision of the three-Judge Bench in *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 reiterating the decision of two-Judge Bench in *Sarla Verma v. DTC*, (2009) 6 SCC 121, the law is no longer *res integra*. This is what the Apex Court said:

"39. The standardisation of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."

7. As there is no exceptional reason to make a departure from *Sarla Verma* case (*supra*), the age of the deceased being 45 years at the time of his death, addition of 30% to his income for future prospects will help in arriving at just and appropriate compensation. As for deduction for personal and living expenses, as held in *Sarla Verma* case as affirmed in *Reshma Kumari* (*supra*), one-third deduction will meet the ends of justice as the deceased was married and is survived by three dependent family members. In addition, the appellant No. 1 will be entitled to Rs. 50,000/- for loss of consortium, whereas the appellant No. 2 and 3 will be entitled to Rs. 25,000/- each for loss of care and parental

guidance. Finally, the appellants will be entitled to Rs. 25,000/- for funeral expenses. Thus, the annual income of the deceased is assessed at Rs. 6,000 x 12 = Rs. 72,000/-, to which will be added 30% as future prospects, which will come to Rs. 72,000 + 21,600 = Rs. 93,600/-. However, one-third deduction shall have to be made for the personal and living expenses of the deceased, which will come to Rs. 93,600 - 21,600 = Rs. 72,000. As the multiplier to be adopted in terms of Sarla Verma case (supra) is 14, the total loss of dependency will come to Rs. 72,000 x 14 = Rs. 10,08,000/- (Rupees ten lakhs and eight thousand) only. Therefore, the total amount of compensation payable to the appellants will be:

Total loss of dependency

-

Rs. 10,08,000/-

Loss of consortium for appellant No. 1

-

Rs. 50,000/-

Loss of parental care and guidance to

-

Rs. 25,000/- each

Appellant No. 2 and 3

-

Funeral expenses

-

Rs. 25,000/-

Total

-

Rs. 11,33,000/-

(Rupees eleven lakhs thirty-three thousand) only

8. The appeal is allowed. The three appellants will be entitled to enhancement of the compensation amount from Rs. 3,72,000/- to Rs. 11,33,000/- in three equal shares among them except for Rs. 50,000/-, which will be paid to her for loss of consortium and Rs. 25,000/- for funeral expenses, while the appellant No. 2 and 3 will be entitled to Rs. 25,000/- each for loss of parental care and guidance. As the offending vehicle was insured with the insurer, the insurer shall satisfy the award together with the enhanced award and deposit the same to the Registry for payment to the appellants within three months together with interest @ 6%

per annum from the date of the claim petition. As there was a delay of 470 days in presenting the appeal, this period shall be deducted for payment of interest. The impugned award is, therefore, modified to the extent indicated above. Needless to say, any amount already paid to the appellants shall be adjusted accordingly. As and when the amount is deposited, the same shall be paid to the appellants by the usual arrangement without further reference from this Court. A copy of this judgment shall be supplied to the learned counsel for the insurer for communication.