
(2016) 10 AHC CK 0024

In the Allahabad High Court

Case No : First Appeal from order No. 682 of 2012

Smt. Geeta Singh

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) AAC 448 : (2017) 1 ACC 258 : (2017) ACJ 1409 : (2016) 10 ADJ 260 : (2017) 1 AILJ 54 : (2016) 6 AllWC 5853 : (2016) 119 ALR 359 : (2016) 4 TAC 337

Hon'ble Judges : Krishna Murari and Prashant Kumar, JJ.

Bench : Division Bench

Advocate : Vidya Kant Shukla, Advocate, for the Appellants; G.K. Srivastava, Advocate, for the Respondent No. 1; Ram Siromani Yadav, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

Prashant Kumar, J.—The present appeal filed by the claimants under Section 173 of Motor Vehicles Act, 1988 is directed against the part of the judgment and award dated 19.09.2011 and 19.11.2011 respectively passed by Motor Accident Claim Tribunal/Special Judge, S.C./S.T. Act, Kanpur Nagar in MACP No. 204 of 2010 whereby the learned Tribunal assessed the compensation to the tune of Rs. 16,39,320/-. The appellants further prayed for enhancement of compensation amount, as claimed in the claim petition.

2. It is stated that the deceased namely Dr. Gyanendra Kumar Singh was travelling in a Maruti Wagon R car bearing registration number U.P. 78 BS 0375 on 11.01.2010 and was coming from Fatehpur to Kanpur. It is further stated that when the vehicle of the deceased reached in between Narwal turn to Maharajpur a DCM truck bearing registration number U.P. 78 N 3907 came from the back side, being driven by its driver in rash and negligent manner, and dashed with the Maruti Wagon R car. It is stated that due to that deceased received serious

injuries and died on the spot. It is further stated that in the said accident other two co-passengers namely Dr. Devendra and his wife also received injuries. It is stated that after the accident the driver of the offending vehicle fled away with the vehicle. Thereafter an information lodged in the police station regarding the accident.

3. It is stated that at the time of accident deceased was working as Animal Medical Officer under the U.P. Pashupalan Department and was earning Rs. 43,183/- per month. It is further stated that at the time of accident the deceased was aged about 47 years. It is further submitted that due to untimely death of the deceased the claimants had suffered huge financial loss, physical pain and mental agony. Thus they filed application under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs. 63,50,000/- with 9 % interest.

4. It appears that the owner of the offending vehicle and insurance company had contested the claim application by filing written statement. The following issues were framed on the basis of pleadings of the parties:-

I. Whether on 11.01.2010 at about 3:20 PM between Narwal Turn and Maharajpur, within P.S. Maharajpur, Kanpur Nagar, when the deceased was travelling in WagonR No. U.P. 78 TS 0375 and was coming from Fatehpur to Kanpur then DCM Truck No. U.P. 78 N 3907 being driven by its driver rashly and negligently hit the WagonR Car and as a result the deceased Gyanendra Kumar Singh died?

II. Whether the driver of DCM Truck No. U.P. 78 N 3907 was not having a valid and effective driving licence at the time of accident? If so, its effect?

III. Whether the DCM Truck No. U.P. 78 N 3907 was not validly insured at the time of accident? If so, its effect?

IV. Whether the claimants are entitled for any compensation? If so, its amount and from whom?

The claimants produced three witnesses in support of their case. They also filed various documentary evidence, details of which given in the impugned judgment. It further appears that though opposite party Nos. 1 and 2 had not given any oral evidence, but they adduced documentary evidence in support of their case.

5. It appears that after hearing the arguments of learned counsel for the parties, the learned Tribunal came to the conclusion that the accident took place due to rash and negligent driving of DCM truck, bearing registration No. U.P. 78 N 3907 and in the said accident the deceased Dr. Gyanendra Kumar Singh had received serious injuries, due to that he died. The Tribunal further came to the conclusion that at the time of accident the offending vehicle was insured with the United India Insurance Company Ltd., and the policy was valid on the date of accident. The Tribunal also found that at the relevant time all the papers relating to offending vehicle i.e. driving licence of the driver, registration certificate, permit and fitness certificate etc., are valid and effective. Thus the insurance company is

liable to indemnify the owner. The learned Tribunal after discussing the materials available on the record further came to the conclusion that the claimants are entitled to receive compensation to the tune of Rs. 16,39,320/- with 6% interest. Against the aforesaid finding, by which learned Tribunal assessed the compensation, this appeal filed by the claimants and appellant further prayed for enhancement of the compensation.

6. It is worth mentioning that the insurance company and/or owner of the truck had not challenged the findings of the Tribunal on issue Nos. 1, 2 and 3. Thus in this appeal, we are confined to examine the correctness of the finding of the learned Tribunal on issue No. 4.

7. It is submitted by Sri Vidya Kant Shukla, the learned counsel for the appellants that the learned Tribunal while assessing the compensation had deducted 1/3 amount towards the personal expenses of the deceased. It is submitted that in the instant case, on the date of filing of claim application as well as on the date of passing of judgment, altogether 5 persons were dependent upon the deceased. Thus as per the judgment of the Hon''ble Supreme Court in *Sarla Verma and others v. Delhi Transport Corporation* and another reported in (2009) 6 SCC 121 only 1/4 amount is liable to be deducted from the total income of the deceased towards personal expenses. It is then submitted that the learned Tribunal while assessing the compensation had arbitrarily refused to add any amount in the income of the deceased towards future prospect. It is submitted that admittedly at the time of accident the deceased was working as Animal Medical Officer under the State Government. The Tribunal assessed the age of the deceased as 48 years. Thus in view of the judgment of the Hon''ble Supreme Court in *Sarla Verma* (supra) it is imperative for the Tribunal to make addition of 30% in the income of the deceased, because the deceased was in the age group of 40 to 50 years. It is further submitted that the learned Tribunal had wrongly deducted Rs. 16,420/- from the income of the deceased which the claimant No. 1 is getting from the State Government towards family pension. It is submitted that in view of the various judgment of Hon''ble Supreme Court and of this Court family pension, received by the widow of the deceased, is not liable to be deducted from the income of the deceased. It is submitted that the learned Tribunal had awarded Rs. 25,000/- towards loss of consortium, Rs. 10,000/- for loss of estate, Rs. 10,000/- for funeral expenses, which are very meagre amount and against the various judgments of the Hon''ble Supreme Court. Therefore, it is submitted that the entire assessment of compensation made by the Tribunal is illegal and against the law laid down by the Hon''ble Supreme Court.

8. On the other hand, Sri G.K. Srivastava, learned counsel appearing for the insurance company submitted that the Tribunal had assessed the compensation in accordance with law. It is submitted that 1/3 amount of the income was deducted by the Tribunal in view of the II Schedule of the Motor Vehicles Act. It is further submitted that the learned Tribunal refused to give benefit of future prospect, because the claimants had not adduced any evidence to show that in

future income of the deceased will be enhanced. The Tribunal had further stated that there may be a chance that the claimant No. 1 will get a compassionate amount due to death of deceased. Accordingly, it is submitted that the aforesaid finding of learned Tribunal does not require any interference. It is further submitted that the Tribunal has deducted the amount of family pension from the income of the deceased in view of the judgment of the Hon'ble Supreme Court in *Bhakra Beas Management Board v. Kanta Aggarwal and others* reported in (2008) 11 SCC 366.

9. Having heard the submissions, we have gone through the record of the case. In the instant case it is an admitted position that at the time of accident the deceased was working as Animal Medical Officer under State of Uttar Pradesh. Thus he was a Government employee. The claimants produced the high school certificate of the deceased wherein the date of birth of the deceased was mentioned as 02.04.1962. Thus at the time of accident the deceased was 47 years and 9 months old. The claimants have also produced documents showing that at the time of death the salary of the deceased was Rs. 43,183/-. Form-16 produced by the claimants shows that in the financial year 2009-10 a sum of Rs. 38,722/- deducted from the total annual income of the deceased towards the income tax. Thus the deceased was paying about Rs. 3200/- towards income tax per month. Under the said circumstance, if Rs. 3200/- deducted from the monthly salary of the deceased (i.e. Rs. 43,183/-) then actual monthly income of the deceased comes to Rs. 39,983/-.

10. The Hon'ble Supreme Court in *Sarla Verma's case* (supra) at paragraph No. 24 has held as follows:-

"In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances. "

11. Thus in view of the aforesaid law laid down by the Hon'ble Supreme Court, since the age of the deceased was in between 40 to 50 years, therefore, 30% of his salary is required to be added in the actual monthly income of the deceased, towards future prospect.

12. In the instant case, the learned Tribunal had not added any amount in the actual monthly income of the deceased towards future prospect. Thus, we find, that the Tribunal had not followed the law laid down by the Hon''ble Supreme Court in the Sarla Verma's case (supra). Under the said circumstance, we held that for assessing the actual compensation, it is necessary to add 30% of the actual salary of deceased in the actual monthly income of the deceased towards future prospect. We have already come to the conclusion that actual monthly income of the deceased from the salary, after deducting income tax, comes to Rs. 39,983/-. The 30% of aforesaid amount comes to Rs. 11,994/-. In that view of the matter after addition of Rs.11,994/- towards future prospect, the actual monthly income of the deceased, for the purpose of computing compensation, comes to Rs. 51,977/-.

13. From the perusal of the impugned award, we find that the Tribunal had deducted Rs. 16,420/- from the actual monthly income of the deceased, which the claimant No. 1 received from the State Government towards family pension. The learned Tribunal for doing so had relied upon the judgment of the Hon''ble Supreme Court in Bhakra Beas Management Board v. Kanta Aggarwal's case (supra). In our considered view the judgment of Bhakra Beas Management Board v. Kanta Aggarwal's case (supra) has no application in the facts and circumstances of this case. In the aforesaid judgment the Hon''ble Supreme Court was considering the point as to whether any benefit received by the claimant by way of compassionate appointment and residential accommodation provided by the employer against whom claim application was filed, is required to be deducted from the compensation awarded under Section 166 of the Motor Vehicles Act and after considering the aforesaid facts had concluded that the claimants of that case are only entitled to get Rs. 5,00,000/- towards compensation.

14. In this case none of the claimants have been appointed on compassionate ground nor they have been provided any residential accommodation by the Government, insurance company or the owner of the vehicles, thus ratio of that decision has no application in the facts of this case.

15. It is true that Section 168 of the Motor Vehicles Act provides that a just compensation be given to the victims of a motor vehicles accident. Meaning thereby it should not be a meagre amount, nor should be bonanza for the claimants. But at the same time, while computing compensation, it should be kept in mind that the object of giving compensation under the Motor Vehicles Act is to give succour to the victim of accident, who lost the support of their bread-earner. The object of the Act is not to provide any benefit, which the victims received under any other statute or contract for the death of deceased, to the wrongdoer or tortfeasor.

16. It is worth mentioning that the Hon''ble Supreme Court in Helen C. Rebello (Mrs.) and others v. Maharashtra Road Transport Corporation and another reported in (1999) 1 SCC 90 has held in paragraph Nos. 34 and 35 that :-

"34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the "pecuniary gain" only on account of one's accidental death. This, of course, is pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicle Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any provisions of law.

35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the 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. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction.

When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual.

(emphasis added) ".

17. A similar view was taken by the Hon'ble Supreme Court in *United India Insurance Co. Ltd. Etc. v. Patricia Jean Mahajan and others* reported in (2002) 6 SCC 281, wherein paragraph No. 34 their Lordship's held as follows:-

"We are in full agreement with the observations made in the case of *Helen Rebello* (supra) that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some co-relation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accident Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this Judgment, it is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some co-relation between the amount received and the accidental death or it may be in the same sphere, absence the amount received shall not be deducted from the amount of compensation. Thus the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far other items in respect of which learned counsel for the Insurance Company has vehemently urged for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system no co-relation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which, payment on account of social security system is made one of the constituent of fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the Insurance Policy and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of Dr. Mahajan. If

the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains may be on account of savings or other investment etc. made by the deceased would not go to the benefit of wrong doer and the claimant should not be left worse off, if he had never taken an Insurance Policy or had not made investments for future returns.

(emphasis added)"

18. Again in *Vimal Kanwar and Ors. v. Kishore Dan and Ors.*, reported in (2013) 7 SCC 476, the Hon"ble Supreme Court, after relying on the judgment in *Helen C. Rebello (Mrs.)*" case (supra), held that the family pension amount cannot be deducted from the income of the deceased at the time of computing compensation under Section 166 of the Motor Vehicles Act.

19. In our view, a widow is entitled for family pension as per service condition of her deceased husband. Such benefit she is entitled to get even in case of natural death of her husband. The State Government gives the benefit of family pension to the heirs of its employee, under the terms and condition of service contract. Thus amount received as family pension has no co-relation with the accidental death. Thus according to us such amount is not liable to be deducted from the compensation amount, which the widow is entitled under the Motor Vehicles Act. In our view, if such amount will be deducted from the compensation granted under the Motor Vehicles Act, the same will amount to providing benefit to the tortfeasor, which is not justified. Under the said circumstance, we are of the considered view that family pension to the tune of Rs.16,420/-, which the claimant No. 1 is receiving from the State Government, as per service condition of her deceased husband, is not liable to be deducted from the actual monthly income of the deceased. In that view of the matter, the aforesaid finding of the learned Tribunal cannot be sustained.

20. It is worth mentioning that the learned Tribunal while assessing the compensation had deducted 1/3 amount from the actual monthly income of the deceased towards personal expenses in view of II Schedule of the Motor Vehicles Act. It is worth mentioning that the present claim application filed under Section 166 of the Motor Vehicles Act. Under the said circumstance the provisions of II Schedule of Motor Vehicles Act have no application, because the same will apply only in cases where the claim applications filed under Section 163-A of the Motor Vehicles Act. The Hon"ble Supreme Court in *Sarla Verma's* case (supra) at paragraph No. 30 has held as follows:-

"Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*, the general practise is to apply standardised deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased

was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."

21. From the perusal of the impugned judgment, it appears that 5 persons jointly had filed the claim application and made averment that they are dependent upon the income of the deceased. Claimant Nos. 1, 2, 3, 4 and 5 are widow (wife), son, daughter, father and mother of the deceased respectively. Thus, it appears that they are dependent upon the deceased. In that view of the matter as per the aforesaid law laid down by the Hon'ble Supreme Court only 1/4 amount is required to be deducted from the actual income of the deceased towards personal expenses. Thus, if 1/4 amount is deducted from actual income i.e. Rs. 51,977/- the monthly dependency comes to Rs. 38,983/-. Thus the annual dependency comes to Rs. 4,67,796/-.

22. Thus for computing pecuniary compensation, the annual dependency is required to be multiplied by suitable multiplier. In the instant case, the Tribunal had applied multiplier of 13 which according to us is correct as per law laid down by Hon'ble Supreme Court in Sarla Verma's case (supra). Thus, if the annual dependency of Rs. 4,67,796/- is multiplied by 13, the pecuniary compensation comes to Rs. 60,81,348/-.

23. From perusal of the findings of the learned Tribunal, we find that the learned Tribunal had awarded Rs. 25,000/- towards loss of consortium, Rs. 10,000/- for loss of estate, Rs. 10,000/- funeral expenses. The Hon'ble Supreme Court in Juju Kuruvila & Ors v. Kunjujamma Mohan & Ors reported in (2013) 9 SCC 166, Shashikala and others v. Gangalakshamma and another reported in (2015) 2 T.A.C. 867 (S.C.), Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr. (Civil Appeal Nos. 8131-8132 of 2014), Rajesh and Ors. v. Rajbir Singh and Ors. Reported in (2013) 9 SCC 54 has held that the Claim Tribunal should award substantial amount of Rs. 1 lakh towards loss of consortium and Rs. 1 lakh towards loss of estate and also award Rs. 25,000/- towards funeral expenses. Thus in view of the aforesaid law laid down by the Hon'ble Supreme Court non pecuniary compensation awarded by learned Tribunal under the aforesaid head required to be enhanced.

24. In view of the aforesaid discussions, in our view the finding of the learned Tribunal is required to be modified. Thus, we conclude that the claimants/appellants are entitled to receive following amount as compensation under different heads:-

1.

Loss of dependency

Rs. 60,81,348/-

2.

Loss of consortium

Rs. 1,00,000/-

3.

Loss of estate

Rs. 1,00,000/-

4.

Funeral expenses

Rs. 25,000/-

Total

Rs. 63,06,348/-

Therefore, the respondent-insurance company is liable to pay a sum of Rs. 63,06,348/- to the appellant with simple interest @ 6% per annum from the date of filing of the claim application till the date of payment.

25. This appeal is accordingly, allowed and we hereby increase the compensation to the tune of Rs. 63,06,348/- with 6% simple interest per annum from the date of claim application till the date of payment. Accordingly, we direct the respondent insurance company to pay Rs. 63,06,348/- with 6% simple interest per annum from the date of filing of claim application till the date of payment to the claimants/appellants within three months from today. The apportionment of the compensation amount will be made among the claimants in the same proportion as directed by the Tribunal. It is made clear that if the Insurance Company had already paid or deposited the amount directed by the Tribunal, then the same be adjusted from the amount awarded by this order.