

(2012) 11 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 360 of 2005

Smt. Sita Kanwar and Others

APPELLANT

Vs

New India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 2 CDR 897

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : O.P. Rajpurohit, for the Appellant; D.K. Bhootra and Mr. D.L.R. Vyas, for the Respondent

Judgement

Nirmaljit Kaur, J.—This is an appeal under Sec. 173 of the Motor Vehicles Act against the award and judgment dt. 17.10.2003 passed by the Motor Accident Claims Tribunal Pali. The facts in short are that the accident is stated to have occurred on 12.11.2001. In the said accident, Narpat Singh and Ghisa Ram died whereas Guman Singh suffered injuries. Narpat Singh was unmarried. However, the other legal heirs of Narpat Singh filed the claim petition before the Motor Accident Claims Tribunal, Pali. A total amount of Rs. 2,69,000/- was awarded to the claimants of deceased Narpat Singh. Aggrieved thereby, the present appeal has been filed for enhancement.

2. The first argument of the learned counsel for the claimants while praying for enhancement is that the deceased Narpat Singh was a driver. He was earning Rs. 3,000/- as salary. Besides, his job as driver, he was earning Rs. 1000/- by undertaking the work in agricultural field but the Tribunal while accepting the salary certificate as driver, did not take into consideration the income earned by him from agriculture.

3. The second argument is with respect to the future enhancement. It is contended that the Tribunal did not take into account the future prospects. Reliance was placed on the various judgments of the Apex Court to substantiate

the argument that while calculating the income of the deceased the future increase in the income should have also been taken into consideration.

4. The third ground for enhancement is based on the rate of deduction calculated by the Tribunal. It is contended that 50% deduction as the amount spent by the deceased on himself is on the higher side. Reliance was placed on the judgment rendered by the Apex Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

5. The last argument raised is that while applying multiplier, age of the deceased should be taken into consideration and not of the claimants.

Learned counsel for the respondents on the other hand submitted that the claimants are not entitled for enhancement as no evidence was produced by them that the deceased was doing the agriculture work. The Tribunal had therefore rightly rejected the plea of the claimants that deceased was engaged in business of farming. It is further contended that the deceased being a bachelor, the deduction of 50% was rightly made as the amount spent by the deceased on himself. It is further stated, the future increase in the income was rightly not granted as the deceased was a bachelor and the remaining members of the family were not expected to remain dependent on the deceased. It was also contended that as per Sarla Verma's case, the multiplier of 13 was rightly added as the age of the father was more than 47 years.

6. Heard.

With respect to the first argument that the income earned by the deceased on account of doing agriculture work should have been considered while calculating the income, has no merit. The only evidence produced by the claimants is the statement of employer who had verified that the deceased was his driver and the statement of the claimant PW-1, the father himself. The statement of the employer is not substantiated by any other documentary evidence qua the agriculture income of the deceased. Thus, the same in itself is not sufficient to establish that the deceased was engaged in the business of farming. Thus, no fault can be found with the finding recorded by the Tribunal to this effect.

7. The second argument that the Tribunal has erred in not taking into consideration the future income on account of the future prospects, carries weight. The deceased was a driver. He was earning Rs. 3000/- per month. He was an able bodied person. The deceased was yet to achieve maximum potential in his earning capacity. His salary was bound to be increase. The Hon''ble Apex Court in the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, was pleased to hold that a person who is self-employed or engaged in fixed wages should also get 30% increase in his total income which he would have earned in future. Para 14 of the said judgment reads as under:--

14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the

deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board, it does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional Income necessary for sustaining their families. The salaries of those employed under the Central and State Government and their agencies instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths, If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

8. Learned counsel for the respondent has not been able to point out either from the Act or by the judicial pronouncement that the increase in the income on account of future prospects cannot be granted because deceased is a bachelor. Thus, taking into account the formula as laid down by the Apex Court in Santosh

Devid's (Supra), 30% increase in the income on account of future prospects should have been added

9. The third argument that the deduction at the rate of 50% as the amount spent by the deceased upon himself is on the higher side cannot be reconsidered in the facts of the present case. The deceased was a bachelor. There were five claimants including his mother and father and two younger brothers and one sister. Being a bachelor and one of the claimants being a father, a different principle has to be applied qua the deduction. With respect to deduction qua a deceased who is a bachelor, the clarification has been given by the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and 15 of the judgment read as under:-

14. 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 practice is to apply standardized 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.

15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

10. Applying the test in the facts of the present case, seeing that father is still alive, thus deduction at the rate 50% has rightly been applied.

11. The last argument raised is that while applying the multiplier, age of the deceased should be taken into consideration and not of the claimants as held in

the judgment rendered in the case of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, .

12. There is no dispute with the proposition of law that age of the deceased has to be taken into consideration. However, the method of multiplier in the case of deceased who is bachelor is laid down in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, of the said judgment reads as under:-

16. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage there from towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45 and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier, method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have Justified a departure from the multiplier method on the ground that Sec. 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be "Just", the statutory determination of a "Just" compensation would unshackle the exercise from any rigid formula, it must be borne in mind that the multiplier method is the accepted method of ensuring a "just compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified ill rare and extraordinary circumstances and very exceptional cases.

13. The another judgment of the Apex Court rendered by a Bench of three judges in the case of New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, , the Apex Court agreed with High Court that the age of the parents and not the age of the deceased whichever is higher should be taken into consideration.

14. This view has been consistently followed by the Apex Court. The Apex Court, in the case of Shakti Devi Vs. New India Insurance Co. Ltd. and Another, decided both the issues i.e. with respect of deduction at the rate 50% as well as the issue

that age of the parents who are claimants and not the age of the unmarried son should be taken into consideration as under:-

12. So far as the present case is concerned, at the time of accident, the deceased was 22-year old and not married. He was running a general store from his house and earning about Rs. 1,000/- per month from the business. In *Sarla Verma's*, this Court stated that where the deceased was self-employed, the Court shall usually take only the actual income at the time of death; a departure from there should be made only in rare and exceptional cases involving special circumstances. Does the present case involve special circumstances In our view, it does. The evidence has come that the deceased was to get employment in the forest department after the retirement of his father. Obviously the evidence is based on the government policy. The deceased, thus, had a reasonable expectation of the government employment in near future. In the circumstances, the actual income at the time of deceased's death needs to be revised and taking into consideration the special circumstances of the case, in our view, the monthly income of the deceased deserves to be fixed at Rs. 2000/-. As regards the personal expenses, since the deceased was not married, we are satisfied that the principle stated in *Sarla Verma's* that 50% should be treated as the personal and living expenses of the bachelor may be applied. Seen thus, the annual loss of dependency would come to Rs. 12,000/-. Insofar as multiplier is concerned, the Tribunal applied the multiplier of 8. Learned counsel for the appellant argued that the multiplier of 18 should have been applied keeping in view the age of the deceased. The argument is devoid of any substance. In a case where the age of the claimant is higher than the age of the deceased, the age of claimant and not the age of the deceased has to be taken into account for the capitalization of the lost dependency. It is so because the choice of multiplier is determined by the age of the deceased or that of the claimant, whichever is higher.

15. The judgment in the cases of *Shanti Pathak (supra)* and *Shakti Devi (supra)* are of an earlier point of time. Both the judgments have not been brought to the notice of the Hon''ble Supreme Court and therefore there is no reference of them in the judgment rendered by the Apex Court in the case of *Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others*, .

16. Hon''ble the Apex Court in the case of *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, while considering the different views expressed in two different judgments rendered by Hon''ble Apex Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and subsequently in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, rejected the judgment in the case of *Jeet Ram's* case as the earlier judgment rendered in the case of *Motilal's* case (*supra*) on the same point was not considered, Para 12 of the judgment rendered in *Union of India & Ors. vs. Godfrey Philips India Ltd.*, (*supra*) reads as under:-

There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or

executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. We must concede that the subsequent decision of this Court in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in *Motilal Sugar Mills* case that the doctrine of promissory estoppel cannot be defeated by invoking the defence of executive necessity, suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult to understand how a Bench of two Judges in *Jeet Rams* case could possibly overturn or disagree with what was said by another Bench of two judges in *Motilal Sugar Mills* case. If the Bench of two Judges in *Jeet Ram's* case found themselves unable to agree with the law laid down in *Motilal Sugar Mills* case, they could have referred *Jeet Ram's* case to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a coordinate Bench of the same Court in *Motilal Sugar Mills* case. We have carefully considered both the decisions in *Motilal Sugar Mills* case and *Jeet Ram's* case and we are clearly of the view that what has been laid down in *Motilal Sugar Mills* case represents the correct law in regard to the doctrine of promissory estoppel and we express our disagreement with the observations in the *Jeet Ram's* case to the extent that they conflict with the statement of the law in *Motilal Sugar Mills* case and introduce reservations cutting down the full width and amplitude of the propositions of law laid down in that case.

17. Besides the above, the judgment rendered in the case of *Shanti Pathak* (supra) is rendered by a bench of three judges holding the view that age of the claimant is higher than the age of the deceased, therefore, age of claimant has to be taken into consideration. Thus, following the view as laid down in the cases of *Shanti Pathak* (supra) and *Shakti Devi* (Supra) being of earlier point of time and applying the same in the facts of the present case, the age of the claimants i.e. the parents of the deceased who is their unmarried son, being higher, has to be considered.

18. Thus, the question now arises is as to whether the age of the mother has to be taken into consideration or that of the father. The Apex Court in the case of *Sarla Verma* (supra) as already reproduced, duly held in para 15 that "thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent." Thus, taking into account the age of the mother which is stated to be 45 years, multiplier of 14 should be applied.

19. In view of the above, the appeal is partly allowed as under:-

In view of the above, the claimants are now entitled to the enhanced amount of Rs. 93,600/- being the balance amount of award. The said amount be paid within

a period of two months with interest as already awarded by the Tribunal.