

(2022) 02 BOM CK 0062
In the Bombay High Court
Case No : First Appeal No. 967 Of 2007

Snehalata Wd/O Arunkumar Pandya	APPELLANT
Vs	
Premchand Abhyakumar Mishrikotkar And Others	RESPONDENT

Date of Decision : 26-02-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2022) 02 BOM CK 0062

Hon'ble Judges : Anuja Prabhudessai, J

Bench : Single Bench

Advocate : G.E. Moharir, M.B. Joshi, A. Paunikar

Final Decision : Allowed

Judgement

Anuja Prabhudessai, J

1] The Appellant (hereinafter referred to as "the Claimant") has assailed the judgment and award dated 03/03/2007 passed by the Claims Tribunal in Claim Petition No. 457/1993 under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act"). By the impugned judgment and award, the Claims Tribunal has partly allowed the claim petition and awarded compensation of Rs. 51, 140/- with interest @ 6% per annum from the date of the application till final realization.

2] The brief facts necessary to decide this Appeal are as under:-

On 26/03/1993, while the Appellant was proceeding to Ramtek by Car No. MUK-6996, which was driven by her husband Arunkumar Pandya, a jeep bearing No. MTE-2004 dashed against their vehicle as a result of which she sustained multiple fractures. The said jeep was owned by the respondent No. 1 and was insured with the respondent No. 2 (hereinafter referred to as "the Insurance Company"). The Claimant had alleged that the accident was caused due to the rash and negligent driving by the driver of the jeep. She further stated that she had sustained multiple fractures resulting in 20% permanent disablement. The

Claimant therefore claimed total compensation of Rs. 2,84,135/-.

3] The Respondent No. 2, the insurer of the offending vehicle, denied that the accident was caused due to rash and negligent driving by the driver of the jeep. The Insurance Company claimed that it was a case of composite negligence. The Insurance Company further claimed that the claim was exorbitant and that it is not liable to pay the compensation as claimed by the Claimant.

4] The learned Tribunal framed the issues and upon considering the evidence adduced by the respective parties, held that the accident was caused due to the rash and negligent driving by the driver of the jeep. The Tribunal has also recorded a finding that the Claimant had sustained multiple fractures which had resulted in permanent disablement of 20%. The Tribunal considered notional income of the Claimant as Rs. 15,000/- per annum as per Schedule II of the said Act and considering disablement of 20%, the Tribunal assessed loss of earning capacity to Rs. 33,000/-. The Tribunal also awarded compensation of Rs. 4,540/- towards medical and hospital bills, Rs. 800/- towards transportation and fees of medical attendant, Rs. 1,500/- towards ambulance charges, Rs. 2,000/- towards special diet, Rs. 5000/- towards pain and sufferings and Rs. 3,500/- towards charges of staff nurse. Thus, the Tribunal awarded total compensation of Rs. 51,140/-. Being aggrieved by the quantum of compensation awarded by the Tribunal, the Claimant has filed this Appeal under Section 173 of the said Act.

5] Shri G.E. Moharir, learned advocate for the Appellant submits that the Tribunal has erred in considering notional income of the Claimant at Rs. 15,000/- per annum. He further submits that the amount of compensation awarded by the Tribunal is not just and reasonable compensation.

6] Per contra, Shri M.B. Joshi, learned advocate for the Insurance Company submits that the Claimant was a housewife and there is no proof of her income and hence, the Tribunal was justified in awarding compensation on the basis of notional income of Rs. 15,000/- per annum. He submits that the impugned judgment and award does not warrant interference.

7] I have perused the record and considered the submissions advanced by the learned counsel for the respective parties.

8] The only question which falls for consideration is whether the quantum of compensation awarded by the Tribunal is just and reasonable. It is not in dispute that the Claimant was injured in an accident and that she had sustained multiple fractures. It is also not in dispute that at the relevant time, the Claimant was 52 years of age and was a housewife. The Tribunal has determined the compensation on the basis of notional income of Rs. 15,000/- per annum. It may be mentioned that the Hon'ble Apex Court has, time and again, taken note of contribution made by the housewives in running the house and managing the entire family. In Arun Kumar Agrawal and another vs. National Insurance Company and others – (2010) 9 SCC 218, the Hon'ble Apex Court has held that the contribution made by the wife to the house is invaluable and cannot be

computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and managing household affairs cannot be equated with the services rendered by others.

9] In *National Insurance Company Limited vs. Pranay Sethi & Ors.* - (2017) 16 SCC 680, the Hon'ble Apex Court has held that whichever method a Court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The Court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to the Claimants.

10] In a recent decision of the Hon'ble Apex Court in *Kirti & Ors. vs. Oriental Insurance Company* - (2021) 2 SCC 166, the Hon'ble Apex Court has reiterated that the issue of fixing notional income for a homemaker serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms. It signals to society at large that the law and the Courts of the land believe in the value of the labour, services and sacrifices of the homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindset and of our international law obligations. And, most importantly, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals.

11] There is no fixed approach or standard in determining notional income of a homemaker. Nevertheless, an income of Rs. 15,000/- as notional income is totally a meager amount which certainly cannot be the value of this multifarious services rendered by the housewives for managing the family affairs.

12] In *Rajendra Singh and ors. vs. National Insurance Company Limited and ors.* Reported in AIR 2020 SC 3144, the Hon'ble Apex Court has referred to the decisions in *Lata Wadhwa (supra)* and *Arun Kumar Agrawal (supra)* and considered the notional income of a homemaker aged about 30 years, at Rs. 5,000/-per month. The Hon'ble Apex Court has also observed that if the deceased had survived, her skills as a matured housewife in contributing to the welfare and care of the family and in the upbringing of the children would have only been enhanced by time and hence 40% was added towards future prospects. In the instant case, the Claimant was 52 years of age. Considering her age, the notional income can be fixed at Rs. 3,000/- per month.

13] The evidence on record reveals that the injured had suffered multiple fractures resulting in 20% permanent disablement. She had taken treatment initially at Mayo Hospital and latter at Chandak Nursing Home. She was put under traction for six months.

Hence, the Claimant will be entitled for total loss of income for a period of six months which works out to Rs. 18,000/-

14] The evidence of the Claimant reveals that despite physiotherapy, she is unable to climb the stairs, walk without support, sit and stand without help. Considering the nature and extent of permanent disablement, the injured would also be entitled for loss of future income at 20%. Considering the notional income of Rs. 3000/- per month and adding 10% towards future prospects, the annual income of the Claimant works out to Rs. 39,600/-. Considering the permanent disablement at 20% and applying multiplier of 11, loss of future income works out to Rs. 87,120/-.

15] The Claimant had produced the medical bills of Rs. 4,540/-. She had also stated that she had paid Rs. 1,000/- to the medical attendant under receipt at Exhibit No. 49. The Claimant had deposed that she had engaged a nurse for a period of three months on payment of Rs. 1,500/- per month. She had produced the receipt at Exhibit No. 50. The Claimant had also produced the receipt at Exhibit No. 51 in respect of payment of Rs. 1,860/- towards the ambulance charges from Nagpur to Rewa. The Tribunal was not justified in reducing the amount paid to the nurse, medical attendant or towards ambulance charges, for the reason that the Claimant had not proved the said receipts. The amount claimed was very meager and it would be unreasonable to expect the Claimant to spend substantial amount in summoning these witnesses. The approach of the Tribunal is pedantic and not justice oriented.

16] Thus, the Claimant is entitled for compensation as under:-

i.

Notional Income of the Deceased

Rs. 3000/-

ii.

Addition of 10% towards future prospects

Rs. 3,300/-

iii.

Annual Income

Rs. 39,600/-

iv

20% Permanent Disability and applying multiplier of 11

Rs. 87,120/- (39600 x 20% x 11)

v.

Loss of actual earning

Rs. 18,000/-

vi.

Miscellaneous expenses viz. Nursing charges, medical attendant and ambulance charges etc.

Rs. 7360/- (4500 + 1860 + 1000)

vii.

Pain and sufferings

Rs. 15,000/-

viii.

Loss of amenities of life

Rs. 10,000/-

Total compensation payable is Rs. 1,37,480/- which is rounded up to Rs. 1,38,000/-.

17] It is therefore held that the Claimant is entitled for compensation of Rs. 1,38,000/- as against compensation of Rs. 51, 140/- granted by the Tribunal.

18] Under the circumstances, the following order is passed:-

(a) The Appeal is allowed.

(b) The Claimant is held to be entitled for compensation of Rs. 1,38,000/- with interest at the rate of 6% per annum from the date of the Petition till final realization.

(c) The Respondent Nos. 1 and 2 shall jointly and severally pay the balance compensation amount and deposit the same before this Court within a period of three months.

(d) The Claimant shall be entitled to withdraw the said compensation amount with proportionate interest accrued thereon.

The Appeal stands disposed of in the above terms.

Pending application(s), if any, stand(s) disposed of.