(2022) 09 CAL CK 0057

In the Calcutta High Court

Case No : F.M.A No. 2297 Of 2013

Surjee Yadav & Ors. APPELLANT

Vs

National Insurance Company Limited & Anr RESPONDENT

Date of Decision : 13-09-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2022) 09 CAL CK 0057

Hon'ble Judges : Bibhas Ranjan De, J

Bench : Single Bench

Advocate : Amit Ranjan Roy, Samim Ahammed, Ambiya Khatun

Final Decision : Disposed Of

Judgement

Bibhas Ranjan De, J

1. The claimants have filed this appeal challenging the judgment passed by Motor Accident Claim Tribunal, 1st Court, Asansol on 21.12.2012 in MAC Case No. 94 of 2008, seeking enhanced compensation.

2. One Nand Kishore Yadav died on account of injuries sustained in a motor accident which occurred on 06.12.2007 involving a mini truck bearing Reg. No. WB 37A/4096 which was moving in rash and negligent manner and dashed the scooter of the victim from behind. At the time of accident and untimely death, deceased was aged 49 years and was working in EC limited on a monthly salary of Rs. 12,000/- to 15,000/-.

3. Exhibit 6 shows the insurance coverage of the vehicle involved in the accident. From the evidence as well as exhibit -7, 8,10 and 11 it appears that salary of Nand Kishore varies from 12000/-to 15,000/- per month. After statutory deduction viz. professional tax, income tax, the income of Nand Kishore Yadav comes to Rs. 14,000/- .

4. Here, in this appeal none of the parties to this appeal raised any dispute

regarding income of Rs. 14,000/- and therefore Rs. 1,68,000/- stands income per annum.

5. In assessing multiplier we can rely on the settled principle observed in Sarla Verma and others vs. Delhi Transport corporation and another (2009 (2)T.A.C 677 SC) wherein the Hon'ble Apex Court viewed as follows:-

"21.We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M- 11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

6. Therefore I have no hesitation to take multiplier 13 for assessment of compensation.

7. Ld. Tribunal did not add any future prospect in assessing the compensation and Ld. Tribunal deducted 1/3rd of the total amount for personal expenses of the deceased. Accordingly, he deducted 56,000/- from the income per annum and after applying multiplier 11 Ld. Tribunal assessed total loss of dependency as Rs. 12,32,000/- and general damages as Rs. 9,500/-. Thereby total compensation comes to Rs. 12,41,500/-. That apart, Ld. Tribunal also granted consortium of Rs. 5,000/-to the widow of the deceased.

8. At this juncture, we should take assistance of other landmark judgement i.e National Insurance Company Limited Vs. Pranay Sethi and other 2017 (4) T.A.C 673 (SC). Hon'ble Apex Court has given us guideline as follows:-

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

9. Therefore, considering the age of the Nand Kishore Yadav there is no other option but to add 30% of the income as future prospect. In Sarla Verma (supra) it is held as under:-

"25. The appellants next contended that having regard to the fact that the family of deceased consisted of 8 members including himself and as the entire family was dependent on him, the deduction on account of personal and living expenses of the deceased should be neither the standard one- third, nor one-fourth as assessed by the High Court, but one-eighth. We agree with the contention that the deduction on account of personal living expenses cannot be at a fixed one-third in all cases (unless the calculation is under section 163A read with Second Schedule to the MV Act). The percentage of deduction on account personal and living expenses can certainly vary with reference to the number of dependant members in the family. But as noticed earlier, the personal living expenses of the deceased need not exactly correspond to the number of dependants. As an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Therefore we are of the view that interest of justice would be met if one-fifth is deducted as the personal and living expenses of the deceased. After such deduction, the contribution to the family (dependants) is determined as Rs.57,658/-per annum. The multiplier will be 15 having regard to the age of the deceased at the time of death (38 years). Therefore the total loss of dependency would be Rs.57,658 x 15 = Rs.8,64,870/-."

10. In view the aforesaid observation, it would be appropriate to deduct 1/4th instead of 1/3rd due to number of dependents and deduction would be sufficient

in terms of 7 family members of Nanda Kishore Yadav (since deceased).

11. In Pranay Sethi (supra) general damages were calculated as follows:-

"61. (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

12. In the aforesaid view of the matter, no option is left to this Court but to assess general damage as Rs. 70,000/-.

13. Therefore, I am calculating the award as follows:-

Yearly Income : Rs. 1,68,000/-

Deduction 1/4 :Rs. 1,68,000-42000= 1,26,000/-

Future Prospects 30% : Rs. 1,26,000+ 37800= 1,63,800/-

Multiplier 13 (Age 49) : 1,63,800 x13 +21,29,400/-

General Damages : Rs. 70,000/-

Total Compensation : 21,29,400+ 70000 +21,99,400/-

Tribunal Awarded : 12,41,500/-

Balance : 21,99,400 -12,41,500 = 9,57,900/-

14. From the record it appears the claimants have already received the amount awarded by the Tribunal. Considering the aforesaid facts and circumstances, respondent/National Insurance Company is directed to deposit the aforesaid enhanced compensation to the Ld. Registrar General along with interest @ 6 % per annum from the date of filling claim petition till payment, within 6 weeks from date.

15. Ld. Registrar General will disburse the amount in favour of the claimants on proper identification and also verification of payment of Court fees on the enhanced compensation.

16. Let the records of the Tribunal be sent back immediately.

17. F.M.A 2297 of 2013 is being disposed of without any order as to cost.

18. All pending applications, if any, stand disposed of accordingly.

19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

