(2019) 03 J&K CK 0076

In the Jammu And Kashmir High Court

Case No : MA No. 480 Of 2012, 238 Of 2013

Thaker Ali And Anr — APPELLANT

Vs

New India Assurance Co. Ltd And Anr — RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Citation : (2019) 03 J&K CK 0076

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Piyush Gupta , Udhey Bhasker

Final Decision : Dismissed

Judgement

MA No. 480/2012

1 The appellants, the parents of the deceased, who died in a vehicular accident, by way of the instant appeal, seek enhancement of the compensation granted vide impugned award dated 11.09.2012 by the Tribunal on the ground that the Tribunal has erred in taking the income of the deceased, a skilled labourer, at Rs.4500/- per month which is contrary to several judgments rendered by the Hon'ble Supreme Court on the issue. The impugned award has also been assailed on the ground that as provided in the case of National Insurance Company Ltd. Vs Pranay Sethi and others, AIR 2017 SC 5157), the increase by 40% towards future prospectus has not been taken note of. The appellants also find fault with the impugned award on the ground that the Tribunal has applied the multiplier by taking the age of the parents and not that of the deceased as is now authoritatively held by the Supreme Court in the case of Sarla Verma and ors vs Delhi Transport Corporation and anr, AIR 2009 SC 3104 and Pranay Sethi's case (supra).

2 Before considering the grounds taken by the appellants in this appeal seeking enhancement of the compensation, it would be appropriate to briefly note few facts leading to the filing of the instant appeal.

On 25.02.2009, the vehicle i.e, Bus bearing Registration No.JK02U-0759, in which the deceased Joginder Lal, aged 25 years was travelling, met with an accident at Galginder near Pul Doda due to rash and negligent driving by the driver of the aforesaid vehicle. The deceased was unmarried at the time of accident. The appellants, the parents of the deceased, filed a claim petition before the Tribunal claiming, inter alia, the compensation to the tune of Rs.20,50,000/-. The claim petition was contested, inter alia, by the respondents-Insurance Company and on the basis of the pleadings of the parties, the Tribunal framed the following issues:

i. Whether on 25.02.2009 deceased Joginder Lal was travelling in Bus No.JK02U-0759 from Bhaderwah to Jammu and the vehicle met with an accident due to rash and negligent driving of driver of the said vehicle at Galginder near Pul Doda, due to which deceased died ? OPP

ii. If issue No.1 is proved in affirmative, whether petitioners are entitled to any compensation, if so, to what extent and from whom ?OPP

iii. Whether the vehicle was carrying passengers more than prescribed capacity at the relevant time, if so, what is its effect on the present petition ? OPR-1.

iv. Relief ? O.P.Parties.

3. On the basis of the evidence led and the arguments addressed by the learned counsel for the parties, the Tribunal allowed the claim petition and awarded the following sum by way of compensation to the appellants:

1. Loss of dependency Rs.2, 97,000/-

2. Funeral expenses Rs.15,000/-

3. Loss of love and affection Rs.10,000/-

Total Rs.3,22,000/-

4. The Insurance Company feeling aggrieved, challenged the impugned award in MA No. 238/2013 which was dismissed by a Bench of this Court on 09.12.2016. However, the appeal filed by the appellants remained undecided. The appellants sought review of the judgment dated 09.12.2016 and the review petition was registered as Review Application No.17/2018 which was disposed of by a Bench of this Court on 10.08.2018 holding that the decision/judgment dated 09.12.2016 in MA No. 238/2013 shall not come in the way of the disposal of the cross-appeal on merits. This is how the cross-appeal (MA No.238/2013) has come up before this Court for consideration.

5. Having heard learned counsel for the parties and perused the record, I am of the opinion that in view of the latest law laid down by the Supreme Court in number of judgments and the parameters laid down therein for assessing the just and fair compensation, the impugned award needs to be enhanced.

6. It is not in dispute that the deceased, at the time of accident, was 25 years

old and was doing the job of painter. The job of a painter is a skilled job and, therefore, cannot be equated with an ordinary labourer as has been done by the Tribunal. The Tribunal has taken the income of the deceased as Rs.45000/- per month on the analogy that in the absence of any cogent proof on record, the income of a labourer has to be taken as per the minimum wages payable at the relevant point of time under the Minimum Wages Act, but the Tribunal has failed to take into consideration the fact that the deceased was a skilled worker for which higher wages were payable even under the Minimum Wages Act.

7. Learned counsel for the appellants has relied upon the judgment dated 13.01.2015 rendered by the Supreme Court in the case of Neeta w/o Kallappa Kadolkar and ors vs. Div. Manager, MSRTC, Kolhapur whereby the Supreme Court in the case of a skilled worker like the carpenter, in the facts and circumstances, has taken the monthly wages as Rs.6000/- in the absence of any contrary proof brought on record by the parties.

8. Learned counsel for the respondents-Insurance Company relies upon the judgment rendered by the Supreme Court in the case of Rani and others vs. National Insurance Company Ltd and ors, (2018) 8 Supreme Court Cases 492 in which the Supreme Court, in similar circumstances, has taken the monthly wages of a mechanic (a skilled worker) as Rs.5000/- in the absence of any proof brought on record by the parties.

9. On the conspectus of the judicial opinion emerging from the aforesaid judgments, it is seen that in a case where the deceased is a skilled worker (painter in the instant case) and the parties have not brought on record any cogent evidence to prove the income, it is left to the Tribunal to determine the notional income by taking into consideration all the relevant factors including the wages payable at the relevant point of time under the Minimum Wages Act. As already observed, the minimum wages payable to a labourer and a skilled worker vary and a skilled worker is entitled to higher wages than an ordinary labourer. This distinction, therefore, needs to be borne in mind by the Tribunal while determining such notional income. The Tribunal has failed to do so. By taking into consideration the relevant factors including the one that at the relevant point of time, the minimum wages of labourer were Rs.4500/- per month as taken by the Tribunal, the notional income of the deceased in this case can very well be pegged at Rs.5500/- per month. This income, however, would have increased with the passage of time, therefore, taking cue from the Judgment rendered in the case of Pranay Sethi and keeping in view the age of the deceased which is below 40 years, the increase in the income on account of future prospectus shall be 40% of the income. As laid down in Sarla Verma's case, for the age group of the deceased, 18 is the multiplier to be used. Besides the aforesaid sum, the appellants would also be entitled to filial consortium to the tune of Rs.40,000/-. In view of the aforesaid, the award shall be in the following manner:

Loss of dependency

i. Monthly income- Rs.5500/-

Add 40% towards future prospectus=5500+2200=Rs.7700/-

ii. Deduction on account of personal expenses @ ½ - 7700-

3850=Rs.3850/-

iii. Monthly income to be taken into consideration= Rs.3850/-

iv. Multiplier to be used=18

v. Annual loss of dependency= 3850x12x18=8,31,600/-

vi. Funeral expenses- Rs.15000/-

vii. Loss of filial consortium payable to father i.e appellant

No.1=Rs.40000/-

viii. Loss of filial consortium payable to mother i.e appellant

No.2=Rs.40000/-

ix. Total: 9,26,600/-

10. The award is enhanced to the aforesaid extent. Let the balance amount which is payable under this order be deposited in the Registry of this Court within two months. On deposit, the same shall be released in favour of the appellants in terms of the impugned award.

MA No. 238/2013

In view of the order passed in MA No.480/2012, the appeal filed by the Insurance Company stands dismissed.