

(2012) 09 BOM CK 0173
In the Bombay High Court
Case No : First Appeal No. 692 of 2011

The New India Assurance Co. Ltd.

APPELLANT

Vs

Prabhakar Rakhunde and Lilabai Prabhakar Rakhunde

RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 6 ALLMR 314 : (2013) 2 BomCR 779 : (2012) 6 MhLj 658

Hon'ble Judges : M.N. Gilani, J

Bench : Single Bench

Advocate : M.B. Joshi, for the Appellant; M.H. Pathade, Advocate for Respondent Nos. 1 and 2, for the Respondent

Judgement

M.N. Gilani, J.—This appeal is directed against the judgment and award dated 08.10.2009 passed by Motor Accident Claims Tribunal, Nagpur in M.A.C.P. No. 102/2004 whereby the tribunal awarded compensation of Rs. 3,00,000/- on account of death of one Pravin caused in motor vehicular accident occurred on 28.12.2003 involving a taxi bearing No. MH-34/D-2296 and private bus bearing registration No. MH-31/M-4500. Mr. Joshi, learned counsel for the appellant, is fair enough to raise only two points for consideration. Firstly, he contended that the learned tribunal ought to have deducted 50% of the income of the deceased towards his personal and living expenses. Secondly, he raised the issue of choice of proper multiplier. According to him, the multiplier ought to have been chosen having regard to the age of the claimants rather than the age of deceased. In the instant case, the tribunal has chosen multiplier of 18 considering the age of the deceased, who was 22 years when he died.

2. The learned tribunal relied upon decision in Bilkish.vs. United India Insurance Company Ltd. and anr.; 2008 (4) Supreme Court Cases 259 in which it is held that as the deceased was bachelor he could have at the most spent 1/3rd of his total income for his personal use and rest of the amount could have been spent for family i.e. parents.

3. Mr. Joshi, learned counsel for the appellant, placed reliance upon decision in Syed Basheer Ahamed and others. vs. Mohd. Jameel and another; 2009 ACJ 690. In that case also, the deceased was a bachelor and the claimants were the parents. Dealing with the issue of deduction towards personal expenses of the deceased, Their Lordships observed thus:

18. On the question of deduction on account of personal expenses by deceased, there is no set formula which would be applied in every case to determine as to what should be the deduction on this account. The contention that deduction on that count cannot exceed one-third on the ground that there is some statutory recognition in the Second Schedule to the Act for such deduction, is untenable. The said deduction would depend upon the facts and circumstances of each case. In the present case, no evidence was led on this point as well. In the absence of any evidence to the contrary, the practice is to deduct towards the personal and living expenses of the deceased, one-third of the income in case he was married and one-half (50 per cent) if he was a bachelor...

4. Prabhakar, father of the deceased filed an affidavit in lieu of his oral evidence. He deposed that the deceased was earning Rs. 2500/- per month and he and his wife were his dependents. However, he did not whisper a word as to how much amount the deceased was contributing towards family expenses. In cross-examination, he admitted that he had one more son by name Pramod and he is residing with Pramod. His wife is also doing the same work. After the decision in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the issue of deduction towards personal and living expenses of the deceased in case he was unmarried is no longer res integra. It is observed that,

But 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 dependent and the mother alone will be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

5. This is not a case where besides leaving behind him parents, there are minor sisters and brothers who were being looked after by the deceased. In that view of the matter, the award passed by the learned tribunal will have to be modified by allowing 50% deduction towards personal and living expenses of the deceased.

6. The second point is regarding choice of multiplier. This issue is also covered by the decision in the case of Sarla Verma (supra). In order to ensure consistency and uniformity in the matter of applying proper multiplier and deductions towards personal and living expenses, Their Lordships observed thus:

Basically only three facts need to be established by the claimants for assessing compensation in the case of death i.e. (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. Further, the issues to be determined by the Tribunal to arrive at the loss of dependency are: (i) additions/ deductions to be made for arriving at the income of the deceased; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detained evidence. It will also be easier for the insurance companies to settle accident claims without delay.

7. In the case of P. Somanathan and others. vs. District Insurance Officer and others; 2011 (3) Mh. L. J. (S.C.) 735, the aforesaid view has been reiterated. In that case, the tribunal had applied the multiplier of 16 which was reduced to 5 by the High Court having regard to the age of the dependents. The Supreme Court, restored the decision of the tribunal by observing thus;

15. In the present case, the claimants had filed for compensation u/s 166 of the Motor Vehicles Act, 1988. The original claim petition had been filed by the mother and brother of the deceased and the deceased was 33 years of age when he died in the accident. For the purpose of calculating the multiplier, the High Court held that the mother was the real legal representative and others could not claim to be the legal representatives and others could not claim to be the legal representatives of the deceased, and accordingly applied a multiplier of 5, whereas the Tribunal had calculated compensation by considering a multiplier of 16. This Court is of the opinion that the law as has been laid correctly in Sarla Verma, a very well considered judgment, is to be followed.

The reasoning of the High Court is not correct in view of the ratio in Sarla Verma. Following the same the High Court should have proceeded to compute the compensation on the age of the deceased.

(Emphasis supplied)

This being the legal position, in the present case, the tribunal did not commit any wrong in applying multiplier of 17.

8. In view of above, the entitlements of the respondents/claimants will be as follows:

(i)

Rs. 2500/-per month X 12

= Rs. 30,000/-

(ii)

50% of Rs. 30,000/-

= Rs. 15,000/-

(iii)

Rs. 15,000/- X 17

= Rs. 2,55,000/-

(iv)

Loss of estate

= Rs. 15000/-

(v)

Funeral expenses

= Rs. 5000/-

(vi)

Total compensation

= Rs. 2,75,000/-

9. Thus, the total amount to which the claimants are entitled to comes to Rs. 2,75,000/-. To that extent the judgment and award passed by the tribunal will have to be modified. The appeal succeeds partly. It is held that the claimants are entitled to claim total amount of compensation of Rs. 2,75,000/- (Rs. Two Lac Seventy five Thousand Only) instead of Rs. 3,00,000/- awarded by the tribunal. Rest of the directions regarding apportionment, interest, etc. issued by the tribunal are upheld.

The appellant has deposited entire amount under award with the Registry of this Court. The amount with accrued interest, if any, be transmitted to the M.A.C.T. Nagpur. On receipt of the said amount, the tribunal shall disburse the same in terms of the award. Surplus, if any is left, it be refunded to the appellant.