
(2013) 12 CAL CK 0060
In the Calcutta High Court
Case No : F.M.A. 783 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Niyati Kumar and Others

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2014) 3 ACC 120 : (2014) ACJ 2100 : (2014) 1 CALLT 563

Hon'ble Judges : Indira Banerjee, J;Anindita Roy Saraswati, J

Bench : Division Bench

Judgement

Indira Banerjee, J.—This appeal filed by New India Assurance Company Limited, is against a judgment and award passed by the Motor Accident Claim Tribunal, Purulia in MAC Case No 86 of 2005, whereby the learned Tribunal awarded Rs. 2,65,000/- jointly in favour of the applicants, being the respondent Nos. 1 and 2 herein and directed the appellant insurer to issue a cheque of Rs. 1,00,000/- to the claimant respondent number 2, that is, the father of the deceased victim, and Rs. 1,65,000/- to the claimant respondent No. 1, that is, the mother of the deceased victim, after deduction of any amount, that might have already been paid to the claimants u/s 140 of the Motor Vehicles Act. The judgment and/or award of the learned Tribunal under appeal reveals that the respondent claimants claimed compensation of Rs. 8,00,000/- on account of the death of their son, in an accident, caused by a bus bearing the registration number WB - 55 2848, which was insured by the appellant insurer. The claimants claimed that their son, who was 21 years of age, and a bachelor at the time of his death, earned Rs. 6,500/- per month as a television mechanic.

2. On consideration of the materials and documents on record, the learned Tribunal found that the victim was 21 years of age. The learned Tribunal was also satisfied that the death of the victim was due to an accident and the accident was caused by the bus on which the victim had been travelling. However, on consideration of the materials on record, the learned Tribunal accepted the argument of the appellant insurer that the victim was a mere trainee, with no

income.

3. On consideration of the entire facts and circumstances of the case, and on consideration of the materials and the evidence on record, the learned Tribunal awarded to the claimants, compensation of Rs. 2,00,000/- on account of the death of the victim, by assuming his income to be Rs. 15,000/- per annum, deducting 50% therefrom, on account of personal expenses which the victim would have incurred had he been alive, and thereafter multiplying the balance 50% of his income with the multiplier 20.

4. The learned Tribunal awarded a further sum of Rs. 50,000/- by way of reimbursement of actual medical expenses incurred on the treatment of the victim, which had been proved by documentary evidence. The learned Tribunal also awarded Rs. 10,000/- for mental pain and suffering and Rs. 5,000/- towards funeral expenses.

5. Learned Counsel appearing on behalf of the appellant insurer, contended that the learned Tribunal grossly erred in law by applying the multiplier of 20 and submitted that the claimants being the parents, multiplier was to be applied on the basis of the average age of the parents. In other words, if the father was 50 and the mother was 40, the average age of the parents would have to be taken to be 45 years and the multiplier applicable to that age group would have to be applied.

6. u/s 163A of the Motor Vehicles Act, the owner of a motor vehicle or the insurer is, in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, liable to pay, as the case may be, to the victim, or the legal heirs of the victim compensation as indicated in the second schedule to the said Act.

7. The principles for grant of compensation in motor accidents claims cases have evolved and developed through a plethora of judgments of the Supreme Court interpreting the provisions of the Motor Vehicles Act particularly the scope and ambit and extent of binding value of the second schedule.

8. There can be no doubt that the owner or the insurer of a vehicle is liable to pay in, inter alia, a case of death on account of any accident arising out of use of that vehicle, just compensation to the legal heirs of the deceased victim.

9. "Just compensation" is adequate compensation which is fair and equitable, in the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do, by applying the well-settled principles relating to the award of compensation.

10. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Supreme Court held that though assessment of compensation involves some hypothetical considerations, it should be objective. Compensation in motor accidents claim cases is not meant to be a bonanza, largesse or source of profit.

11. In *Sarla Verma (supra)* the Supreme Court held that justice emanates from equality in treatment, consistency in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision on identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, there should be consistency and uniformity to arrive at a just compensation.

12. As held by the Supreme Court in *Sarla Verma (supra)* if different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, and the common man may be confused, perplexed and bewildered. If there is significant divergence among the Tribunals in determining the compensation on similar facts, it will lead to dissatisfaction.

13. In *Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another*, , the Supreme Court warned that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining compensation. The object of providing compensation is to put the claimants, to the extent possible, in almost the same financial position, as they were in before the accident and not to make fortune out of misfortune that had befallen them.

14. The Supreme Court further held that the wide amplitude of power u/s 166 of the Motor Vehicles Act, does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. It can neither be used as a source of profit, nor a windfall to the persons affected. Nor should it be punitive to the persons liable to pay compensation.

15. In the aforesaid case the Supreme Court held that the multiplier method and structured formula as contained in the 2nd schedule to the Motor Vehicles Act is a guiding factor, but cannot be used as a ready reckoner. The Supreme Court also reiterated that the general rule was to deduct 1/3rd of the income towards personal expenses in case the victim was married and 50% if the victim was unmarried.

16. For uniformity it would be safe to calculate compensation on the basis of the structured formula as stipulated in the 2nd schedule to the Motor Vehicles Act. To compute compensation, the income of the deceased should be determined. If there are materials in support of the claim of the claimants to compensation, the actual income should be taken into account. If income cannot be proved, it would have to be assessed on hypothetical basis. Out of the income as determined, a deduction should be made with regard to the amount which the deceased would have spent on himself by way of his own personal and living expenses which should ordinarily be 1/3rd the income, as stipulated in the Second Schedule to the Motor Vehicles Act. Of course, as held by the Supreme Court, the 2nd schedule is in the nature of guidelines and may be deviated from in appropriate cases, for the ends of justice.

17. In *Syed Bashir Ahmed v. Mohammed Jameel & Ors.* (Supra), the Supreme Court held that the structured formula and multiplier method was a guiding factor, but could not be used as a ready reckoner. In *Syed Bashir Ahmed v. Mohammed Jameel & Ors.* (Supra), the Supreme Court held that there was no set formula to decide the question of deduction on account of personal expenses of the deceased, which could be applied in every case. The contention made on behalf of the claimant in that case, that deduction could in no circumstance exceed one third of the total income as provided in the 2nd Schedule to the Motor Vehicles Act was found untenable. The Supreme Court was of the view that the quantum of deduction towards personal expenses would vary from case to case. The Supreme Court found that the practice was to ordinarily deduct 50% of the income of a bachelor towards his personal expenses.

18. For example, when the income of the victim is low, and there are numerous dependants, a lesser amount may be deducted towards personal expenses. Similarly, as held by the Supreme Court, when the victim is single, the personal expenses may be higher.

19. In *Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others*, the Supreme Court reaffirmed that in case of a bachelor 50% of the total income was required to be taken as contribution to the family.

20. However, in *Bilkish Vs. United India Insurance Co. Ltd. and Another*, the Supreme Court disapproved deduction of determining loss of dependency by 50% and held that the incumbent being a bachelor could not have spent more than one third of his total income for personal use and the rest of the income earned by him would go to the family kitty.

21. As observed above, deduction towards personal expenses has also to be standardised, since the exact personnel expenditure of the victim may be difficult to ascertain. Thus, deduction of 1/3rd in case of a married man with dependants as per the structured formula in the 2nd schedule to the Motor Vehicles Act should be the normal rule.

22. However, where the deceased is a bachelor and the claimants are the parents, a different principle may be followed, since bachelors may be assumed to spend more on themselves. 50% might reasonably be considered to be the personal expenses of a bachelor. However as observed above, where the income is low and there are a large number of dependants the percentage may be fixed having regard to the number of dependants. In the case of *Sarla Verma (supra)*, which was a case of death of a government servant aged about 38 years, with income of Rs. 4000/- per month, who was survived by his widow, 3 minor children, parents and a grandfather, who later died, the monthly income for the purpose of assessment of compensation was determined at Rs. 6006/- by adding about 50% of his salary to his actual salary income and 1/5th of that amount was deducted towards his personal expenses.

23. In *Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others*,

the Supreme Court held that there was no rigid rule or formula for deduction towards personal expenses of the deceased. In the aforesaid case, deduction of 50% of the income of a bachelor was disapproved.

24. As held in *Sarla Verma (supra)*, the appropriate multiplier should be selected, having regard to the age of the deceased and the period of active career. It is not possible to ascertain the number of years that the victim would have lived or worked, but for the accident. The multiplier should be chosen from the table as given in the 2nd schedule to the Motor Vehicles Act, with reference to the age of the deceased. The compensation for the loss of dependency to the family is to be arrived at by multiplying the annual contribution of the victim to the family, by the multiplier chosen according to the age of the victim at the time of his untimely accidental death. Of course, if it is found that application of the multiplier as per the age of the victim would be grossly unfair, for example, where the deceased is in his twenties and dependants in their late seventies or eighties, a different multiplier may be applied by the Court having regard to the life expectancy of the younger dependant. In case the claimant is the widow of the deceased victim of the accident, an amount is to be added as loss of consortium. The funeral expenses, the cost of transportation of the body (if incurred) and the cost of any medical treatment of the deceased before his death have also to be added. However, no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased,

25. In *Reshma Kumari and Others Vs. Madan Mohan and Another*, the Supreme Court reaffirmed the steps and guidelines for computation of compensation as laid down in *Sarla Verma (supra)*.

26. *Ramesh Singh and Another Vs. Satbir Singh and Another*, the Supreme Court held that choice of multiplier would have to be determined by the age of the deceased or the age of the claimants, whichever age was higher, reasoning that when a young man was killed in an accident leaving behind aged parents who might not survive long enough to match the higher multiplier provided by the 2nd Schedule, the Court would have to offset such higher multiplier and balance the same with the short life expectancy of the claimants.

27. In *Ramesh Singh (supra)* the Supreme Court referred to an earlier judgment in *New India Assurance Co. Ltd. Vs. Charlie and Another*, and held that when the deceased victim was young and the claimants were the parents, the multiplier would have to be calculated taking into account the average age of the two parents.

28. In *National Insurance Company Ltd. Vs. Shyam Singh and Others*, the Supreme Court followed *Ramesh Singh and Another Vs. Satbir Singh and Another*, and held that the Tribunal had rightly applied the multiplier of eight in that case by taking the average age of the parents of the deceased.

29. However, in *Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others*, and in *P.S. Somanathan and Others Vs. District Insurance Officer*

and Another, the Supreme Court categorically held that the multiplier should be adopted on the basis of the age of the deceased.

30. In view of the recent pronouncements of the Supreme Court in *Sarla Verma* (supra), *Amrit Bhanu Shah* (supra) and *P.S. Somanathan* (supra) and having regard to the fact that the 2nd schedule to the Motor Vehicles Act provides for multiplier on the basis of the age of the deceased victim, we hold that the learned Tribunal rightly applied the multiplier applicable to the age group of the deceased victim for the purpose of computation of compensation.

31. Generally, the actual income of the deceased, less income tax, should be the starting point for calculating compensation. However, having regard to evidence as to future prospects the income may be increased. In *Sarla Verma* (supra) the Supreme Court held that in view of uncertainties, rule of the thumb may uniformly have to be applied. Where the deceased was under 40 years of age and had a permanent job. 50% of the actual salary might be added towards the future prospects. If the age of the deceased was 40 to 50 years, 30% might be added and there should be no addition where the age of the deceased is more than 50 years. Where, however, the deceased was self-employed, or was on a fixed salary (with the provision for increments) the actual income at the time of death should be taken into account and departure therefrom should only be made in exceptional cases involving special circumstances.

32. In *Rajesh and Others Vs. Rajbir Singh and Others*, the Supreme Court held that the main guiding principle for determination of compensation is that the compensation should be just. In the aforesaid case the Supreme Court reaffirmed the principle of making an addition to the income of the deceased taking into account the future prospects of the deceased, rising cost and the like.

33. In *Syed Basheer Ahmed* (supra) the Supreme Court held that determination of just compensation has to be on the basis of data brought on record by the claimant. Income cannot accurately be assessed and necessarily involves some estimation or may be, even some conjecture. The amount of compensation to be awarded to the claimant has, however, to be fair and reasonable.

34. There is no uniform rule or formula for measuring the value of human life. Computation of compensation must, however, be based on certain data establishing reasonable nexus between the loss incurred by the dependants of the deceased and the compensation to be awarded to them.

35. In *Oriental Insurance Co. Ltd. v. Deo Patodi & Ors.* (supra) the Supreme Court in effect and substance held that for computation of just compensation a lower multiplier could be applied.

36. In view of the recent pronouncements of the Supreme Court in *Sarla Verma* (supra), *Amrith Bhanu Shah* (supra) and *P. S. Somanathan* and having regard to the fact that the 2nd schedule to the Motor Vehicles Act provides for multiplier on the basis of the age of the deceased, we agree with the decision of the learned

Tribunal to take the age of the deceased into account for the purpose of the multiplier.

37. If the income of the victim could not be proved, the income it had to be estimated as per principles laid down by the Supreme Court. In *Laxmi Devi and Others Vs. Mohammad Tabbar and Another*, the Supreme Court upheld the finding of the High Court that where claim to income was not reliable the notional income should have to be Rs. 3,000/- per month, considering the fact that now a days even an unskilled labourer can easily earn Rs. 100/- per day. The income of the victim should have been taken to be Rs. 3,000/- per month, more so since there is evidence that the victim worked as helper in several trucks and tractors and earned approximately Rs. 120/- per day and some times only Rs. 50/- per day. The learned Tribunal, in our view, erred in proceeding on the basis that the income of the victim was only Rs. 1,500/- per month.

38. The learned Tribunal, in our view, erred in law in awarding Rs. 10,000 for mental pain and agony. As observed above, in *Sarla Verma (supra)* the Supreme Court clearly held that no amount could be awarded for loss, and suffering caused to the family members of the victim.

39. The victim being 21 years of age, multiplier of 17 should have been applied instead of multiplier of 20. However since the victim was a bachelor, 50% of his income had to be deducted on account of personal expenses of the victim.

The just compensation payable to the appellant would thus be:

40. The award under appeal is modified accordingly and the appeal is disposed of. The claimant shall be entitled to interest at the rate of 8% per annum from the date of the application for compensation till full payment to the claimant to be calculated as per reducing balance.

Urgent certified copy of this judgment and order, if applied for, be supplied to the respective parties, subject to compliance with the requisite formalities,

Anindita Roy Saraswati, J.

I agree.