(2016) 06 MAD CK 0160

In the Madras High Court

Case No : C.M.A. No. 440 of 2011 and M.P. Nos. 1 and 2 of 2011 and Cross. Obj No.71 of 2011

The New India Assurance Company Ltd. APPELLANT

Vs

Mrs. G. Alamelu RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 173

Citation : (2016) 2 AnWR 544 : (2016) 2 TNMAC 451

Hon'ble Judges : Mr. T. Mathivanan, J.

Bench : Single Bench

Advocate : Mr. J. Michael Visuvasam, Advocate, for the Respondent No. 1 in Cross. Obj No.71 of 2011; No appearance, for the Respondent No. 2 in Cross. Obj No.71 of 2011; Mr. J. Michael Visuvasam, Advocate, for the Appellant in C.M.A. No. 440 of 2011 and M.P. Nos. 1

Final Decision : Disposed Off

Judgement

Mr. T. Mathivanan, J. - Questioning the quantum of compensation, the second respondent/Insurance Company has filed this memorandum of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicle Act 1988.

2. The first and second respondents are the claimants, whereas, the third respondent herein, is the owner of the offending vehicle. Claiming a sum of Rs.10,00,000/- towards the compensation for the death of their son one G.Raja, the respondents 1 & 2 had moved the Claims Tribunal with a claim petition in MCOP No.5609 of 2004.

3. According to the claimants, that on 13.11.2004 at about 00.45 a.m., when their son G.Raja was driving the Tata Indica Car bearing Registration No.TN 10 J 5761, a Water Tanker Lorry bearing Registration No. TN 05 3798 belonging to the third respondent herein, came from the opposite direction coupled with rashness and negligence and rammed the Tata Indica Car driven by the deceased. As a result of which, the deceased had sustained multiple injuries which resulted in

his death.

4. Despite the contest made by the appellant/Insurance Company by filing their counter statement, based on the evidences both oral and documentary, the Tribunal had proceeded to award a sum of Rs.4,81,000/- towards the compensation, directing the appellant/Insurance Company to pay the aforesaid amount with interest at 7.5% from the date of filing of the claim petition, till the date of the deposit within a period of two months.

The Tribunal had passed the award under the following heads.

(a) Towards the pecuniary loss Rs.3,96,000/-

(b) For love and affection Rs. 50,000/-

(c) Loss of expectation of life Rs. 25,000/-

(d) Funeral Expenses Rs. 10,000/-

Total Rs.4,81,000/-

5. Questioning the method of calculation as well as the quantum, the appellant/ Insurance Company stand before this Court with this appeal.

6. The claimants having not been satisfied with the award passed by the Tribunal have filed their cross objection. It appears that the deceased was a driver by profession and earning a sum of Rs.300/- per day. The Tribunal, based on the daily wage had fixed his monthly income at Rs.4,500/-. The deceased was aged about 30 years at the time of accident. These are all admitted facts.

7. Mr. J. Michael Visuvasam, learned counsel appearing for the appellant/ Insurance Company has contended that the Tribunal should have given 50% of deduction towards his personal and living expenses as he was a bachelor at the time of his death. He has also argued that as per the evidence of PW1/(R1), her husband, the second respondent was bedridden and in the absence of any documentary evidence to prove his illness, the Tribunal had given deduction of ? rd from the annual income of the deceased, in stead of giving 50% as observed in Sarla Verma and Others v. Delhi Transport Corporation and Another (2009) SC 1298.

8. On the other hand, Mr. V. Mohan Choudary, learned counsel appearing for the cross objectors/ claimants has submitted that since the deceased was aged about 30 years at the time of the accident, the Tribunal ought to have added 50% of his monthly income towards the future prospects of the deceased. He has also argued that the Tribunal instead of fixing the monthly income @ Rs.4500/- ought to have fixed @ Rs.9000/- per month as per Ex.P7. Ex.P7 is nothing but the Driving Licence, and it is not the concrete proof for the monthly income of the deceased. In fact, no satisfactory evidence was adduced by the claimants to support the monthly income of the deceased. However, the Tribunal, in the absence of any evidence had fairly fixed the daily income @ Rs.300/- per day

and the monthly income is also fixed accordingly @ Rs.4500/- . Since the deceased was aged about 30 years at the time of occurrence, it may be proper to give 50% of the deduction towards the personal and living expenses and apart from this since he was below the age of 40 years, 50% deduction was approved by the Three -Judge Bench in Reshma Kumari and Others v. Madan Mohan and another (2013) 9 SCC 65 and apart from this, there must be an addition of 50% to the actual monthly income of the deceased, while computing future prospects.

9. It is to be pointed out that the Tribunal while adopting multiplier system to calculate the quantum of compensation, the age of the first respondent/first claimant, who is none other than the deceased was taken into consideration. In this connection, the Tribunal has observed that as per the earlier decisions, the age of the lesser aged parents would form basis for the selection of proper multiplier when the deceased was a bachelor. Insofar as this case is concerned, the Tribunal has further observed that the age of the first respondent(mother of the deceased) could be taken into consideration for fixing the multiplier and since she was aged about 50 years, at the time of filing the claim petition as per Ex.P5, the multiplier of 11 was selected as per the second schedule to Section 163-A of the Motor Vehicles Act.

10. Now, in a recent decision viz., Munna Lal Jain and Another v. Vipin Kumar Sharma and Others(15 May, 2015), while speaking on behalf of the three-Judges Bench of the Apex Court, the Hon''ble Mr. Justice. Kurian Joseph has observed that the question as to whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for some time, but that has been given quietus by another three-Judge Bench decision in Reshma Kumari(supra). It was held that multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainly with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. His Lordship has made reference to paragraphs Nos.36 and 19 of Sarla Verma case to support his view. He has also extracted paragraph No.36 of the Sarla Verma case as under;

Para 36: In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased, (b) income of the deceased, the number of dependants. To arrive at the loss of dependency, the Tribunal must consider(i) additions/deductions to be made for arriving at the income, (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. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma''''. In Sarla Verma(supra) at paragraph-19, a two-Judge Bench dealt with this aspect in step

2. To quote:

"19..............Step2 (Ascertaining the multiplier)Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased. ''''The multiplier, in the case of the age of the deceased between 26 to 30 years is 17. There is no dispute or grievance on fixation of monthly income as Rs.12,000.00 by the High Court.

With reference to deduction towards personal and living expenses, his Lordship has observed that :

"on the issue of deduction towards personal and living expenses in Sarla Verma(Smt.) and Others v. Delhi Transport Corporation and another, (2009) 6 SCC 121, at paragraph-31, it was held that:

"31.......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 dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.'''' The deduction ordinarily in the case of a bachelor at 50% was approved recently by a three-Judge Bench decision in Reshma Kumari and Others v. Madan Mohan and another (2013) 9 SCC 65 holding that the standard fixed in Sarla Verma (supra) on the aspect of deduction for personal and living expenses...''''must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out''''. Preceding paragraph-41 reads as follows:

"41.....The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man''s net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of (pic)dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.'''' In the case before us, there are no such exceptional circumstances or compelling reasons for deviation on the basis of evidence and therefore deduction of 50% towards the personal and living expenses is not to be disturbed.

11. Based on the decision reported in Munna Lal Jain & Another v. Vipin Kumar Sharma & Others, cited supra, this Court finds that it may be appropriate to take the age of the deceased for arriving at correct quantum of compensation instead of taking the age of his parents.

12. In the present case, the deceased was aged about 30 years. As per the second schedule to Section 163(A) of M.V. Act, 17 is the appropriate multiplier. The monthly income of the deceased is determined @ Rs.4500/- and 50% of the actual income of the deceased is to be added with this amount. Accordingly it come to Rs=6750/-(4500+2250, 50% of actual income). The annual dependency would be(x 12) =Rs.81,000/-. From this amount, 50% towards the personal and living expenses of the deceased shall have to be deducted. Accordingly, the remaining balance would be Rs.40,500/-. Applying multiplier of 17, as the deceased was aged about 30 years, the pecuniary loss of the family would be Rs.6,88,500/-. Besides this amount, the Tribunal has awarded a sum of Rs.50,000/- towards love and affection. Towards funeral expenses, the Tribunal has awarded a sum of Rs.10,000/-. This amount seems to be very low and therefore, can be fixed to Rs.15,000/-. While calculating the future prospects as well as the pecuniary loss of the family, there is no need to grant a separate amount towards loss of expectation of life and therefore, a sum of Rs.25,000/- granted by the Tribunal is deleted.

13. Having regard to all related circumstances, this Court finds that the just compensation may be awarded as detailed under:

(a) Towards pecuniary loss of the family Rs.6,88,500/-

(b) Loss of love and affection Rs. 50,000/-

(c) Funeral Expenses Rs. 15,000/-

Total Rs.7,53,500/-

Based on this calculation, the award of the Tribunal viz., Rs.4,81,000/- has been increased to Rs.7,53,500/-.

14. Accordingly, the appeal filed by the second respondent/ Insurance Company is dismissed and the Cross Objection filed by the respondents 1 & 2/claimants is allowed.

15. It is brought to the notice of this Court that the appellant/Insurance Company has deposited the entire award amount along with the accrued interest and cost to the credit of the claim petition in MCOP No.5609 of 2004, on the file of the Motor Accident Claims Tribunal(IV Judge, Court of Small Causes), Chennai. It was also brought to the notice of this Court that the respondents 1 & 2/ claimants, have withdrawn 50% of the deposited amount.

16. Keeping in view of this fact, the appellant/Insurance Company is directed to deposit the enhanced compensation with interest @ 7.5% from the date of the claim petition till the date of deposit. Consequently, connected miscellaneous

petitions are closed. No order as to costs.

