

(2013) 07 BOM CK 0245
In the Bombay High Court
Case No : First Appeal No. 205 of 2009

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Maya, Ku. Varsha, Mr. Shaikh Mubarak Shaikh Gafur
and Mr. Vinod

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2014) 1 ACC 904

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : A.B. Godbole, for the Appellant; R. Dewani, Advocate for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Partly Allowed

Judgement

A.P. Bhangale, J.—The present appeal is directed against the judgment and award dated 12/02/2007 passed by Motor Accident Claims Tribunal, Amravati in M.A.C.P. No. 130 of 2003 whereby learned Tribunal was pleased to grant a sum of Rs. 10,96,500 as compensation inclusive of no fault liability and interest at the rate of 7.5% per annum from the date of petition till realization thereof. The respondents before the Tribunal i.e. owner/driver and insurer were held liable to pay compensation to the claimants jointly and severally. The brief facts stated are as under -

One Sandeep Khatri, the son of claimant-respondent No. 1 and brother of claimant-respondent No. 2, who was the student of Final Year B.E. (Civil), studying in the College of Engineering at Badnera, was riding on a scooter bearing No. MH-33/B-278 as pillion rider along with his friend Pankaj Kothe. When the scooter was near Ashish Restaurant, Gupta Petrol Pump, offending motor vehicle i.e. Truck bearing registration No. MP-09/KB-5982 came from opposite direction in a rash and negligent manner, lost its balance, fell upon Sandeep and his friend Pankaj and crushed them, as a result of weight, Sandeep

died on the spot, due to multiple injuries on vital parts of his body. The incident reported to Badnera Police Station vide F.I.R. No. 6 of 2003 on 07/01/2003. Badnera Police had investigated the matter, drawn spot panchnama, referred dead body for post mortem. It was found that deceased Sandeep was a student of Final Year B.E. (Civil) studying in College of Engineering, Badnera, Amravati and was working with a Construction Company as part time job of drawing designs of the buildings and was also executing construction works. It was claimed that he was getting salary of Rs. 12,000/- per month in the year 2003 (below Exhibit-31). It is also claimed that Sandeep had completed AUTOCAD-2000 course during July-September from Graphic Computers, Amravati and also passed Computer Programming Course in March, 1997. According to the claimants, the offending truck was insured with the Orient Insurance Company Limited covering the date of accident with validity of period between 06/09/2002 to 05/09/2003.

2. The fact that the offending truck was insured with the appellant as also the fact that the accident had resulted on account of the said truck are not disputed before the Court. The main contention of the appellant is that compensation that has been awarded by learned Tribunal is excessive, unjust and unreasonable. The fact that the victim was aged about 21 years, studying in Final Year B.E.(Civil) and earning in-training part time salary of Rs. 4,000/- Per month is not disputed by the appellant. According to appellant, the learned Tribunal ought to have considered the earning of Rs. 4,000/- per month by victim while he was allegedly serving with Architect, Nitin Kadam. Although, there is no service record of victim Sandeep. Learned Advocate for the appellant also contended that considering the age of dependent mother Smt. Maya stated as 48 years at the time of accident, ought to have been taken into consideration by learned Tribunal so as to choose appropriate multiplier as also appropriate multiplicand after deduction of about 50% from the true income of the deceased Sandeep.

3. Admittedly, there are no cross-objections in this appeal on behalf of the respondents-claimants. But it is contended at the time of hearing that victim Sandeep was aged 21 years only and was a student when the accident had occurred. By that time, he had undergone AUTOCAD-2000 course, Computer Programming and was already having a part time job with Architect Nitin Kadam from whom, deceased Sandeep was earning a sum of Rs. 4,000/-. According to learned Advocate for the respondent Nos. 1 and 2, the income as civil engineer with all his future prospects ought to have been considered by learned Member to award just and proper amount of compensation. Learned Advocate for respondent Nos. 1 and 2 submitted that the amount awarded under the impugned judgment and award is in fact lower considering the facts in the absence of any cross-objection. Learned Advocate for respondent Nos. 1 and 2 sought for the dismissal of the appeal and supported the impugned judgment and award.

4. Learned Advocate for the appellant in support of his submission made a

reference to Donat Louis Machado and Others Vs. L. Ravindra and Others, . In that case while judging quantum of compensation in the case of journalist aged 31 years and earning about Rs. 2,500/- per month with dependent parents and sisters. The Tribunal had awarded aggregate sum of Rs. 52,800/- which was enhanced by High Court to Rs. 1,27,000/- and the Apex Court considered that deceased journalist had very lucrative career before him for a number of years and, therefore, had he survived, he could have earned Rs. 7,500/- per month at the end of his career. After deducting 50% of the amount from his assessed earning at Rs. 3,750/- per month multiplied by 15 as chosen multiplier, worked out a total sum of Rs. 6,75,000/-. But Apex Court took conservative figure of Rs. 6,00,000/- only and awarded 1/3rd of it on the ground that deceased would have spent his 2/3rd of his earning on his own family which he would have raised and would have spent on himself. A sum of Rs. 2,00,000/- was held as appropriate compensation payable to the claimants.

5. A reference is also made to the ruling in Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, whereby part of compensation was fixed in case of victim, who suffered 70% of permanent disability, on the basis of assessed future income of Rs. 60,000/- per annum and loss of earning capacity at Rs. 42,000/- per annum. Thus, after choosing multiplier of 18, the total sum of Rs. 7,56,000/- plus Rs. 1,50,000/- towards medical expenses were awarded by enhancing the compensation to Rs. 9,06,000/-. Learned Advocate for the respondent Nos. 1 and 2 submitted that principles, which are considered in case of permanent disability, would not have applicable in the present case, which was based on death of the victim in motor vehicle accident.

6. Learned Advocate for the respondent Nos. 1 and 2 made a reference to the ruling in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which gave guidelines in the cases arising in claims for fatal accidents. The Apex Court gave certain directions to the Tribunals and Courts in respect of procedure and steps to be followed to arrive at uniformity and consistency in judgments in this regard. The Apex Court held that-

Basically only three facts are required to be established by the claimants so as to assess compensation in the case of death claims i.e. -

- (a) age of the deceased;
- (b) income of the deceased; and
- (c) the number of dependents upon him/her.

And to arrive at the loss of dependency, it has to be considered that -

- (i) additions/deductions to be made for arriving at the income of the deceased;
- (ii) the deduction 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, which can also help insurance companies to settle the accident claims without delay.

The Apex Court gave guidelines regarding steps to be taken to arrive at the figure of just compensation.

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependent family, constitutes the multiplicand.

Step 2 (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 the Supreme Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs. 10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of Rs. 5,000/- to Rs. 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

7. It appears that the Apex Court had considered the earlier judicial precedent. In case of bachelor deceased and claimants are his parents, normally 50% is allowed to be deducted as personal and living expenses, assuming that bachelor would spend half of the amount earned by him as an earning member of the family. The principles to determine liability and quantum of compensation which were laid down by the Apex Court were modeled in Schedule-II of the Motor Vehicles Act, 1988 read with Section 163-A of the Act of 1988 to arrive at just and fair compensation. In para-20 of Sarla Verma's case (cited supra), it was observed that-

Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects.

8. The Apex Court also expressed its view considering the imponderables, uncertainties and addition of 50% to the actual salary of the deceased would be considered after deducting tax there from. Thus, in cases where victim was bachelor and claimants are parents, normally 50% amount is to be deducted as personal and living expenses because it is assumed that bachelor would spend more on himself. There is also possibility in future that he would get married in a short time, in which event the contribution to his parents and siblings is likely to be cut drastically. Thus, considering the imponderables as also relevant considerations, living expenses or personal expenses are to be deducted from the income of the deceased, if any, if payable. Thereafter, multiplier has to be selected bearing in mind the loss of dependency, looking to the age of the deceased person as also the age of the dependents. Thus, guided by Second Schedule read with Section 163-A of the Act of 1988, the amount of compensation can be arrived at multiplicand by appropriate multiplier, just and reasonable compensation may be awarded and not bonanza for the claimants. In short, in Sarla Verma's case (supra), multiplier scale in the ruling of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, as well as New India Assurance Co. Ltd. Vs. Charlie and Another, were also considered as acceptable to be used for arriving at just and reasonable compensation and in addition to the amounts such as funeral expenses, loss of estate, loss of consortium as the case may be with reasonable compensatory interest from the date of amount become payable till the amounts are to be awarded.

9. A reference is also made to the ruling in Santosh Devi Vs. National Insurance Company Ltd. and Others, Supreme Court, wherein the Apex Court observed that-

Court can take judicial notice of the fact that to meet the challenges of high cost, persons latter (self employed) also periodically increase cost of their labour. It can be assumed that even a self employed person's income over a period of time will increase by amount 30%.

Thus, there is a guideline to calculate compensation.

10. Learned Advocate for respondent Nos. 1 and 2 submitted that as far as claimants ought to be put in the pre-accidental position by awarding just compensation and damages which claimants have suffered on account of death of important family member. Pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognizes that payment should also be made for non-pecuniary losses on account of loss of happiness, pain, suffering and expectancy of life, etc. It appears that appellant could make reference to Sarla Verma's case (supra) for determination of

compensation in cases of involving motor accident as also guidelines mentioned therein to determine just compensation. The Apex Court desired that in cases of self employed person or persons, who were employed on fix salary without provision for annual increment, etc. relies on the cost of living. The fact of rise in prices, additional prospects of increase in income as also challenges posed by high cost of living, the persons falling in the later category periodically increase in the cost of labour, increase in prices of essential and cost of living with due regard the education, occupation of the victim are all factors which may be considered for assessment of compensation in motor accident claims.

11. It is true that claimants are not required to prove the case as required to be done in a criminal trial as observed in *Kusum Lata and Others Vs. Satbir and Others*, to endeavour the Tribunal in such cases is to award just, fair and reasonable compensation. To restore the claimants to apposition on assumption that death had not occurred in the family or accident had not caused injury to the victim. Thus, claimants are required to establish their case upon preponderance of probabilities and the evidence on record may be considered accordingly.

12. In the present case, the victim was a student, studied in Civil Engineering B.E. Final and had also completed Courses in AUTOCAD-2000 and Computer Programming. The evidence was led about his part time job, but it appears that the claimants had not led evidence regarding prospects of future of the victim as Civil Engineer, his possible pay, promotion, increment, etc. Learned Advocate for the respondent Nos. 1 and 2 wants to point out pay scale available in Civil Engineering with the help of print out form the website www.payscale.com to argue that salary of Civil Engineer in the current year can be anywhere between Rs. 1,76,778/- to Rs. 9,51,320/-. This evidence was not before the Tribunal and Tribunal had assessed compensation on the hypothetical basis that victim would have earned Rs. 20,000/- per month with which appellant had not agreed. As according to the appellant, without any evidence, such assertion was wrong to fix just, fair and reasonable compensation in the present case. There is no dispute that victims have to be brought to the pre-accidental position by awarding reasonable and additional compensation. Considering the future prospects of the victim, there are other imponderable also entered into calculations such as premature death of victim, marriage in the family after some years, another income which may be available to the family, possibility of claimants dying early than expected span of life, suffix it to say that award of compensation must be assessed as just and reasonable sum and not excessive. Compensation will have to be considered in the light of evidence that may be read in respect of other conventional benefit such as loss of love and affection, loss of estate, funeral expenses, etc. to enable the Tribunal to award total compensation on the basis of evidence since appellant has only limited to his claim to justness and reasonableness of compensation. In view of the above, I think, it is in the interest of justice to set aside the award and direct the Tribunal to allow the parties to lead evidence regarding quantum of compensation. Hence, the

following order is passed.

ORDER

Appeal is partly allowed.

The impugned judgment and award is set aside with direction to the parties to lead their respective evidence regarding quantum of compensation only.

The Tribunal to allow the parties to lead evidence as they may choose within a period of six weeks from the date of receipt of the R. & P.

Parties to cooperate with the Tribunal for early hearing.

After recording evidence, Tribunal to decide quantum of compensation on the basis of evidence led by the parties and after considering the ponderables and imponderables, future prospects of increase in income, conventional heads etc. for awarding just, fair and reasonable compensation.

The award amount deposited in this Court be transferred to the Tribunal and to be retained by Tribunal till final award is passed on the basis of evidence that would be led by the parties.

Order accordingly.