

(2017) 11 AHC CK 0023
In the Allahabad High Court
Case No : 1772 of 2007

The Oriental Insurance Company Ltd.	APPELLANT
Vs	
Anil Kumar Maheshwari, & Ors.	RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41 Rule 22](#)

Citation : (2017) 11 AHC CK 0023

Hon'ble Judges : Amreshwar Pratap Sahi, Saral Srivastava

Bench : Division Bench

Advocate : Anand Kumar Sinha, A.N. Bhargava, Ajai.Vasisth

Final Decision : Dismissed

Judgement

1. Heard Sri Anand Kumar Sinha, learned counsel for the appellant-Insurance Company and Sri A.N. Bhargava, learned counsel for the respondent-claimant.
2. The present appeal has been filed by the appellant-Insurance Company, challenging the order dated 29.03.2007 passed by Additional District Judge/ M.A.C.T./F.T.C.4, Etah whereby the Tribunal has awarded Rs.7,69,028/- as compensation to the claimant-respondent.
3. The claimant-respondent have filed cross-objection no. 228618 of 2007 under Order 41 Rule 22 C.P.C. for enhancement of compensation.
4. We would first deal with the appeal filed by the Insurance Company. The claim petition was instituted by one Anil Kumar Maheshwari for the death of his wife Smt. Praveen Kumari in an accident on 10.07.2004 at about 05:30 P.M. It was alleged in the claim petition that Smt. Praveen Kumari was travelling in Jeep No. U.P. 80 T/9619 along with her mother-in-law and other persons from Kashganj to Saron. It was further alleged that the driver of the jeep was driving it rashly and negligently, and when the jeep reached near village Fish Farm in village Prahladpur, it dashed with a tree and turned turtle. In the said accident Smt.

Praveen Kumari suffered serious injuries and died. The deceased was Assistant Teacher and was earning salary of Rs.9,265/- per month. The claimants prayed for compensation of Rs.15,25,000/- along with 12% interest.

5. The owner of the jeep did not appear before the Tribunal to contest the claim petition and therefore, the Tribunal proceeded ex-parte against the owner of jeep vide order dated 06.05.2006.

6. The insurance company contested the claim petition by filing a written statement wherein it denied the factum of accident. The insurance company also denied the negligence of the driver of jeep and the income of the deceased, and further pleaded that the liability of the company was subject to the terms and conditions of the insurance policy. The Insurance Company prayed for dismissal of the claim petition.

7. On the basis of pleadings between the parties, the Tribunal framed several issues. The Tribunal, after appreciating the evidence on record, decided the issue of occurrence of accident and negligence of driver of jeep in the accident in favour of the claimant. The issue of driving license was also decided by the Tribunal in favour of the claimant-respondent.

8. On the issue of quantification of compensation, the Tribunal held the deceased was an Assistant Teacher and her salary was Rs.9,265/- P.M. as per the salary certificate. The tribunal for the purpose of computation of compensation accepted Rs.8,631/- P.M. only as income which the deceased was carrying home after compulsory deductions. The Tribunal, thereafter, deducted 1/3rd from Rs.8,631/- towards personal expenses of the deceased and multiplied it by 12 to arrive at the annual income of the deceased. Thereafter, the Tribunal computed the compensation towards loss of income by applying the multiplier of 11 on the annual income and awarded Rs.7,69,028/- towards loss of income.

9. Challenging the quantification of compensation, counsel for insurance company has urged that there were only two units in the family i.e. husband and wife and therefore, contribution of the deceased towards the family could not be more than 50%. He further submits that in the present case, husband and wife both were earning, and if one of them had died then the contribution towards the family affairs from the income of deceased could not be more than 50 per cent. Consequently, he submits that the Tribunal should have deducted 50% towards the personal income of the deceased instead of 1/3rd while computing the compensation. In this regard he has placed reliance upon paragraph 30 of the judgment of the Apex Court in the case of (Sarla Verma and others Vs. Delhi Transport Corporation and others) 2009 (6) SCC 121 which is extracted herein below.

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased

was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."

10. Per contra, the counsel for the claimant has submitted that the deceased was a house wife and was also an earning member of the family, and the services of the house wife towards family should be considered in a broader perspective. In other words, he submits that services of the house wife towards the family should not be considered in a narrow compass, inasmuch as, the gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. He further submits that the house wife takes care of all requirements of the family including cooking of food, washing of clothes etc. and the claimant would have to keep somebody to manage all these household affairs. Thus, he submits that while assessing the pecuniary loss and dependency of the family upon deceased, all these factors have to be taken into consideration. He has placed reliance on para no. 25 to 27 of the Apex Court judgment in Arun Kumar Agarwal and another Vs. National Insurance Company Limited and others 2010 (9) SCC 218, which are reproduced herein below:

"25. In Mehmet v. Perry (1977) 2 All ER 52, the pecuniary value of a wife's services were assessed and granted under the following heads:-

- (a) Loss to the family of the wife's housekeeping services.
- (b) Loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her.
- (c) Loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.

26. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by

the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier."

11. Counsel for the respondent has also relied on paragraph no. 14 and 15 of the judgment of this Court in the case of F.A.F.O No. (Surjeet Singh and others Vs. Raj Kumar Gupta and Another) which are reproduced herein below:

"14. Coming next to the aspect of deduction towards personal living expenses, this Court finds that Tribunal had appropriated 1/3rd towards personal expenses of the deceased. This finding of the Tribunal has not been assailed in appeal by the insurance company. However, it is submitted before this Court that 50%, instead of 1/3rd, was liable to be appropriated towards deduction for personal living expenses. Reliance has been placed upon Paragraph 30 of the judgment of the Apex Court in Sarla Verma Vs. DTC [2009 (6) SCC 121], which is reproduced:-

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."

15. Tribunal in the present case has observed that appellant nos.2 and 3, who are sons of the deceased, are not dependent upon the deceased. It was, however, contended on behalf of the appellants that one of the sons was unemployed and was dependent upon the deceased. Although, this Court finds that Tribunal has rightly ignored both the sons as dependents on the ground that in due course they would be able to earn their own livelihood yet in view of the fact that only 1/3rd was allowed towards personal expenses of the deceased, which observation and finding of the Tribunal has not been challenged by insurance company and keeping in view the fact that family of deceased also consisted of her sons, the appropriation allowed by Tribunal of 1/3rd, instead of 1/2, cannot be said to be unjustified. Even under Section 163-A of the Act, statutory recognition has been granted to 1/3rd deduction for personal use under the IIInd schedule to the Act. In Kerla SRTC Vs. Susamma Thomas [1994 (2) SCC

176], which has been relied upon in *Sarla Verma (supra)*, it has been observed that in the absence of evidence, deduction of 1/3rd of gross income towards personal living expenses of the deceased is not unusual. Thus, the award of the Tribunal appropriating 1/3rd towards personal expenses is not liable to be interfered."

12. In the case of *A. Rajam Vs. M. Manikya Reddy and Another* 1989 ACJ 542, the Andhra Pradesh High Court has considered the contribution of wife towards family and has summarised certain principles for assessing the loss due to death of wife. Paragraph 12 of the judgment is extracted herein below:

"12. From the aforesaid rulings, the following principles can be summarised:

(1) The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of "services" to the family, if there was reasonable prospect of such services being rendered freely in the future but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the house housewife. Apart from the value of obtaining substitute services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.

(2) While estimating the "services" of the housewife, a narrow meaning should not be given to the meaning of the word "services" but should be construed broadly and one has to take into account the loss of constant "love and affection" as also of "personal care and attention" by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services.

(3) In case the husband is compelled to give up his job to attend constantly to children who are extremely sickly, the loss of husband's job can also be treated as loss to the family. If the deceased was contributing from her earnings to the family, that should also be treated as loss.

(4) If the wife was totally living away and there were no chances of reconciliation, the loss of services cannot be treated as a loss. But if there were reasonable chances of reconciliation, 50 per cent of the loss of services could be awarded.

(5) In the case of an injured housewife, the award from the date of trial on the above basis of "loss of services" has to be made irrespective of whether she is in fact, going to employ a substitute or not. Even for the period before trial, if she had not engaged a substitute, the award need not be diminished because the extra burden she had borne could be considered as part of the award for the "pain and suffering" and the said burden could be treated as equivalent to that of engaging a substitute."

13. Thus, he submits that the Tribunal was justified in deducting 1/3rd towards personal expenses of deceased for computing the compensation.

14. We have heard the rival submissions of the parties and perused the record.

15. It can be safely culled out from the aforesaid judgments that the contribution of wife towards the family for the purpose of assessing pecuniary loss cannot be estimated in conservative terms, rather it has to be considered in broader perspective. The claimant in order to run the family has to engage somebody to do the household jobs for which he has to pay. Thus, pecuniary loss due to death of wife has to be assessed keeping in mind the principles enunciated by the Apex Court as well as the High court in the judgements referred to herein above.

16. In the instant case, we find from record that the Insurance company has not disputed that the deceased was an Assistant Teacher. We cannot lose sight of the fact that in India even working women contribute in the daily affairs of the family like non working women.

17. Considering the fact that the deceased was a working woman and also was contributing towards the daily affairs of the family, we do not find force in submission of the learned counsel for the appellant. Accordingly, we hold that the Tribunal was justified in deducting 1/3rd towards personal expenses of the deceased instead of 1/4th. No other point was urged by the counsel for appellant. The appeal therefore deserves to be dismissed.

18. We would now deal with the cross-objection no. 228618 of 2007 filed by the claimant. The counsel for the claimant has submitted that the salary of the deceased was Rs.9,265/- and the Tribunal has erred in law in computing the compensation on the basis of carry home salary i.e. Rs.8,631/-. He submits that only statutory deductions like income tax can be deducted from the income of the deceased, whereas, all other deductions in the form of GPF etc. cannot be deducted from her salary for computing the compensation. Thus, his submission is that the compensation should be computed by treating the income of the deceased to be Rs.9,265/- per month. In this regard he has placed reliance upon paragraphs no. 18 and 19 of judgment of the Apex Court in the case of Vimal Kanwar & others Vs. Kishore Dan & others 2013 (7) SCC 476 which are extracted herein below:

"18. The first issue is "whether Provident Fund, Pension and Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."

19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr. reported in (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable

under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction.

19. The following was the observation and finding of this Court:

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor or for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

20. He further submitted that the deceased was in a permanent job and her age was 44 years and one month, therefore, the Tribunal should have awarded 30 per cent towards future prospect and should have applied the multiplier of 14 instead of 10. He has lastly submitted that award of Rs.2,000/- towards funeral

expenses and Rs.5,000/- towards pain and suffering is on the lower side, and the claimants are entitled for Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards loss of estate. Lastly, he submits that award of 6 per cent interest by the Tribunal is also on the lower side.

21. Refuting the aforesaid submissions of the counsel for the claimant, the counsel for the Insurance Company submitted that the compensation should be computed on the basis of carry home salary and therefore, the Tribunal was justified in computing the compensation treating the income of deceased Rs.8,631/-P.M.. He further submits that the compensation awarded by the Tribunal is just and proper and does not call for any interference by this Court.

22. So far as the contention of the counsel for claimant that the compensation should be computed on the basis of actual salary of the deceased, and not the carry home salary, we find force in the submission of counsel as the Apex Court in the Case of Vimal Kanwar (Supra) has held that amount of GPF and ESI etc. cannot be deducted from the amount of salary. The salary certificate annexed with the appeal indicates that the deductions of Rs.634/- was not under any statutory head like income tax etc. Therefore, we find that the Tribunal has committed an illegality in deducting Rs.634/- from the salary of deceased for computing compensation. Thus, we hold that the compensation should be calculated treating the salary of the deceased to be Rs.9,265/- and not Rs.8,631/-.

23. So far as the contention of the counsel for the appellant with regard to grant of 30% future prospect, applicability of the multiplier of 14 and compensation under conventional head i.e. loss of consortium, loss of funeral expenses and loss of estate are concerned, we find force in the submission of learned counsel for the claimant in view of the Apex Court judgment in the case of National Insurance Co. Ltd vs Pranay Sethi decided on 31 October, 2017 (Constitution Bench) SPECIAL LEAVE PETITION (CIVIL) NO. 25590 OF 2014.

24. Thus, Since the deceased was aged about 44 years and one month and was in permanent job , therefore we award 30 per cent towards future prospect. We also provide that the compensation should be calculated by applying the multiplier of 14. We also award Rs.15,000/- towards loss of funeral expenses, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards loss of estate in place of Rs. 2,000/- towards funeral expenses and Rs.5,000/- towards loss of estate as awarded by the Tribunal.

25. We find that the award of 6 % interest is on lower side and therefore, we hold that the enhanced amount of compensation shall carry 9% interest from the date of institution of the claim petition. The counter-claim therefore deserves to be allowed as held above.

26. The appeal of the Insurance Company lacks merit and is hereby dismissed. The cross-objection of the claimants is partly allowed to the extent indicated above. The insurance company is directed to pay the enhanced amount of

compensation within a period of three months.

27. There shall be no orders as to costs.