
(2014) 02 RAJ CK 0081

In the Rajasthan High Court

Case No : Civil Misc. Appeal Nos. 547/2002 and 124/2003

Uma Lohra and Others

APPELLANT

Vs

Suresh Tiwari and Others

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Citation : (2014) 02 RAJ CK 0081

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Rajesh Parihar, for the Appellant; Jagdish Vyas, for the Respondent

Judgement

Sandeep Mehta, J. These two appeals had been preferred; one by the claimants and the other by the insurance company against the judgment and award dated 3.6.2002 passed by the learned Judge, Motor Accident Claims Tribunal No. 1, Jodhpur in MAC No. 63/2000 whereby whilst accepting the claim petition filed by the claimants/appellants, a total sum of Rs. 3,94,341/- with interest @ 9% per annum from the date of filing of the claim petition was awarded in favour of the claimants as compensation for the unfortunate death of their only son Vikram, aged 18 years.

2. The claimants have approached this Court by way of CMA No. 124/2003 seeking enhancement in the awarded amount, whereas the insurance company has approached this court by way of CMA No. 547/2002 for the reduction thereof.

3. Facts in brief are that on 8.4.1999 Vikram Lohra, the only son of the claimants, a brilliant young boy, aged 18 years, studying in the 12th standard with Science Subject was going to attend coaching classes on his Hero Puck Moped bearing registration No. RJ19.4M.3993. When he reached opposite the PWD Dak Bungalow, Jodhpur, an Ambassador Car bearing registration No. RJ19.C.1213, which was being driven at a great speed, rashly and negligently, came from behind and collided with the Hero Puck driven by Vikram resulting into grievous injuries being caused to him. The Hero Puck Moped was damaged.

The injured was immediately taken to the M.G. Hospital, Jodhpur for treatment from where he was referred to the New Teaching Hospital, Neuro Surgery Department. The injured became unconscious as a result of the accident. Thereafter, on the advice of the doctors, he was taken to Mumbai by air. He remained under coma during treatment and ultimately as a result of the head injuries received in the accident, he expired in the Mumbai Hospital on 28.4.1999.

4. A claim petition was filed before the Motor Accident Claims Tribunal, Jodhpur by the claimants the parents of the young boy claiming that the deceased was a brilliant student. He was the only son of the claimants. He had cleared his 10th Board Examination securing 82.18% marks. He was preparing for the Pre-Engineering Test when he met with an unfortunate untimely death. There was imminent possibility of him becoming an engineer subsequent to clearing the Pre-Engineering Test. He was also preparing for entrance to the I.I.T. A total claim for Rs. 77,00,000/- was laid by the claimants under various heads.

5. The Tribunal framed the following issues for consideration:-

6. All the issues were decided in favour of the claimants.

7. The learned Tribunal, on the basis of the evidence led before it, worked out the following calculations and computation for evaluating the compensation awardable to the claimants.

8. The learned Tribunal awarded interest @ 9% on the awarded amount from the date of filing of the claim petition.

9. Being aggrieved of the above judgment cum award, the claimants have approached this Court by way of CMA No. 124/2003 seeking enhancement in the awarded amount whereas the insurance company has filed CMA No. 547/2002 for reduction thereof.

10. Shri Rajesh Parihar learned counsel for the claimants vehemently contended that the procedure adopted by the learned Tribunal in granting the compensation to the claimants is absolutely faulty and erroneous. The criterion applied by the learned Tribunal to decide the various issues before it were unjust and inappropriate. He urged that the learned Tribunal restrictively assessed the notional income of the deceased to be only Rs. 15,000/- per year without any justification. To that income, the multiplier of 16 was applied and 1/3rd of the amount was deducted towards personal needs and expenses. Learned counsel submitted that by a bare conservative estimate, as soon as the deceased gained an engineering graduation degree, he would be entitled to draw a basic pay scale of Rs. 5000-8000 on being appointed as Jr. Engineer/Sub Engineer in the State Government. He has placed on record the pay scale/pay band table applicable to the government employees in the Rajasthan State. Referring to the entry 7 thereof, learned counsel submitted that in the year 2000 the Jr. Engineer was entitled to a pay scale of Rs. 5000-8000. The running pay band in the year 2004 was 9300-34800. Learned counsel thus submitted that even if the pay band for

the year 2000 is accepted then the notional income of the deceased would be at least Rs. 8050/- per month because additional 61% DA had accrued by that time. Learned counsel thus submitted that the salary of the deceased should be assessed at Rs. 8050/- per month. He submitted that to the said salary, 50% addition has to be mandatorily made for future prospects in light of the decision rendered by Hon''ble Supreme Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, . He contended that the multiplier to be applied in this case would be 18 in reference to the age of the deceased whereas the Tribunal applied the multiplier of 16 without any reason. He further submitted that the amount awarded by the learned Tribunal towards loss of love and affection should be individually awarded at Rs. 1,00,000/- to both the parents. He conceded that so far as the amount of medical bills and transportation is concerned, the total amount as claimed was accepted and thus, there is no need to alter the same. He thus urged that appropriate enhancement be ordered in the compensation awarded looking to the aforesaid submissions.

11. Learned counsel for the claimants relied upon the decisions rendered by the Hon''ble Supreme Court in the cases of M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, , Kishan Gopal and Another Vs. Lala and Others, , Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad, and a judgment of Jaipur Bench of this Court in the case of Smt. Vimla Devi & Ors. v. Rameshwar & Ors. decided on 20.9.2013 in SBCMA No. 2210/2008 in support of the plea to enhance the compensation.

12. He submitted that in the case of Vimla Devi (supra), the deceased was a 21 years old boy. This Court holding the deceased to be a brilliant student and studying for medical degree, took the notional salary of the deceased on the basis of the salary applicable to a medical graduate employed by the State Government and calculated the income of the deceased on that basis. He further submitted that in the case of Hazi Zainullah Khan (supra), the Hon''ble Supreme Court awarded a compensation of Rs. 1,50,000/- to the claimants in relation to death of a young boy aged 20 years, in an accident which took place in the year 1972 and that too when the boy was studying in the B.Sc. First Year only. Learned counsel submitted that this Court in the case of Vimla Devi (supra) took the higher side of the pay band and accepted the same as applicable for calculating the earnings of the deceased, therefore, the same criterion be adopted in the case at hand also and appropriate enhancement be directed.

13. Learned counsel also submitted that the learned Tribunal applied the multiplier of 16 only in reference to the age of the deceased without any justification. Learned counsel relied upon the decision rendered by the Hon''ble Supreme Court in the case of Reshma Kumari and Others Vs. Madan Mohan and Another, and urged that the learned Tribunal should have applied the multiplier of 18 in light of the table proposed by the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . He submitted that the dispute in this regard has been laid to rest by the Hon''ble

Supreme Court in the case of Reshma Kumari, which judgment was subsequently followed by Hon''ble Supreme Court in the case of Puttamma and Others Vs. K.L. Narayana Reddy and Another, . He thus vehemently urged that the multiplier of 18 would be applicable in the case as per the guidelines issued by the Hon''ble Supreme Court in para Nos. 34 and 40 of Reshma Kumari''s judgment.

14. Per contra, Shri Jagdish vyas learned counsel for the insurance company submitted that the learned Tribunal has already taken an unduly liberal view favouring the claimants and has passed the award on the higher side and thus, the compensation should be reduced. He submitted that the multiplier to be applied in this case would be 11 or 13 as per the age of the parents whereas the learned Tribunal applied the multiplier of 16 in reference to the age of the deceased, which was improper.

15. Learned counsel for the insurance company has relied upon following judgments of Hon''ble Supreme Court in support of his arguments:

- "1. Shakti Devi Vs. New India Insurance Co. Ltd. and Another,
2. National Insurance Company Ltd. Vs. Shyam Singh and Others,
3. Ramesh Singh and Another Vs. Satbir Singh and Another,
4. The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, Civil
5. Gyan Chand Jain & Anr. v. Parmanand & Ors. reported in 2003(2) WLC (SC) Civil 435
6. U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, "

16. I have given my thoughtful consideration to the arguments advanced at the Bar and have gone through the impugned judgment.

17. In the opinion of this Court, looking to the educational certificates of the deceased, which are on record, it is evident that the deceased was a brilliant student. He was studying in the 12th standard with science subjects. Numerous certificates proving the educational and academic excellence of the deceased were proved on record. It was mentioned in the claim petition that the deceased was preparing for admission to the IIT and the Engineering Colleges. No evidence was led to controvert the said averment. No significant cross-examination was done from the claimants in their evidence by the non-applicants on this issue. Thus, this Court is of the opinion that applying the logic and ratio of the decisions rendered by the Hon''ble Supreme Court in the case of Hazi Zainullah Khan, Kishan Gopal and this Court''s judgment in the case of Smt. Vimla Devi (supra), it can safely be held that there was every possibility of the deceased going on to become an engineer subsequent to his studies. In the case of Hazi Zainullah Khan, the deceased was a student of B.Sc. First Year and yet for an accident which took place in the year 1972, a compensation of Rs.

1,50,000/- was awarded by the Hon"ble Supreme Court holding that the deceased was likely to be appointed as an engineer subsequent to his studies.

18. Having held that the deceased would have gone on to become an engineer, the next question arises as to what would be the notional income of the deceased. As per the table submitted by the learned counsel regarding the existing pay scales between the year 2000-2004, a Jr. Engineer appointed in the State Government was entitled to the pay scale of Rs. 5000-8000/- with 61% DA accrued in the year 2000. The learned Single Bench of this Court in the case of Smt. Vimla Devi (supra) applied the said pay scales for calculating the notional income of the deceased, who was a student studying in the first year of the MBBS Course. The salary applicable to a medical officer at the entry level was accepted by the Court for assessing the notional income of the victim. Thus, the total notional monthly income of the deceased at the time of the accident is assessed to be Rs. 5000+3050 (61% DA) = Rs. 8050/-. To this, future prospects of 50% deserve to be added in light of the decision rendered by the Hon"ble Supreme Court in the case of Rajesh v. Rajbir Singh (supra).

19. Now the next question which arises for consideration is as to what would be the multiplier to be applied in this case.

20. As per the learned counsel for the insurance company, Shri Vyas, the Hon"ble Supreme Court in the cases of Shakti Devi, Shyam Singh, Ramesh Singh, Laxman Iyer, Gyan Chand Jain and Trilok Chandra (supra) has laid down that the multiplier to be applied in cases of death of a bachelor would be contextual to the age of the parents. Suffice it to say that the latest judgment relied upon by the learned counsel for the insurance company is of the year 2011.

21. Subsequently, in the year 2013, the controversy was laid to rest in Reshma Kumari's judgment passed by a three Judges Bench of the Supreme Court, which was subsequently followed in Puttamma's case (supra). In Reshma Kumari's case, the Hon"ble Supreme Court held as below:-

"34. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in Sarla Verma (supra) for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma (supra) is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163A. As regards the

cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma (supra), should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma (supra), should be followed.

40. In what we have discussed above, we sum up our conclusions as follows:

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma 17 read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma 17 for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma.

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma (supra), subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration."

(Emphasis Supplied)

22. Thus, in light of the mandatory directions reproduced above, no controversy remained whatsoever in regards to the multiplier to be applied. It has in no unequivocal terms held after considering the earlier decisions of the Hon"ble Supreme Court that the multiplier would be applicable in reference to the age of the deceased.

23. Thus, this Court is of the opinion that the multiplier has to be applied in this case as per the table drawn in Sarla Verma's case. As the deceased was between the age group of 15-20 years, multiplier to be applied would be 18 and not 16 as done by the Tribunal.

24. So far as the amount awarded to the two parents towards love and affection at Rs. 50,000/- each is concerned, in the opinion of this Court, the same deserves to be enhanced to Rs. 1,00,000/- each. No challenge has been made to the remaining part of the award.

25. Thus, in view of what has been discussed above, the following calculations can be made for deciding the quantum of compensation awardable to the Claimants Appellants:-

26. The payment of the original awarded amount shall be made in terms of the order passed by the learned Tribunal, whereas on the enhanced amount, the claimants shall be entitled to an interest @ 7.5% per annum from the date of filing of the claim petition.

27. The learned Tribunal shall be at discretion to disburse the awarded amount in appropriate proportions of cash and Fixed Deposits in its wisdom looking to the facts and circumstances of the case. Any amount already paid by the insurance company under Section 140 and/or proviso to Section 173 or any other amount, shall be adjusted towards the amount finally awarded by this Court.

28. Accordingly, the appeal filed by the claimants being CMA No. 124/2003 is partly allowed as aforesaid and the appeal filed by the insurance company i.e. CMA No. 547/2002 is rejected.

29. There shall be no order as to costs.

30. Record of the learned Tribunal be sent forthwith.