
(2015) 05 PAT CK 0014

In the Patna High Court

Case No : Miscellaneous Appeal No. 804 of 2009

United India Insurance Co. Ltd.

APPELLANT

Vs

Ram Baran Thakur and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2015) 2 PLJR 831

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Prakash Kumar, for the Appellant; Shambhu Sharan Singh,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "M.V. Act") has been preferred against the judgment dated 7.7.2009 and award dated 24.7.2009 passed by the learned Additional District Judge-VI, Patna-cum-Motor Vehicle Claims Tribunal, Patna, (hereinafter referred to as "Claims Tribunal") in Claim Case No. 134 of 2008. By the said judgment and award the learned Claims Tribunal while allowing the claim petition has directed to pay total compensation amount of Rs. 6,64,500/- which was to be paid after deducting Rs. 50,000/- which was paid as interim compensation. The said amount i.e. the total amount was directed to be paid with interest at the rate of 7% per annum from the date of filing of the claim case till the date of realization.

2. Short fact of the case is that the Respondent No. 1 and 2, whose son namely, Sri Kant Kumar alias Sri Kant Kumar Thakur had died in a vehicular accident in the month of January, 2008, filed an application under Section 166 of the M.V. Act claiming total compensation of Rs. 8,00,000/- with loss of estate and funeral expenses and also interest at the rate of 12% per annum from the date of filing

of the claim petition. It was disclosed in the claim petition that on 3.1.2008 at about 8 P.M. while the son of respondent No. 1 and 2 namely, Sri Kant Kumar alias Sri Kant Kumar Thakur was coming to Patna from Hajipur by a tempo bearing registration No. BR-31G-4196, the said tempo, after over taking a truck which was an act of rash and negligent driving by the tempo driver, dashed with a divider as a result of which the son of the respondent No. 1 and 2 fell down from the tempo and his face was smashed by the tempo. In the said accident Sri Kant Kumar alias Sri Kant Kumar Thakur died on the spot. On the spot itself police arrived and on the basis of fardbeyan of brother of the deceased an F.I.R. was lodged vide Vaishali Town P.S. Case No. 5 of 2008 for the offence under Section 279 and 304A of the Indian Penal Code against the driver of the Bikram Tempo bearing registration No. BR31C5196 (hereinafter referred to as the "offending vehicle"). After investigation case was found true against the driver and thereafter, subsequently, charge sheet was submitted. The accident had taken place near Prabhat Nursery on N.H. - 19, Hajipur. On the dead body of the son of the respondent No. 1 and 2 post-mortem examination was done and finally, since it was a case of vehicular accident due to rash and negligent driving of the offending vehicle by its driver, a claim case was filed by the respondent No. 1 and 2, which was registered as Claim Case No. 134 of 2008. The Claims Tribunal after examining the evidences on record, allowed the claim petition and directed the appellant/insurer of the offending vehicle to pay the compensation amount, as indicated above. The said judgment and award has been assailed by the insurer of the offending vehicle in the present appeal. Against the judgment and award the appeal has been preferred only on the point of quantum of award. Meaning thereby, that the insurer/appellant has accepted the liability.

3. Sri Prakash Kumar, learned counsel for the United India Insurance Company Ltd./appellant, assailing the judgment and award has firstly argued that the income of the deceased has been incorrectly taken into account treating the same as Rs. 5,500/- per month. He submits that before the Claims Tribunal no plausible evidence was brought on record from the claimants' side that the deceased was an employee and earning Rs. 5,500/- per month as salary. The second limb of argument of learned counsel for the appellant is that the learned Claims Tribunal has incorrectly deducted 1/3rd from the annual income as personal and living expenses of the deceased. According to learned counsel for the appellant since the deceased was a bachelor, 50% of income of the deceased was required to be deducted as personal expenses of the deceased. To corroborate his submission Sri Prakash Kumar has argued that this issue has already been set at rest by the Apex Court in a case reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 . He has specifically referred to paragraph No. 31 of the said judgment of the Apex Court, which is quoted hereinbelow:-

"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. 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.

4. On aforesaid two grounds, learned counsel for the appellant has assailed the quantum of compensation granted by the learned Claims Tribunal

5. Sri Shambhu Sharan Singh, learned counsel for the respondent No. 1 and 2/claimants, has opposed the prayer of the appellant. Learned counsel for the respondent No. 1 and 2 at the very outset has argued that regarding income of the deceased, number of documents were exhibited. He submits that before the Claims Tribunal from the claimants' side a certificate issued by the employer of the deceased has been brought on record, which was got exhibited as Exhibit-1. The certificate categorically states that the deceased's last drawn monthly salary was Rs. 5,500/-. He submits that the deceased at the time of accident was working as Tele Marketing Executive in INFO VISION SOLUTIONS, a registered company situated at Vasant Vihar, New Delhi. He also referred to Exhibit - 1/1, which is the letter of intent regarding confirmation of recruitment of the deceased, which indicates that deceased's salary was between Rs. 4,000/- - Rs. 11,500/- per month. The deceased after getting employment in Delhi had got his Account opened in I.D.B.I. Bank, Surya Kiran Building, 19 K.G. Marg, New Delhi. The deceased had got employment about six months prior to his death. Altogether 10 documents were got exhibited on behalf of the claimants/respondent No. 1 and 2. Before the Claims Tribunal it was also indicated that the deceased had done one year management course from NIS Academy, 2nd Floor, Kumar Tower Boring Road Crossing, Patna and the claimants had also got the paper showing admission of the deceased as Exhibit - 10. Sri Singh, learned counsel for the claimants/respondent No. 1 and 2 submits that in view of unimpeachable evidence brought on record from the side of the claimants to show that the deceased was an employee (Tele Marketing Executive) in INFO VISION SOLUTIONS and was earning Rs. 5,500/- per month salary, according to learned counsel for the claimants, the Claims Tribunal has rightly considered the income of the deceased on the basis of evidence on record and after calculating the same in accordance with law, has directed the insurance company to pay the compensation amount. Controverting the submission of learned counsel for the appellant on the point of deduction of 50% as personal expenses in respect of deceased, learned counsel for the respondent No. 1 and 2 submits that the learned Claims Tribunal of-course has not deducted 50% amount from the

income as personal expenses of the deceased, at the same time, the learned Claims Tribunal has not enhanced the income of the deceased on the basis of future prospect. He submits that the Apex Court in Sarla Verma Case (Supra) has also declared for adding the future prospect and as such, 50% of income was to be added with the annual income in terms of Sarla Verma Case (Supra). However, the learned Claims Tribunal has failed to enhance the income in terms of paragraph No. 24 of the judgment of the Apex Court in Sarla Verma Case (Supra). Learned counsel for the respondent No. 1 and 2 has further argued that besides documentary evidence from the side of claimants" two witnesses were examined. However, save and except filing written statement from the side of the appellant/insurance company, no evidence, either documentary or oral, has been brought on record to controvert the claimants" case. In sum and substance, it has been argued by learned counsel for the respondent No. 1 and 2, that the impugned judgment and award may not be interfered with.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. At the time of hearing none had appeared on behalf of the respondent No. 3 and 4/owner and driver of the offending vehicle, respectively. After filing of the claim case under Section 166 of the Motor Vehicle Act, from the claimants" side one another petition was filed under Section 140 of the Motor Vehicle Act for paying interim compensation of Rs. 5,0000/- which was allowed and record suggests that payment of the said amount was also made to the claimants. It is not in dispute that the offending vehicle was under insurance cover of the appellant. This has not been disputed nor the insurance company has taken any other ground in the present appeal, save and except, quantum of compensation amount. So far the first plea which was taken by learned counsel for the appellant that income of the deceased was incorrectly accepted as Rs. 5,500/- per month is concerned, the court is of the opinion that this submission has got no substance. Before the Claims Tribunal, to substantiate the income of the deceased, the claimants had got exhibited the appointment letter of the deceased, which has been marked as Exhibit - 1/1 and also a certificate issued by the employer of the deceased, which suggests that the deceased had lastly drawn salary of Rs. 5,500/-. Prima facie, I do not find any ground to disbelieve those documents. The reason is that at the time while those documents were being got exhibited, no objection was raised from the side of the appellant, and once the documents were got exhibited, without any objection, at subsequent stage, the insurance company may not be allowed to raise any objection. Accordingly, the income of the deceased which was taken note by the Claims Tribunal as Rs. 5,500/- per month being salary of the deceased is unquestionable. Accordingly, the court is of the considered opinion that the income of the deceased has rightly been considered in calculating the compensation amount. So far as the second ground which has been raised by learned counsel for the appellant regarding deduction of 50% from the income of the deceased as his personal expenditure is concerned, it is true that in Sarla Verma Case (Supra) it has been held that 50% of income may be deducted, but

fact remains that while considering the income of the deceased for calculation of compensation amount, the learned Claims Tribunal has also not taken into account future prospects which was required to be taken into account in view of the judgment of the Apex Court in Sarla Verma Case (Supra). At this juncture it is appropriate to quote paragraph No. 24 of the said judgment in Sarla Verma Case (Supra), which is as follows:-

24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

7. Moreover, in respect of deduction of 50%, of course the Apex Court in Sarla Verma Case (Supra) has observed to deduct 50% of income as living expenses of the deceased, but the Apex Court has indicated that normally such deduction may be made. However, in view of the fact that in the present case the other direction of the Apex Court regarding addition of 50% of salary, as indicated in paragraph No. 24 of the judgment in Sarla Verma Case (Supra) has not been followed and addition of 50% salary has not been done, the court considers that the compensation amount directed to be paid by the Claims Tribunal is just and as such, only on technicality, the impugned judgment and award may not be interfered with.

8. Sri Shambhu Sharan Singh, learned counsel for the claimants/respondent No. 1 and 2 has rightly relied on this issue on a judgment of the Apex Court reported in P.S. Somanathan and Others Vs. District Insurance Officer and Another, (2011) ACJ 737 : (2011) 112 CLT 208 : (2011) 2 JT 242 : (2011) 162 PLR 497 : (2011) 2 RCR(Civil) 228 : (2011) 2 SCALE 473 : (2011) 3 SCC 566 : (2011) 2 SCC(Cri) 48 : (2011) 4 SCR 367 : (2011) 1 TAC 861 : (2012) AIRSCW 2264 : (2011) AIRSCW 1313 The Apex Court has observed that determination of compensation must be liberal, not niggardly since the law values life and limb in a free country in generous scales. In the case in hand the son of respondent No. 1 and 2 who was earning Rs. 5500/- per month, had died in a vehicular accident, which

occurred long back in the month of January, 2008 itself. Merely on the ground that instead of deduction of 50% of income of the deceased, only 1/3rd has been deducted, the judgment and award may not be interfered with particularly, in view of the fact that regarding future prospects learned Claims Tribunal has not granted addition of 50% in the income in terms of paragraph No. 24 of the Sarla Verma Case (Supra).

9. In view of the facts and circumstances, I do not find any ground to interfere with the impugned judgment and award. The appeal stands dismissed.

10. The appellant is directed to pay the compensation amount in terms of the judgment and award of the Claims Tribunal preferably within a period of two months from the date of receipt/production of a copy of this order.