**(2016) 12 MP CK 0014**

**In the Madhya Pradesh High Court**

**Case No :** M.A. No.1014 of 2014

United India Insurance Co. Ltd. APPELLANT

Vs

Ravindra Kaur RESPONDENT

**Date of Decision :** 06-12-2016

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

**Citation :** (2017) 2 TAC 252

**Hon'ble Judges :** Vivek Agarwal, J.

**Bench :** Single Bench

**Advocate :** Shri B.K. Agrawal, learned counsel, for the United India Insurance Co. Ltd.; Smt. Meena Singhal, learned counsel, for the Claimants

**Final Decision :** Allowed

## Judgement

Vivek Agarwal, J.—First Miscellaneous Appeal has been filed by the Insurance Company assailing the award dated 01.08.2014 passed by the Motor Accident Claims Tribunal, Gwalior in Claim Case No.77/2013 on the ground that the award granted by the Claims Tribunal is on the higher side and the same deserves to be modified inasmuch as the Claims Tribunal has erred in taking into account three sources of income of the deceased namely agricultural income, income from sale of milk and income from renting out the tractor. According to the Insurance Company these three incomes could not have been clubbed and therefore the award as has been passed by the Tribunal needs to be moderated and down-scaled.

2. It is also submitted that dependency of the deceased''s father has been wrongly taken inasmuch as there are other brothers of the deceased and therefore dependency of the father on the deceased was not proved and therefore in spite of making ? deduction from the notional income, a deduction of ? amount should have been made.

3. In support of their contentions, the Insurance Company has placed reliance on

 

the judgment of the Supreme Court in the case of Ponnumany & another v. V.A. Mohanan & Others : 2008 ACJ 1338, wherein the Supreme Court has held that though the material was placed by the appellant to show that the deceased owned the agricultural land, but there was no convincing evidence to prove the income out of it and since the land was owned by him, it cannot be said that there is total loss of income due to the injuries suffered by the appellant.

4. Similarly, reliance has been placed on the judgment of the Supreme Court in the case of Syed Basheer Ahamed & Others v. Mohd. Jameel & Another : 2009 (1) T.A.C.794 (SC), wherein in para 13, it has been held that a bare assertion in regard to income in the claim petition is not sufficient and onus lies on the claimants to prove this fact by leading reliable and cogent evidence before the Tribunal.

5. Similarly, reliance has been placed on the judgment of the Supreme Court in the case of Mamta alias Kala Devi & Ors. v. Shyam Sunder Vaishnav & Ors. : MACD 2014 (SC) 1, wherein in para 10, the claim of the claimants that the deceased was earning over and above his salary from other sources was rejected.

6. Reliance has also been placed on the judgment of the Supreme Court in the case of Jayakodi & Others v. Branch Manager, National Insurance Co. Ltd. & Another : 2010 ACJ 697, wherein in para 6 a sum of Rs.5,000/- was awarded for loss of estate and Rs.5,000/- for funeral expenses. It was also held that the father, sister and brothers were neither dependents nor legal representatives of the deceased and therefore the entire compensation amount shall be taken by his mother.

7. Similarly, reliance has been placed on the judgment of this Court in the case of Vimla v. Dinesh Kumar Sharma & Others : 2008 ACJ 816 wherein in paras 16 and 17, a direction was given for apportionment of the compensation between the widow and the mother of the deceased in the ratio of 70:30.

8. The Insurance Company has also placed reliance on the judgment of this Court in the case of Sukmani alias Jyoti v. Jagdish : 2012 (1) T.A.C.111 (MP) wherein multiplier of 15 for the age of 35 years was upheld and further held that only mother can receive compensation on death of married son.

9. Before adverting to the appeal filed by the claimants, it will be necessary to deal with various case laws cited by the Insurance Company for reduction of compensation awarded by the Tribunal.

10. As far as the law laid down in the case of Ponnumany & another is concerned, it deals with the issue that there should be convincing material to deal with income out of the agricultural land. In the present case all the witnesses of the claimants had categorically deposed that the deceased had more than 05 hectares of land generating 4.00 Lacs of annual income, yet only 1.00 Lac of annual income has been taken into consideration by the Claims Tribunal. This evidence remained unrebutted and could not be countered by the

 

Insurance Company, therefore the ratio of this judgment is of no use to the Insurance Company.

11. The ratio of the judgment in the case Syed Basheer Ahamed & Others is also the same that earnings of the deceased are to be proved by the claimants. There is no quarrel to the said proposition but it is evident from the evidence available on record that the claimants had proved the income of the deceased as has been accepted by the Claims Tribunal.

12. The ratio of the judgment in the case of Mamta alias Kala Devi & Ors. is in regard to salarised employee that income from other sources by way of work as Commission Agent was rejected. In the present case the facts are different and it is common practise in rural India to supplement agricultural income through dairy farming and renting tractor-trolley for agricultural operations to persons having smaller holdings therefore there being a connect between the three sources of income from which the claimant asserted income of the deceased, ratio of judgment in the case of Mamta alias Kala Devi & Ors. is also not applicable to the facts and circumstances of the case.

13. As far as ratio in the case of Jayakodi & Others is concerned, the two issues have been decided namely that a sum of Rs.5,000/- was awarded for loss of estate and for funeral expenses. In that case, the accident had taken place on 16.12.2001 wheres in the present case, the accident is of the year 2013 and therefore in regard to award of compensation for funeral expenses and loss of estate etc., the judgment in the case of Neeta & Others v. Divisional Manager, Maharashtra State Road Transport Corporation : 2015 ACJ 598 is more relevant. As far as the issue of dependency of the father is concerned, in the case of Jayakodi & Others, it was held that the father, brother and sister were not dependents on the deceased. In the present case, the age of the father on the date of accident was 80 years, he was not in a position to carry out agricultural operations and was definitely dependent on the son therefore the facts of the present case are different from that of Jayakodi & Others and are distinguishable.

14. Ratio in the case of Vimla is also different and is distinguishable inasmuch as the widow had deposed in her examination that she was living separately with her husband at the time of the accident and her in-laws and other members were residing separately and this evidence was not rebutted by the other claimants. In the present case, there is no rebuttal to the evidence that the father of the deceased was also staying along with the deceased and was dependent on him.

15. Similarly, the ratio of the judgment in the case of Sukmani alias Jyoti is also distinguishable and is not applicable to the facts and circumstances of the case inasmuch as no amount has been awarded in favour of the father of the deceased by the Claims Tribunal. In fact, it is the arguments of the learned counsel for the claimants that in the light of the judgment in the case of Neeta & Others even the father was entitled to loss of love and affection, which this Court will examine while considering the appeal filed by the claimants. Thus, there is

 

no substance in the appeal filed by the Insurance Company for reduction of the claim amount, thus the appeal fails and is hereby dismissed.

16. After vehemently arguing for sometime, the learned counsel for the claimants in MA No.1048/2014 made submission to the effect that the income has been computed on the lower side and multiplier of 15 was wrongly applied and multiplier of 16 should have been applied, she has submitted that there should have been addition of 50% of the income for future prospects to the notional income and then the claim amount should have been calculated. Reliance has been placed on the judgment of the Supreme Court in the case of V. Mekala v. M. Malathi & Another : 2014 ACJ 1441, in which the claimant-appellant was a student of 11th Standard and had a brilliant career prospects ahead of her and therefore 50% addition was made to the notional income towards the future prospects. Reliance has been placed on the judgment of this Court in the case of Smt. Nirmala & Others v. Fazal Khan & Others : 2007 (1) ACCD 406 (MP) that the income if proved through oral evidence, then it cannot be rejected only on the ground that no documentary evidence was filed. Reliance has also been placed on the judgment of the Supreme Court in the case of Rajesh & Others v. Rajbir Singh & Others : 2013 ACJ 1403 wherein in paras 11 and 12, the Supreme Court has held in regard to addition to the actual income of the deceased while computing future prospects. Reliance has been placed on the judgment of the Supreme Court in the case of Sonabanu Nazirbhai Mirza & Others v. Ahmedabad Municipal Transport Service : 2013 ACJ 2733 wherein it has been held that the Supreme Court had added 50% of the income for future prospects and awarded Rs.1.00 Lac for loss of care and guidance to minor children and Rs.25,000/- towards pain and sufferings. Reliance has also been placed on the judgment of the Supreme Court in the case of Mamta & Ors. v. National Insurance Co. Ltd. : MACD 2009 (SC) 443 wherein it was held that the appellate Court should not have disturbed the finding of fact arrived at by the trial Court in regard to the income of the deceased. Reliance has also been placed on the judgment in the case of Munnalal Jain & Another v. Vipin Kumar Sharma & Others : 2015 ACJ 1985 to support addition of 50% of the income of the deceased to his actual income for the purpose of computing compensation. Similarly, reliance has been placed on the judgment of the Supreme Court in the case of Santosh Devi v. National Insurance Co. Ltd. & Others : 2012 ACJ 1428 to bring home the issue of addition of the income for future prospects for self-employed persons and persons engaged on fixed wages. Reliance has also been placed on the decision in the case of Neeta & Others v. Divisional Manager, Maharashtra State Road Transport Corporation : 2015 ACJ 598. Thus, to deal with the arguments of the learned counsel for the claimants, it is apparent that as far as addition of the income for future prospects is concerned, the sources of income namely the agricultural land, tractor and buffaloes remained intact and continued to be sources of income for the claimants, therefore there is no justification in yielding to forceful arguments of the learned counsel of the claimants to add 50% of notional income towards future prospects. Similarly, the issue of multiplier has

been settled in the case of Smt. Sarla Verma v. Delhi Transport Corporation : 2009 (II) T.A.C.671 (SC) and as the age of the claimants on the date of the accident was more than 35 years, therefore multiplier of 15 too has been rightly applied by the Claims Tribunal.

17. It is seen that the Claims Tribunal has not awarded any compensation on account of loss of love and affection for two children and loss of love and affection for the parents. Therefore, this Court deems it appropriate to add a sum of Rs.2,00,000/- (Rs.Two Lacs) for loss of love and affection to claimant daughter Ku. Navdeep and claimant son Dalveer Singh and Rs.50,000/- (Fifty Thousand only) for love and affection to the claimant father of the deceased, i.e., Tek Singh Sardar. Thus, the appeal of the claimants is partly allowed and the compensation amount already awarded by the Claims Tribunal is enhanced by a sum of Rs.2,50,000/-, i.e., from Rs.19,08,752/- to Rs.21,58,752/-. Other aspects of the award shall remain as they are.

Certified copy as per rules.

 