(2015) 08 RAJ CK 0129

In the Rajasthan High Court

Case No : SB Civil Misc. Appeal No. 2045 of 2015

United India Insurance Company Ltd. APPELLANT

Vs

Barji Devi and Others RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 133, 166, 173

Citation : (2015) 08 RAJ CK 0129

Hon'ble Judges : J.K. Ranka, J

Bench : Single Bench

Advocate : Tripurari Sharma, Counsel, for the Appellant

Final Decision : Dismissed

Judgement

J.K. Ranka, J—Instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the appellant-Insurance Company assailing the award dt. 26/03/2015 passed by the Motor Accident Claims Tribunal, Neem Ka Thana, District Sikar in MACT Claim Case No. 99/2012 whereby a compensation to the tune of Rs. 16,78,080/- has been awarded to the claimants-respondents.

2. Brief facts of the case are that on 26/01/2012 at about 6.30 p.m. a Jeep bearing No. RJ-23-UA-2482, which was being driven by its driver (Mukesh Kumar) in a high speed, in rash & negligent manner and on wring side, hit motorcycle of deceased-Puranmal at Manakshas Sarai road near Bagoli power house, as a result of which Puranmal sustained fatal injuries and expired on the spot. FIR to this effect came to be lodged with the concerned police station and a claim petition was filed before the Tribunal claiming compensation alleging that the deceased was working in PHED department of the State Government as a Beldar and was aged about 21 years at the time of accident and was drawing salary to the tune of Rs. 10,174/- per month. The Tribunal, after detailed analysis, awarded compensation to the extent of Rs. 16,78,080/- by the impugned award which is assailed herein.

3. Ld. counsel for the appellant-Insurance Company contended that the impugned award is unjustified, perverse and several illegalities have been committed by the Tribunal in passing the impugned award. He drew attention of this Court to the fact that admittedly the deceased was a Beldar and was aged about 21 years at the time when the accident occurred and in so far as the multiplier is concerned, it was applied of 18 which is incorrect and based on the judgment of Hon''ble Apex Court in the case of New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, (2007) ACJ 2188 : AIR 2007 SC 2649 : (2008) 149 PLR 784 : (2007) 9 SCALE 216 : (2007) 10 SCC 1 : (2007) 8 SCR 237 : (2007) AIRSCW 4779 : (2007) 5 Supreme 460 wherein three Judges'' Bench of the Hon''ble Apex Court had opined that in a case where the deceased happens to be bachelor, then age of father and mother, lower out of the two, may be taken as the basis whereas the Tribunal in the instant case has applied multiplier of 18 taking into consideration the age of the deceased himself which is contrary to the law laid down by the Hon''ble Apex Court.

4. Counsel further contended that there is no justification for allowing future prospect as the deceased was just 21 years of age and had just entered into service of PHED and therefore, there was no question of allowing future prospect to the extent of 50%. He further contended that the other amount allowed on account of loss of love and affection, loss of estate and funeral expenses is too excessive and unreasonable and therefore, the order needs consideration and the amount which has been excessively allowed deserves to be reduced suitably taking into consideration the other several judgments of the Hon''ble Apex Court and this Court wherein time and again it has been held that only just and proper compensation is to be allowed while in the instant case, the amount allowed to the tune of Rs. 16,78,080/- is highly excessive.

5. I have considered the arguments advanced by counsel for the appellant and have gone through the order impugned. In my view, the order of the Tribunal deserves to be upheld for the reasons henceforth.

6. Admittedly, counsel for the appellant has also not brought on any material on record to dispel the findings that Mukesh Kumar, driver of the offending vehicle was not negligent and it has been found by the Tribunal that Mukesh Kumar was driving the vehicle in a high speed, in a rash and negligent manner and on account of unfortunate accident, deceased-Puranmal received serious, grievous and fatal injuries due to which he expired on the spot. Admittedly, the vehicle, which was being driven by Mukesh Kumar was found involved in the accident and based on the FIR, site plan, notice under Section 133 and other evidence, this issue has already been considered in detail by the Tribunal, and therefore, in my view, when the Tribunal has already considered all the facts and evidence, it is certainly proved that the vehicle (Jeep) was admittedly insured with the appellant-Insurance Company and therefore, the view of the Tribunal appears to be well reasoned.

7. Admittedly, Mukesh Kumar was also having a valid license to drive the vehicle

and no objection was even raised by the appellant before the Tribunal and the appellant-Insurance Company has also admitted that the vehicle in question, which was found involved in the accident, was duly insured with it and no serious objection was raised by the appellant before the Tribunal and therefore, in so far as the legal issue raised by the appellant is concerned, has no force.

8. Coming to the quantum of compensation, in my view, that too has been adequately allowed by the Tribunal. The Hon''ble Apex Court, time and again, has opined that in a case of an accident or under the Motor Vehicles Act, just, fair and proper compensation is required to be allowed. Though the proposition laid in the case of New India Assurance Co. Ltd. v. Shanti Pathak and others (supra) has been relied upon by counsel for the appellant, in that case the deceased was aged about 25 years and the Tribunal applied multiplier of 17 taking into consideration the age of the deceased and the High Court has also upheld the said view but the Hon''ble Apex Court was of the opinion that the multiplier is to be applied of 5 considering the fact that mother of the deceased was 65 years of age at the time of accident and age of the father was more than 65 years and therefore, the Hon''ble Apex Court applied the multiplier taking into consideration the age of the mother.

9. However, the Hon''ble Apex Court in the case of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, (2012) ACJ 2002 : (2012) 6 JT 301 : (2012) 4 RCR(Civil) 343 : (2012) 11 SCC 738 , had a similar occasion to consider the identical issue wherein the deceased was 26 years of age and was a bachelor and the Hon''ble Apex Court, after considering various judgments, was of the view that selection of multiplier is based on the age of the deceased and not on the basis of age of the dependent and observed in Para Nos. 14, 15 and 16 as under:-

"14. Admittedly both the parents, 1st appellant Amrit Bhanu Shali (father) and 2nd appellant Smt. Sarlaben (mother) have been held to be dependents of deceased Ritesh Bhanu Shali and, therefore, the Tribunal held that the 1st appellant and the 2nd appellant have the right to get the compensation. On the date of the accident the 3rd appellant Mamta was not married but by the time the case was heard by the Tribunal the 3rd appellant Mamta had already been married. In these circumstances, she is not found to be dependent upon the deceased. Thus, both the parents being dependents i.e. father and the mother, the Tribunal rightly restricted the "personal and living expenses" of the deceased of 50% and contribution to the family was required to be taken as 50% as per the decision of this Court in Sarla Verma.

15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation.

16. In Sarla Verma this Court held that the multiplier to be used should be as

mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13."

10. The three Judges'' Bench of the Hon''ble Apex Court in a recent case of Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others(2015) 2 ACC 806 : (2015) ACJ 1985 : (2015) 7 AD (SC) 185 : (2015) 4 ALD 114 : (2015) 4 ALLMR 436 : (2015) 4 BomCR 72 : (2015) 3 CGLJ 93 : (2015) 3 RCR(Civil) 447 : (2015) 3 RLW 2021 : (2015) 6 SCALE 522 : (2015) 6 SCC 347 : (2015) 2 WLN 113 had an occasion to consider the identical issue where also admittedly the deceased was aged about 30 years, self employed and bachelor wherein it has been held as under:-

"11. The remaining question is only on multiplier. The High Court following Santosh Devi, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote: (Reshma Kumar case, SCC p.88, para 36)

36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made Under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions 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. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma.

12. In Sarla Verma, at para 19, a two-Judge Bench dealt with this aspect in Step 2. To quote: (SCC p.133)

"19....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 this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

13. The multiplier, in the case of the age of the deceased between 26 to 30 years is 17. There is no dispute or grievance on fixation of monthly income as Rs. 12,000.00 by the High Court."

11. Therefore, though the judgment in the case of Shanti Pathak (supra), relied upon by counsel for the appellant, supports his contention but the later view is also by a three Judges'' Bench which has also taken into consideration the earlier three Judges Bench judgment, referred to supra and in my view as well, the view, as adopted by the Tribunal taking into consideration the latest judgments of the Hon''ble Apex Court, appears to be just and proper and needs no interference.

12. The another issue raised by counsel for the appellant was about future prospect which also, in my view, is required to be upheld and the Tribunal has rightly allowed future prospect. Admittedly, the deceased was employed with PHED, which is a department of the State Government, as a Beldar and was drawing salary of Rs. 10,174/- per month when he died on account of the unfortunate accident and admittedly, the deceased was having a stable and permanent job and regular income, and was just about 21 years of age and had a long life to live and may have reached at different higher position over the years. In the case of 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 , the Hon''ble Apex Court has held that when a person is in a stable job, there is permanency of income and regular income, then future prospect has to be allowed and, therefore, in my view, the Tribunal has rightly allowed the future prospect which needs no interference. The other amount allowed by the Tribunal is also about loss of estate, loss of love and affection and funeral expenses at the rate of Rs. 10,000/- each which by no stretch of imagination can be said to be excessive and accordingly, the order of the Tribunal is just and proper and I do not find any error, adversity or perversity in the same so as to call for interference. No question of law is found to be involved in the instant appeal.

13. Consequently, the appeal, being devoid of merit, is hereby dismissed.

