
(2016) 03 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 943/2001

United India Insurance Company Ltd.	APPELLANT
Vs	
Jebuna and Others	RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, Section 158, Section 166, Section 168, Section 173

Citation : (2016) 2 DNJ 949 : (2016) 3 RLW 1986

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : U.C.S. Singhvi, for the Appellant; Mukesh Vyas and Amit Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—1. Aggrieved by the impugned judgment and award dated 21.04.2001 passed by the Motor Accidents Claims Tribunal, Bikaner (for short "the learned Tribunal"), the appellant-insurer has laid this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act"). By the award impugned, the learned Tribunal has quantified compensation to the tune of Rs. 10,15,000/- and also allowed interest on the said amount @ 9% per annum from the date of filing of the claim petition.

2. The facts apposite for the purpose of this appeal are that on 14.02.1997 at about 8:45 p.m. Mr. Bhanwardeen was going on Moped No. RJ 07/JM 9429 as pillion rider which was driven by one Anwar Ali. When the moped reached near Ridmalsar Bus Stand, the moped met with an accident with Truck No. RJ 07/G 2028 which was driven rashly and negligently at a fast speed by its driver. Due to accident, Bhanwardeen suffered grave and serious injuries and, therefore, he was taken to hospital but during treatment on the same day, he succumbed to the injuries. In that background, the respondents-claimants who are legal heirs and dependents of deceased Bhanwardeen filed a claim petition against the

driver, owner and insurer of the offending vehicle under Section 140 and 166 of the Act. Being insurer of the offending truck, the appellant was also impleaded as party non-claimant. The respondents-claimants in the claim petition, inter alia, averred that accident occurred due to rash and negligent driving of the truck by its driver and, therefore, all the non-claimants including the appellant-insurer are jointly and severally liable to pay compensation. For quantifying the amount of compensation, age of deceased was shown as 45 years and his monthly salary was indicated as Rs. 3200/-. All the respondents-claimants being widow and kids of the deceased staked claim for compensation as his dependents. The total amount of claim was quantified at Rs. 13,76,000/-.

3. The claim petition is contested by the appellant-insurer and reply to the claim petition is submitted denying all the averments contained therein. Besides the legal heirs of deceased Bhanwardeen, Anwar ali who was driving the moped also laid a separate claim for compensation on account of injuries suffered by him in the accident. The learned Tribunal consolidated both the claim cases. On the basis of pleadings of rival parties, the learned Tribunal framed in all six issues for determination. For substantiating their claim, respondents-claimants produced two witnesses namely AW-1 Smt. Jebuna and AW-2 Anwar Ali besides documentary evidence. AW-2 Anwar Ali was examined as eyewitness whereas AW-1 Smt. Jebuna testified on oath to prove quantum of compensation. On behalf of appellant-insurer, no evidence was tendered.

4. After conclusion of the evidence of the rival parties, the learned Tribunal decided both the claims and in favour of the respondents-claimants awarded aforementioned compensation. The learned Tribunal proceeded to decide issue No. 1 & 4 simultaneously and upon appreciation of evidence recorded a definite finding in favour of respondents-claimants on issue No. 1. As regards issue No. 4 burden of which was on the appellant-insurer, the same was decided against the appellant-insurer for want of any evidence. While adverting to the issue No. 2 & 5, the learned Tribunal decided both these issues simultaneously in favour of the respondents-claimants. After analysing the entire evidence of the respondents-claimants which remained uncontroverted and taking note of the fact that deceased was a government employee, the learned Tribunal moderately assessed the monthly income of the deceased to the tune of Rs. 5,200/-. While taking note of the fact that at the time of accidental death, deceased was 45 years of age and at the relevant point of time, age of superannuation was 58 years, the learned Tribunal determined the quantum of compensation for loss of dependency to the tune of Rs. 9,80,000/-. The Tribunal applied multiplier of 14 keeping in view the age of the deceased. That apart, considering status of the deceased who was a government employee, employed as Pump Driver with the Public Health Engineering Department, the learned Tribunal also awarded compensation for the loss of future prospects at the rate of 50% of the salary of the deceased. For pressing into service, 50% of the salary of the deceased as future prospects, the learned Tribunal has also given due credence to the periodical revision of the pay scales of the government employees. As regards

loss of consortium, learned Tribunal awarded a sum of Rs. 10,000/- to the first respondent and for loss of love and affection to the other claimants, awarded Rs. 5,000/- each i.e. Rs. 30,000/-.

5. Learned counsel for the appellant Mr. U.C.S. Singhvi has vehemently argued that learned Tribunal has erred in allowing 50% of the salary for future prospects to the respondents-claimants. Learned counsel would urge that looking to the age of the deceased, at the most 30% of the salary as future prospects is permissible and, therefore, the award to that extent warrants interference. Learned counsel for the appellant further submits that learned Tribunal has erroneously applied multiplier of 14 whereas it ought to have been applied 13 in the instant case. In support of his arguments, learned counsel for the appellant has placed reliance on following decisions:--

"(1) Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr.: , (2009) 6 SCC 121

(2) Reshma Kumari & Ors. v. Madan Mohan & Anr.: , (2013) 9 SCC 65"

6. Per contra, Mr. Mukesh Vyas learned counsel appearing for the respondents-claimants would contend that learned Tribunal has assessed a fair and equitable compensation in the backdrop of peculiar facts and circumstances of the instant case which requires no interference. Learned counsel submits that multiplier of 14 applied by the learned Tribunal is in consonance and in conformity with the Second Schedule to the Act and, therefore, on this count, no interference is warranted. While joining issue with the appellant on future prospects, learned counsel for the respondents-claimants has urged that at the time of passing of the judgment and award, the age of superannuation of government employee was 58 years but subsequently it was raised to 60 years and as such considering the age of superannuation which the deceased would have attained in the year 2010, the equitable approach of the learned Tribunal in this behalf cannot be faulted. Learned counsel further submits that 6th Pay Commission came into force from 2006 and had the deceased remained alive, he would have been allowed more lucrative grade and emoluments, has been rightly taken into consideration by the Tribunal for quantifying just compensation under this head. Learned counsel has also urged that amount of compensation awarded by the Tribunal for loss of consortium as well as loss of love and affection is grossly inadequate and the Supreme Court in its recent pronouncements has awarded handsome amount for loss of consortium and loss of love and affection. In substance, the submission of learned counsel for the respondents is that in general, the amount of compensation determined by the learned Tribunal is fair, just and reasonable which is not liable to be tinkered with in exercise of appellate jurisdiction by this Court.

7. I have heard learned counsel for the parties and perused the materials available on record.

8. There remains no quarrel that accident caused by the insured vehicle has

engulfed life of Bhanwardeen who was bread-winner for the entire family of claimants. The untimely death of deceased Bhanwardeen at the age of 45 has left the entire bereaved family in lurch inasmuch as the first claimant is widowed at the age of 40 and all the four minor kids are deprived of love and affection of their father. It is an admitted fact that at the time of accident which resulted in death of Bhanwardeen, he was in permanent employment with the Public Health Engineering Department and he was also earning income from agriculture. His death at the age of 45 has obviously shortened his service tenure of almost 15 years and other monetary benefits which he would have earned had he remained alive. The crucial contention sought to be raised by the insurer that learned Tribunal has erroneously awarded 50% of the actual salary towards future prospects instead of 30% do find support from the verdict in Sarla Verma (supra) as well as Reshma Kumari (supra) but then, for determining just compensation, no strait-jacket formula can be pressed into service. Normally, the Courts are expected to apply parameters and yardsticks set out by these legal precedents for quantifying the amount of compensation for future prospects but in the extraordinary circumstances and exceptional cases, departure from this principle cannot be ruled out. In Reshma Kumari (supra), Supreme Court while considering this aspect of the matter emphasised need for standardisation of addition to income for future prospects has held,-

"....A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases".

9. In the instant case, the extraordinary circumstances are apparent inasmuch as deceased who was a government employee died at the age of 45 and after his death pay scales were revised on implementation of 6th Pay Commission. Had he remained alive, he would have been benefitted on account of implementation of 6th Pay Commission and consequential revision in his pay scales till his superannuation in the year 2012 i.e. on attaining 60 years of age. Therefore, this is certainly an extraordinary circumstance which has persuaded this Court not to interfere with the impugned award. There is yet another aspect of the matter that learned Tribunal has awarded compensation for loss of consortium to the tune of Rs. 10,000/- to the first respondent and for loss of love and affection to all the four kids at the rate of Rs. 5,000/- each which is nothing but a pittance. A lady who has suffered widowhood at the age of 40 is required to be adequately compensated for loss of consortium and from any stretch of imagination, Rs. 10,000/- is grossly inadequate. Deprivation of love, affection and parental umbrella by the minor kids cannot be compensated in terms of money inasmuch as it is an irreparable loss. However, the learned Tribunal has awarded very meagre sum under this head to each minor kid. Therefore, these are all some of the important circumstances which have persuaded this Court not to interfere with the impugned award which is based on sound appreciation of evidence determining just and reasonable compensation. The multiplier applied by the learned Tribunal though vociferously canvassed by the appellant as erroneous is also an argument which appears to be quite alluring but lacking the requisite

sting to interfere with the impugned award. Had the learned Tribunal awarded adequate compensation for loss of consortium and loss of love and affection, in the considered opinion of this Court, the magic figure of amount of compensation determined would not have altered to the advantage of the appellant-insurer is also a sufficient reason which has dissuaded this Court to interfere with the impugned award. In the claim petition laid under the Act, the Court/Tribunal is expected to have far-sighted/judicious rather than myopic vision to enable it for determining just and reasonable compensation.

10. A three-judges Bench of Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 has taken note of the revision of salary by 6th Pay Commission with effect from 01.01.2006 for reassessing the compensation for the claimants in that case. The Court held,-

"The petitioners have produced before this Court Annexure P-4, salary certificate of the deceased Bijender Singh which shows that after the revision of the salary by the Sixth Pay Commission with effect from 1-1-2006, the deceased had a monthly salary of Rs. 9520. It is submitted that since the Sixth Pay Commission benefits were announced only subsequently making it to operate retrospectively from 1-1-2006, the salary certificate could not be produced before the Tribunal or the High Court. Applying the principles laid down in *Sarla Verma* case as explained in *Santosh Devi* case, and in the instant case, the compensation has to be reassessed as follows:

The amount will carry interest @ 7.5% as awarded by the Tribunal from the date of the filing of the petition viz. 26-11-2007 till realisation."

11. In the said verdict, Supreme Court has dilated on non-pecuniary head of damages namely loss of consortium to the spouse and while lambasting the ancient approach of awarding meagre amount of compensation proceeded to hold that at least Rs. 1,00,000/- be awarded for loss of consortium. The Court held,-

"The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in *Santosh Devi*. We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs. 2500 to Rs. 10,000 in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In *Sarla Verma* case, it was held that compensation for loss of consortium should be in the range of Rs. 5000 to Rs. 10,000. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care

and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

12. The Court has further issued a word of caution to the Court/Tribunal not to succumb to niceties or technicalities while determining just compensation. The Court held,-

"Whether the Tribunal is competent to award compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At para 10 of Nagappa case, it was held as follows: (SCC p. 280)

10. Thereafter, Section 168 empowers the Claims Tribunal to make an award determining the amount of compensation which appears to it to be just. Therefore, the only requirement for determining the compensation is that it must be just. There is no other limitation or restriction on its power for awarding just compensation.

The principle was followed in the later decisions in *Oriental Insurance Co. Ltd. v. Mohd. Nasir* and in *Ningamma v. United India Insurance Co. Ltd.*

Underlying principle discussed in the above decisions is with regard to the duty of the court to fix a just compensation and it has now become settled law that the court should not succumb to niceties or technicalities, in such matters. Attempt of the court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

There is another reason why the court should award proper compensation irrespective of the claim and, if required, even in excess of the claim. After the amendment of the Act by Act 54 of 1994 with effect from 14-11-1994, the report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under subsection (6) of Section 158 has to be treated as an application for compensation."

13. In view of foregoing discussions and the law laid down by the Supreme Court

in Rajesh (supra), I feel dissuaded to interfere with the impugned judgment and award in this appeal for doing substantial justice in the matter.

14. Resultantly, the appeal fails and the same is hereby dismissed.

15. No order as to costs.