(2018) 12 BOM CK 0150

In the Bombay High Court

Case No : First Appeal No. 1515 Of 2006 With Cross Objection No. 28182 Of 2006

United India Insurance Company Ltd APPELLANT

Vs

Seepa And Ors RESPONDENT

Date of Decision : 22-12-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173
Code of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2018) 12 BOM CK 0150

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : S.S. Vidyarthi, V.D. Jaisingh

Final Decision : Dismissed/ Partly Allowed

Judgement

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the said Act') has been preferred by the Insurance Company as it is aggrieved by the order passed by the Motor Accident Claims Tribunal, Mumbai, dated 25.10.2005, thereby partly allowing the claim petition filed by the respondent nos.1 and 2 herein under Section 166 of the said Act and awarding compensation of an amount of Rs.68,23,000/-. The respondent nos.1 and 2-claimants being dissatisfied with the quantum of compensation as awarded have filed cross-objections seeking further enhancement.

2. The facts in brief according to the claimants are that the husband of claimant no.1 and father of claimant no.2-Shivram Nake was working as the Vice President (Executive) of IndusInd Bank and was the only earning member of the family. On 06.09.1995, Shivram Nake was travelling alongwith his relatives in a Maruti Car. The said car met with an accident as it was dashed by a truck coming from the opposite side. As a result of that accident, said Shivram Nake expired. The deceased was aged 52 years and was having annual income of Rs.12,00,000/-. The offending truck owned by the respondent no.3 was insured

with the appellant-Insurance Company and by pleading that the accident occurred on account of rash and negligent driving of the driver of the truck, claim petition under Section 166 of the said Act was filed seeking compensation of an amount of Rs.100,00,000/-.

3. The Insurance Company opposed the claim by filing written statement at Exhibit 8. It was denied that the accident took place on account of rash and negligent driving of the truck driver. It was pleaded that the accident took place on account of negligent driving of the deceased. It was further pleaded that the owner as well as the insurer of the car in which the deceased was travelling had not been impleaded.

The claim as made was exorbitant and it was thus pleaded that the claim petition was liable to be rejected.

4. The claimants examined respondent no.1-widow of the deceased at Exhibit 14. Chief Manager (Human Resources) where the deceased was working was examined as PW2 at Exhibit 39. The third witness examined was the driver of a car who was following the car driven by the deceased. His deposition is at Exhibit 41. The Insurance Company did not examine any witness. On considering the aforesaid evidence, the Claims Tribunal held that the accident occurred on account of rash and negligent driving by the driver of the offending vehicle. A further finding was recorded that the deceased was earning Rs.12,00,000/- per annum. The annual income of the deceased was taken as Rs.13,00,000/- and on that basis by applying the multiplier of 11 and granting further statutory amounts, a total amount of Rs.68,23,000/- inclusive of the amount towards No Fault Liability was granted as compensation.

5. In this appeal, the respondents filed an application being Civil Application No.3176 of 2012 seeking permission to lead additional evidence under provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908. During the course of hearing, this Court by an order dated 08.10.2013 noted that an opportunity was liable to be granted to the claimants to adduce evidence on the income of the deceased as they sought to rely upon the documents dated 30.08.2012 in that regard. This Court therefore directed the parties to appear before the Claims Tribunal for adducing evidence by examining witnesses in that regard. Liberty was also granted to the Insurance Company to lead further evidence. It was directed that if the Claims Tribunal found the said documents to be proved, a finding with regard to quantum of compensation be also recorded. The matter was thus sent to the Claims Tribunal for recording additional evidence.

Pursuant to the aforesaid order, the claimants examined a witness at Exhibit 64. That witness was working in the Human Resources Department of the bank where the deceased was employed and he produced various documents on record. The Claims Tribunal held that insofar as the document at Exhibit 67 was concerned, it was a document signed by one Shri Milind Sable indicating the calculations towards the salary of the deceased. It was held that said document was technically proved but its contents were not proved. Similarly, another document which was a letter signed by said Shri Milind Sable on 30.08.2012 at Exhibit 72 was held to be not proved. As both the documents at Exhibits 67 and 72 were held to be not proved, the Claims Tribunal did not have any occasion to return any fresh finding on the quantum of compensation.

The aforesaid findings were returned to this Court vide order dated 10.03.2014.

6. Shri S.S. Vidyarthi, learned counsel for the appellant submitted that the amount of compensation as awarded by the Claims Tribunal was on a higher side. There was no evidence on record to indicate the annual income of the deceased as Rs.12,00,000/-. There was also no evidence to indicate that the deceased was permanently employed with the IndusInd Bank. Referring to the additional evidence on record, it was submitted that as per the pass-book at Exhibit 72, it was clear that the income earned by the deceased was on a lower side and Rs.12,00,000/- could not be taken into consideration as being the annual income. The learned counsel referred to the letter at Exhibit 32 issued by the Insurance Company and the fact that no reply thereto was given by the complainant. In the light of the fact that the contents of Exhibits 67 and 72 were not duly proved, there was no basis for awarding high compensation to the deceased. Even the annual report of the Bank at Exhibit 68 did not indicate the nature of employment of the deceased. It was thus submitted by relying upon the decisions in Sait Tarajee Khimchand & Others Versus Yelamarti Satyam Alias Satteyya & Others [(1972) 4 SCC 562], National Insurance Co. Ltd. Versus Pranay Sethi & Others [2017 ACJ 2700], Oriental Insurance Co. Ltd. Versus Meena Variyal & Others [(2007) 5 SCC 428], Life Insurance Corporation of India & Another Versus Ram Pal Singh Bisen [2010(4) SCC 491], Divisional Controller, Karnataka State Road Transport Corporation Versus Mahadeva Shetty & Another [2003 ACJ 1775], Kaushnuma Begum & Others Versus New India Assurance Co. Ltd. & Others [2001 ACJ 428] and State of Rajasthan & Another Versus Surendra Mohnot & Others [(2014 (14) SCC 77] that the amount of compensation as granted deserves to be set aside or at least reduced drastically.

7. Smt.V.D. Jaisingh, learned counsel for the respondent nos.1 and 2-Claimants on the other hand besides supporting the impugned judgment sought further enhancement in the amount of compensation. She submitted that the Claims Tribunal had rightly held that the accident occurred on account of rash and negligent driving of the driver of the offending vehicle. The employment of the deceased with IndusInd Bank was not in dispute and there was no reason to raise a doubt as regards the nature of his employment. The deceased was holding the post of Vice President and the age of retirement from service was 60 years. Referring to the evidence on record, it was submitted that besides the annual salary as taken at Rs.13,00,000/-, no provision had been made for loss of future prospects. It was very likely that the deceased would have been promoted as President at the Bank. The accident having been occurred in the year 1995, the deposition of the witnesses examined could not have been discarded on the

ground that they were not in service when the accident took place. From the records maintained by the Bank, it was clear that the deceased was working as the Vice President at the Bank and the annual report of the year 1994-95 made a reference to that effect. The learned counsel also referred to the documents at Exhibits 67 and 72 which were brought on record by way of additional evidence. That evidence indicated that the deceased was permanently employed with the Bank and hence the same was sufficient to enhance the amount of compensation. Reference was made to the application at Exhibit 51 as well as the documents at Exhibits 64, 69 to 72 in that regard. The learned counsel placed reliance on the decisions in Vimal Kanwar & Others Versus Kishore Dan & Others [AIR 2013 SC 3830], Rajesh & Others Versus Rajbir Singh & Others [2013 ACJ 1403], K.R. Madhusudhan & Others Versus Administrative Officer & Another [AIR 2011 SC 979], The New India Assurance Co.Ltd. Versus Meenaben Pankajkumar Joshi & Others [AIR 2007 NOC 1343], Oriental Insurance Co.Ltd. Versus Vatsal Timirbhai Shah & Others [AIR 2007 NOC 1344], P.C. Purushothama Reddiar Versus S. Perumal [AIR 1972 SC 608], and Messrs. Lionel Edwards Ltd. Versus State of West Bengal [AIR 1967 Calcutta 191].

8. The following points arise for determination:-

I) Whether the Insurance Company has proved that the amount of compensation as awarded by the Claims Tribunal is on a higher side?

II) If answer to Point No.(I) is in the negative, whether the claimants are entitled for any enhanced compensation?

9. I have heard learned counsel for the parties on the aforesaid points and with their assistance I have also perused the records of the case. The Claims Tribunal in paragraph 17 of its judgment has recorded a finding in the light of deposition of PW3 at Exhibit 41 that the accident in question occurred on account of rash and negligent driving of the offending vehicle. This finding was not very seriously challenged by the learned counsel for the appellant. The principal ground of challenge was the quantum of compensation as awarded. The claimant no.1 examined herself at Exhibit 14. She placed on record letter dated 06.06.1995 issued by IndusInd Bank which was at Exhibit 40 of the record. She stated that her husband was drawing salary of Rs.1,00,000/- per month when the accident occurred. He was also getting Rs.1,00,000/- per year as bonus. He was keeping Rs.2,500/- per month for his personal expenses and in September-1995 he was aged about 52 years. Her husband was holding the post of Vice President of IndusInd Bank. Their son was taking education at London and she was spending for his education. In her cross-examination, she stated that her husband joined services at IndusInd Bank in the year 1994 and that prior thereto he was working with the State Bank of India. The salary received by her husband was being deposited in his bank account. Her husband was filing income tax returns. She admitted that she was getting monthly pension of Rs.2,500/- on account of her husband's services with State Bank of India. She was cross-examined as regards the investment of the deceased in various shares.

The second witness examined was one Shri Narayan Ramchandran at Exhibit 39. He was working as the Chief Manager (Human Resources) at IndusInd Bank. He deposed that the deceased was working as the Vice President at the said Bank. He was shown the letter dated 06.06.1995 issued by the Bank indicating grant of increment to the deceased from April-1995. The said letter was signed by one Shri S.D. Wadivkar. He further deposed that in the year 2004, the Executive Director of the Bank was getting Rs.30,00,000/- to Rs.35,00,000/- as salary. In his cross-examination, he stated that the letter at Exhibit 40 signed by Shri S.D. Wadivkar was issued by the Bombay office. He stated that the deceased had not signed any acknowledgment with regard to the letter at Exhibit 40. He had joined the bank in the year 2002 which was much later than the appointment of the deceased.

The third witness at Exhibit 41 was the driver of the car following the car driven by the deceased. He has deposed about the manner in which the accident occurred.

10. As regards the additional evidence brought on record by the claimants, the person who was working in the Human Resources Department of the Bank from January-2005 was examined at Exhibit 64.

He stated that he was deposing on the basis of records available with the Bank and that the old records of the year 1994-95 were being maintained manually. As Claimant no.2 had approached the Bank to trace the records, efforts were made by Shri Milind Sable and certain documents indicating the salary statement of the deceased signed by one Shri M.K. Gambhir were found from the records. Said witness was shown the annual report of the Bank for the year 1994-95 indicating the fact that the deceased was holding the post of Vice President (Global Banking). He referred to the deceased having Employee No.249 and that he was drawing annual salary of Rs.12,00,000/-. In the calculation-sheet, there was salary for unexpired dues of leave. The deceased had also taken three loans. The normal age of retirement was 60 years at the Bank. The witness also referred to the nomination form of Shri M.K. Gambhir bearing his signature to indicate that said signature was identical with the signature on the calculation-sheet pertaining to the deceased and signed by Shri M.K. Gambhir. In his cross-examination, he stated that he had no record to show that the deceased was given Employee No.249. He further stated that he did not find a copy of appointment letter issued to the deceased and he denied the suggestion that the deceased was not working as Vice President with the IndusInd Bank.

The aforesaid is the nature of evidence on record led by the claimants while claiming compensation as well as its enhancement.

11. The letter dated 06.06.1995 at Exhibit 40 has been issued to the deceased stating therein that the bank had decided to increase his emoluments package from Rs.11,00,000/- to Rs.12,00,000/- per annum from 01.04.1995. That letter also recognizes the excellent work done by the deceased so as to give him a

bonus of Rs.1,00,000/-. Said letter has been signed by the Executive Director of the Bank Shri S.D Wadivkar and it was exhibited in the deposition of PW2 who was working as the Chief Manager in the Human Resources Department. Except suggestions that said letter was not signed by Shri S.D. Wadivkar, there was no serious challenge to this letter. It is to be noted that before the Claims Tribunal, the claimants had moved an application dated 31.01.2005 below Exhibit 51 stating therein that the claimants be permitted to examine Shri S.D. Wadivkar as witness in connection with the document at Exhibit 40. This application was opposed by the Insurance Company by filing reply at Exhibit 53 stating therein that letter dated 06.06.1995 at Exhibit 40 issued by said Shri S.D. Wadivkar had already been exhibited and the witness who had identified the signature of Shri S.D. Wadivkar could have given further explanation as to the said document. It was therefore not necessary to examine Shri S.D. Wadivkar to explain the contents of Exhibit 40. The Claims Tribunal passed an order on 14.09.2005 and referred to the objection raised by the Insurance Company that the said letter had already been exhibited on the basis of the evidence of Shri Narayan Ramchandran. It was further observed that said letter could be taken into account and hence the application at Exhibit 51 came to be rejected.

From the aforesaid, it can be seen that besides examining the witness who had identified the signature of Shri S.D. Wadivkar who had signed that letter, the claimants took steps to examine the signatory of that letter. However, the application in question was opposed by the Insurance Company on the ground that the letter in question had already been exhibited after examining the witness in that regard. In the light of the reply as given by the Insurance Company at Exhibit 53, it can be gathered that the Insurance Company decided to rest content with the fact that the witness already examined had identified the signature of Shri S.D. Wadivkar on the letter at Exhibit 40. It would therefore not be now permissible for the Insurance Company to urge that the letter dated 06.06.1995 or its contents were not proved by the claimants. The Claims Tribunal was also satisfied that the letter in question had been exhibited and the same could be taken into account. It is thus found that the letter dated 06.06.1995 at Exhibit 40 can be referred to while determining the income of the deceased.

12. The letter at Exhibit 40 indicates that the Bank had increased the annual package of the deceased to Rs.12,00,000/- per annum from 01.04.1995. Further he was also being given bonus payment of Rs.1,00,000/-. It is on this basis that the Claims Tribunal has come to the conclusion that the salary of the deceased was Rs.13,00,000/- per annum at the time of his death. I find this conclusion to be correct and is based on the material evidence available on record. The finding with regard to the annual income of the deceased being Rs.13,00,000/- at the time of his death stands confirmed. The Claims Tribunal has then deducted 30% amount from the gross salary on account of Income Tax and Professional Tax. It has then determined the net salary to be Rs.9,10,000/- per annum. This deduction is also in accordance with law. It has then deducted 1/3rd amount

from the net salary towards the personal expenses of the deceased. It has thus arrived at the figure of Rs.6,06,000/- being the annual loss to the family of the deceased. The multiplier of 11 has been applied considering the fact that the deceased was aged about 52 years. On that basis, the loss to the family was calculated at Rs.66,66,000/-. 1/3rd amount when deducted from Rs.9,10,000/- comes to Rs.6,06,666/- and by taking multiplier of 11, said figure comes to Rs.66,73,326/-.

13. As regards future prospects of the deceased, the Claims Tribunal has disbelieved the claim as made in that regard. It is observed that the evidence on record as to the nature of appointment of the deceased was not present and hence it did not accept the contention that the deceased would have earned up to Rs.30,00,000/- per annum at the age of 60 years. It merely took into account the salary of the deceased in the year 1995 and awarded compensation.

The evidence on record as regards the document at Exhibit 67 indicates that same is a certificate dated 30.08.2012. In this regard, the claimants have examined an employee from the Human Resources Department who had deposed that the deceased was having Employee No.249 and that, that letter had been handed over by the Bank to the deceased at the instance of Shri Milind Sable. Said document was signed by Shri M.K. Gambhir who was the Vice President of the Bank. Similarly, the letter at Exhibit 72 was signed by Shri M.K. Gambhir and was counter signed by Shri Milind Sable. The nomination form at Exhibit 71 of Shri M.K. Gambhir indicating his signature was also brought on record. On a plain perusal of the documents at Exhibits 71 and 72, it indicates the close similarity in the signatures of Shri M.K. Gambhir. The letters at Exhibits 69 and 70 indicate the leave application of the deceased. Similarly, the annual report of the bank for the year 1994-95 at Exhibit 68 refers to the deceased as Vice President (Global Banking) with his photograph.

While considering this additional evidence, the Claims Tribunal has observed that Exhibit 67 was technically proved and the other document at Exhibit 72 was not proved. It is however to be noted that the facts relating to the year 1994-95 were sought to be referred to prove that the employment of the deceased was with the Bank. Judicial notice can be taken of the fact that employees of the Bank keep changing with the passage of time. The witness at Exhibit 64 has referred to records being maintained manually and old records were produced which were signed by the officers then officiating with the Bank. When the witness who was in the employment when the additional evidence was recorded deposed that he recognized the signatures of the earlier officers and those documents having been produced from proper custody and the Bank's records, there was no reason to doubt the same. The annual report at Exhibit 68 which refers to the engagement of the deceased as Vice President in the year 1994-95 corroborates the aforesaid document. It is to be noted that the proceedings for determining compensation under Section 166 of the said Act are summary in nature. Recording of findings does not require proof beyond reasonable doubt but the findings have to be based on preponderance of probabilities. Even if the documents at Exhibits 67 and 72 have been held to be not proved, when the entire documentary evidence on record is taken into consideration and there is absence of any contrary evidence, it can be safely held that the deceased was working as Vice President at the IndusInd Bank in the year 1994-95 and that he was earning Rs.13,00,000/- per annum. The learned counsel for the claimants is justified in relying upon the ratio of the decision in P.C. Purushothama Reddiar (supra) wherein it was held that if a document is properly admitted in evidence, the contents thereof would also stand admitted but those contents would not be conclusive evidence. Though the learned counsel for the Insurance Company relied on the decisions in Sait Tarajee Khimchand & Others and Life Insurance Corporation of India (supra) to urge otherwise, when the entire documentary evidence is considered there is no doubt raised to disbelieve the case of the claimants. There is no reason to disregard the aspect of his future prospects and mere failure to bring on record the original appointment order of the deceased cannot be the ground to deny the claimants relief with regard to future prospects of the deceased. The finding in that regard recorded by the Claims Tribunal is therefore liable to be set aside.

14. The aspect of future prospects of the deceased and the manner in which the same has to be calculated now stand settled in view of the decision of the Hon'ble Supreme Court in Pranay Sethi & Others (supra). The Constitution Bench has held therein that as regards future prospects where the deceased was between the age of 50 and 60 years, an addition of 15% with regard to actual salary less the amount of tax should be taken into consideration. Thus, calculating the future prospects on that premise, said figure would be Rs.9,99,900/- being 15% of the net salary. The claimants would be entitled to that amount which is rounded off to Rs.10,00,000/-. As regards the conventional amounts awarded by the Claims Tribunal, the same are Rs.1,57,000/-. Though there could be slight modification by either reducing or enhancing some of those amounts under said heads, I am satisfied that the total amount of Rs.1,57,000/- granted under the conventional heads by the Claims Tribunal is reasonable and deserves to be maintained. This is after considering the ratio of the decisions relied upon by the learned counsel for the appellant in that regard.

15. The Claims Tribunal has awarded the amount of compensation with interest at the rate of 7.5% per annum from 03.12.2001. According to the Claims Tribunal, the Insurance Company delayed filing its written statement and as both the parties were responsible for the delay in the trial, interest was being granted from the date of filing of the written statement. This aspect of awarding interest from the date of filing of the written statement is without any reasonable basis. The application under Section 166 of the said Act was filed on 22.12.1995. Though the Insurance Company entered its appearance on 15.03.1996, it filed its written statement only on 03.12.2001. There is no justifiable reason to deny grant of interest to the claimants from the date of filing of the Claims Petition. The Insurance Company cannot be granted advantage of the fact that it filed its

written statement after more than five years. The claimants cannot be blamed for the same. It is thus held that the claimants are entitled for interest on the amount of compensation from 22.12.1995.

16. In the light of aforesaid adjudication, Point No.(I) as framed is answered in the negative. Point No.(II) is answered in the following manner:

a.

Compensation towards loss to the family

Rs.66,73,326=00

b.

Future prospects of the deceased

Rs.10,00,000=00

c.

Funeral Expenses

Rs. 2,000=00

d.

Ambulance Charges

Rs. 5,000=00

e.

Loss of Consortium/Loss of Love & Affection

Rs. 50,000=00

f.

Loss of expectancy of life

Rs. 50,000=00

g.

Loss of Estate

Rs. 50,000=00

TOTAL

Rs.78,30,326=00

This amount would be payable with interest at the rate of 7.5% per annum from 22.12.1995.

17. In the light of aforesaid discussion, the following order is passed:-

(i) The judgment of the Claims Tribunal dated 25.10.2005 in Claim Petition No.4225 of 1995 is partly modified.

(ii) It is held that the claimants are entitled for the amount of Rs.78,30,326/- along with interest at the rate of 7.5% per annum from 22.12.1995 which amount is inclusive of the amount paid towards No Fault Liability under Section 140 of the said Act.

(iii) The aforesaid amount is liable to be paid jointly and severally by the opposite parties.

18. First Appeal No.1515 of 2006 thus stands dismissed and Cross Objection Stamp No.28182 of 2006 is partly allowed in aforesaid terms. The parties shall bear their own costs.