
(2019) 12 CAL CK 0151

In the Calcutta High Court

Case No : Adms. C. Appl Order (FMAT) No. 002 Of 2019

Y. Tulasiamma

APPELLANT

Vs

M. Andiyappan & Anr

RESPONDENT

Date of Decision : 24-12-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 168, 173

Citation : (2019) 12 CAL CK 0151

Hon'ble Judges : Dipankar Datta, J; Moushumi Bhattacharya, J

Bench : Division Bench

Advocate : Anjili Nag, N.A. Khan

Final Decision : Disposed Of

Judgement

Moushumi Bhattacharya, J

1. This appeal has been filed under section 173 of the Motor Vehicles Act, 1988 (hereafter the Act), against a judgment dated 28th August, 2019 of the Motor Accident Claims Tribunal (M.A.C.T) at Port Blair Andaman & Nicobar Islands in M.A.C.T. case No.53 of 2008 passed in an application under Section 166 of the Act filed by the appellant who was the claimant no.1 before the Tribunal. It should be clarified that the case was initially filed under Section 163-A of the Act but was later amended to a Claim under Section 166 by an order dated 25th March, 2014 passed by the learned District Judge, Andaman & Nicobar Islands, Port Blair. The claimed amount of Rs.8,31,000/- however remained the same. We notice from the records that the Amended Claim was received by counsel for the Insurance Company on 2nd April, 2014.

2. Before we come to the impugned judgment, the facts as presented by learned counsel appearing for the parties, should be stated in brief.

3. The deceased, Y. Easwar Rao, aged about 21 years, worked as a daily labourer at Andaman & Nicobar Islands. On 9th September, 2006, at about 8:30 hours, Easwar Rao boarded an auto bearing registration no. AN1B/6825 from

Bambooflat and proceeded to Mount Harriet. After visiting Mount Harriet, Easwar Rao boarded the same auto bearing registration no. AN1B/6825 at about 10:30 hours and was returning to Bambooflat. While approaching the forest check-post at Mount Harriet, the auto tried to negotiate a turning point on the road at a high-speed, but failed to do so. As a result, the auto fell into the jungle that covered the slope of the valley and overturned after hitting a tree. By reason of the impact, both Easwar Rao and the auto driver were thrown from the vehicle in the surrounding jungle. A few labourers from the Forest Department brought Easwar Rao out of the jungle and took him to Bambooflat in an ambulance for treatment after which Easwar Rao was referred to G.B. Pant Hospital, Port Blair for further treatment. Easwar Rao succumbed to his injuries on 12th September, 2006. The claimants before the Tribunal were the mother and father of the deceased, the opposite party no.1 before the Tribunal was the owner of the private auto and the opposite party no.2 was New India Assurance Company Limited.

4. The parents of the deceased claimed Rs.8,31,000/- from the Tribunal as compensation on the ground that the deceased was a young man of 21 years in good health and would have lived till the age of 80 years and was further the sole earning member of the family. The claimants stated that the accident was due to the rash and negligent driving on the part of the auto driver and was not caused due to any contributory negligence on the part of the deceased. The case for compensation was also based on the fact that the deceased was working as a private labourer and was earning Rs.6000/- per month.

5. The opposite party no.1 being the owner of the auto disputed the case made out by the claimants in its written objection. The opposite party no.2 being the insurance company filed a written statement disputing the case made out in the application of the claimants under Section 163-A of the Act.

The impugned judgment records that only the Insurance Company (opposite party no.2) contested the case and since the opposite party no.1 did not appear, the case was decided ex parte against the opposite party no.1

6. In the judgment assailed before us, the Tribunal upon considering the respective cases made out by the parties, came to the following findings:

i) The claimant was liable to be compensated with an amount of Rs.5,80,200/- (Rupees five lakh eighty thousand and two hundred) together with interest at 6% from the opposite party no.2/Insurance Company, from the time of filing of the claim application till the date of realization of the cheque and interest at the rate of 8% in case of default.

ii) According to the Tribunal, since the deceased was within 20-25 years of age, the amount was calculated on the multiplier of 17.

iii) The victim's annual income being Rs.48,000/- (income assessed at Rs.4,000/- per month), the claimant is entitled to get 40% of the income towards future prospects. Further, since the deceased was a bachelor at the time of his death, a

deduction of $\frac{1}{2}$ should be made from his income by way of personal expenses. Hence the total loss of dependency comes to Rs. 33,600/- (Rs. 24,000/- + Rs. 9,600/-)

iv) 17 times of Rs. 33,600/- is equal to Rs. 5,71,200/- (the appropriate multiplier being 17 since the victim was within the age of 20-25 years).

v) The claimant was entitled to get Rs.9,000/- for funeral expenses and hence the total compensation was calculated to be Rs.5,80,200/-.

7. The appellant has challenged the quantum of compensation awarded by the Tribunal by way of the impugned judgment.

8. Learned counsel for the appellant/claimant submits that the notional income of the deceased should have been accepted at Rs.6,000/- per month (and not as Rs.4,000/- per month) as there was no evidence used by the Insurance Company to rebut the claimed amount. Counsel also claims that the interest awarded should have been 9% (and not 6%) and compensation for loss of estate should have been awarded.

9. Learned counsel appearing for the Insurance Company (opposite party no.2/ insurance company) disputes the claim of income as Rs.6,000/- per month and the rate of interest claimed. Counsel further points to the delay attributable to the claimant in proceeding with the case before the Tribunal.

10. We have heard learned counsel appearing for the parties and considered the material on record, including the lower court records which we had called for on an earlier occasion. Despite our efforts, we could not pronounce the judgment during the Circuit since we were handicapped by the erratic internet services in the Islands which prevented us from looking at the relevant case law on the subject.

11. The issue which falls for consideration is whether the amount of compensation of Rs.5,80,200/- awarded by the Tribunal together with interest at 6% is justified in the facts of the case and the relevant decisions on the subject. We propose to briefly visit the relevant case-law on the subject for adjudicating the issue before us.

12. In *Sarla Verma (Smt.) Vs. Delhi Transport Corporation* reported in (2009) 6 SCC 121, the Supreme Court considered the quantum of compensation payable to the widow, children, parents and grandfather of the deceased under the heads of- addition to the income for future prospects, deduction for personal and living expenses and selection of a multiplier.

Under future prospects, the Supreme Court considered whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. The Court held that under this head, an assessment of the prospect of future advancement in life and career in monetary terms should be taken into account for ascertaining the value of the

annual contribution to the dependents of the deceased. For example, where the deceased had a stable job, a court can take into account the career advancement prospects of the deceased which would have a bearing on determining the annual income of the deceased at the time of death. Likewise, if the deceased had good prospects, a higher estimate of monthly income may be made on a projection of what the deceased may have earned had he/she lived till the age of retirement. After reviewing the earlier decisions on this issue, the Supreme Court held that 50% of the actual salary would be added to the income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years.

Under personal and living expenses, the Supreme Court clarified that personal and living expenses of the deceased should be deducted from the income to arrive at the potential contribution to the dependents of the deceased. If the deceased was a bachelor (as in the present case) 50% of the income of the deceased would be deducted towards personal and living expenses. The rationale behind the deduction of 50% in the case of a bachelor was that a bachelor would tend to spend more on himself together with the possibility of his getting married leading to a decrease in the contribution to the parents and siblings. The Supreme Court made an exception for cases where the bachelor had a large and dependent family at the time of his death or a widowed mother and a large number of younger non-earning siblings. In such cases, personal and living expenses were held to be restricted to one-third of the income of the deceased.

13. Sarla Verma was considered and approved by a Constitution Bench of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi reported in AIR 2017 SC 5157 where on a consideration of the relevant decisions on the subject, the Bench held that an amount of 50% of the actual salary would be added to the income of the deceased towards future prospects where the deceased had a permanent job and was below the age of 40 years. For the deduction of personal and living expenses, the Supreme Court approved the proportions/percentages laid down in Sarla Verma. It was further held that the multiplier shall be selected in line with the tabulation in Sarla Verma where the age of the deceased would be the basis for applying the multiplier as laid down in Sarla Verma. The Supreme Court further laid down recommended figures under the conventional heads, namely, Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses and that these amounts should be enhanced at the rate of 10% every three years.

14. Pranay Sethi further held that the concept of "just" compensation has to be viewed through the "prism of fairness, reasonableness and non-violation of the principle of equitability". The Court reiterated that while the claimants cannot expect a windfall, the compensation granted cannot also be a pittance for providing succour to the bereaved.

15. Since in this case, the deceased was unmarried and died a bachelor, we have considered a decision of the Supreme Court in Civil Appeal No.8612 of 13 in M.

Mansoor Vs. United of India Insurance Company Limited where the parents claimed compensation for the death of their son, who was unmarried and was twenty four years of age at the time of his death.

16. In Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram in Civil Appeal No. 9581 of 2018 reported in Manu/SC/1012/2018, the Supreme Court had to determine the compensation to be awarded for the death of a 24-year-old man who was engaged in the business of making namkeen products and died a bachelor. Since the claimants were unable to produce evidence of the income of the deceased, the Supreme Court accepted the monthly income of the deceased on the basis of the minimum wage of an unskilled and self-employed person at the relevant point of time in Haryana where the accident occurred. With respect to the issue of future prospects, relying on Pranay Sethi the Supreme Court awarded future prospects at 40% of the income of the deceased as the deceased was self-employed and below 24 years of age at the time of the accident. The significant ruling of the Supreme Court in Nanu Ram was that the father and unmarried sister of the deceased were entitled to compensation for loss of love and affection as his dependents. The Supreme Court upheld the amount awarded by the High Court of Rs.1,00,000/- towards love and affection on this count. However, since after Pranay Sethi it is arguable whether consortium can be extended to a dependent other than the wife, we restrict the compensation to be awarded under other heads as indicated below. In this regard, it would be useful to set out the relevant passage from Pranay Sethi on this aspect:

"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be

enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

17. In *Sarla Verma*, for determining the multiplier, the Supreme Court recommended an operative multiplier of 18 for the age bracket of 15-20 and 21-25 years with a reduction by one unit for every five years. In *M. Mansoor*, upon considering the decision in *Sarla Verma*, the Supreme Court held that considering the age of the deceased, the multiplier of 18 should have been applied by the Tribunal and further that the claimants were entitled to Rs.50,000/- each for loss of affection of the son.

18. It may be clarified that the multiplier method is for the purpose of calculating the net financial loss on a yearly-basis determined by the age of the deceased on the date of the accident (*Shasikala vs. Gangalakshamma*: (2015) 9 SCC 150) and the impact of the accident on the earning capacity of the injured/deceased. Paragraph 42 of *Sarla Verma* has laid down the operative multipliers to be applied to specific age groups beginning with a multiplier of 18 for the age group of 15-20 and 21-25 years with a progressive reduction of one unit for every five years. The birth certificate and the death certificate of the victim reflects that the victim was born on 3rd October, 1985 and died on 12th September, 2006. Hence, the victim was 20 years 11 months and 9 days on the day when the victim succumbed to his injuries. Hence, following the recommended multipliers as laid down in *Sarla Verma*, we do not find any basis for the Tribunal to apply the multiplier as 17 (and not 18 as formulated in *Sarla Verma* and approved in *Pranay Sethi*).

19. The above heads of computation should be seen against the facts of the present case together with the evidence recorded by the Tribunal.

20. In the present case, the Tribunal assessed the notional income of the deceased at Rs.4,000/- per month. This figure was arrived at due to the absence of documentary evidence in support of Rs.6,000/- per month which was claimed in the claim application. We found that in the written objection and written statement of the opposite party no.1 and 2, respectively, save for bare denials, there was no specific averment with regard to the monthly income of the deceased. The examination-in-chief of the appellant (the mother of the deceased) states that the deceased was working as a private labourer and was earning Rs.6,000/- per month. We have not found any cross-examination conducted on this point. The assessment of Rs.4,000/- as notional income by the Tribunal therefore does not appear to have any basis. The Tribunal could have arrived at a different figure if the statements made in the claim application or the affidavit-in-evidence of the victim's mother (the surviving parent) had been denied or questioned by the opposite parties by corroborating materials. This does not appear to be the case. We, therefore, accept the submissions made by learned counsel appearing for the appellant that in the absence of any evidence to the contrary, the monthly income of the deceased should have been accepted

as Rs.6,000/-per month. This would also be in line with the minimum wages which a daily labourer/majdoor would be expected to earn in the Islands at the relevant point of time.

21. For determining future prospects, the age of the victim as on the date of the accident should be taken as the starting point of the calculation to be made. We find support for this proposition from *Shashikala vs. Gangalakshamma* reported in (2015) 9 SCC 150 and a decision of a Division Bench of this court in *Sohna Singh vs. National Insurance Company Limited* in F.M.A.464 of 2017 with C.O.T No. 7 of 2017.

22. In *Future General India Insurance Co. Ltd. Vs. Soumita Roy* in C.A.N.4022 of 2017, a Division bench of this court authored by one of us (Dipankar Datta, J.), the court held in favour of compensation for loss of love and affection caused by the death of a sibling. For arriving at the compensation awarded, the court was of the view that compensation must be "just" in the facts of this case and not an arbitrary or fanciful amount without having any nexus to the extent of loss suffered by the members of the family of the deceased. In *Future General*, the court also gave a detailed consideration on the aspect of whether a party to a judicial proceeding should be allowed to reap the benefit of delay caused by it in conclusion of the proceeding against its adversary.

23. Upon perusing the orders in the proceedings before the Tribunal, we find that the appellant and/or her counsel have also availed of several adjournments in the matter from July 2018 to August 2019. This would have a material bearing on whether the appellant is entitled to any compensation for the 11 years taken to conclude the proceedings before the Tribunal. However, in this case a mother, after losing her only child, has waited for eleven years for adjudication of a just amount and moreover, a litigant may not be in control of or even be aware of the delay caused by those representing her and also be a stranger to the complexities of the courts processes. We, therefore, deem it fit to give the benefit of two enhancements of 10% (ten percent) for 2 (two) consecutive periods of 3 (three) years each, that is 6 (six) years, for the intervening period from the start to the conclusion of the proceedings before the Tribunal. This would be in line with *Pranay Sethi* which held that the specified figures awarded under the conventional heads including loss of estate and funeral expenses should be enhanced at the rate of 10% in every three years. The figures accordingly awarded by us would be Rs 18,150/-, for loss of estate and Rs. 18,150/- for funeral expenses.

24. Since the Act is in the nature of welfare legislation, we deem it appropriate to award compensation which is just and equitable to the claimant regardless of whether any claim had been made under those heads. Section 168 casts a mandate on the Claims Tribunal to make an Award determining the amount of compensation which appears to it to be just. We may add that the expression "compensation" means to recompense the claimant for the loss suffered or likely to be suffered as a result of the unexpected or untimely death of a family

member caused by a motor accident. The Supreme Court has held in a number of decisions that the compensation to be determined should be just, adequate and reasonable, taking into account the impact and consequences flowing from the sudden loss of a family member which would have a lifelong bearing on the remaining family members of the deceased. While the surviving and dependent legal representative cannot receive a bonanza for the loss of life due to a motor accident. It is equally true that the compensation cannot be an apology for what the Act, 1988, a beneficial legislation, aims to be; namely to make good in quantifiable momentary terms the loss suffered to those most affected by it. We have arrived at the above amounts on the basis of what according to us would be just, reasonable and equitable in the facts as presented before us.

25. In view of the above discussion, the impugned judgment and Award of the Motor Accident Claims Tribunal dated 28th August, 2019 is set aside. We direct compensation to be made in the following manner to the appellant and on the following basis:

- i. The annual income of the deceased will be taken as Rs 72,000/- (Rupees Seventy Two Thousand Only) at the rate of Rs. 6,000/- per month.
- ii. An addition of 50% of the annual income amounting to Rs 36,000/- (Rupees Thirty Six Thousand Only) shall be made towards future prospects which would be added to the annual income. On such addition the sum amounts to Rs 1,08,000/- (Rupees One Lac Eight Thousand Only).
- iii. A deduction shall be made of 1/2 (half) of the above amount of Rs 1,08,000/- (Rupees One Lac Eight Thousand Only) towards personal expenses and that would come to Rs 54,000/- (Rupees Fifty Four Thousand Only).
- iv. On application of a multiplier of 18 (eighteen) to the amount of Rs 54,000/- (Rupees Fifty Four Thousand Only) the amount would stand at Rs 9,72,000/- (Rupees Nine Lac Seventy Two Thousand Only).
- v. Further amounts of Rs 18,150/- (Rupees Eighteen Thousand One Hundred and Fifty Only) for loss of estate, and Rs 18,150/- (Rupees Eighteen Thousand One Hundred and Fifty Only) for funeral expenses is being awarded. (These amounts are inclusive of 10% enhancement for two consecutive periods of 3 years each).
- vi. The total compensation to be awarded would therefore stand at Rs 10,08,300/- (Rupees Ten Lac Eight Thousand Three Hundred Only).
- vii. The total compensation amount of Rs 10,08,300/- (Rupees Ten Lac Eight Thousand Three Hundred only) shall carry an interest @ 8% (Eight percent) per annum from the date of filing of the claim application till the date of receipt of the amount by the Appellant, failing which interest at the rate of 9% per annum will be borne by the Insurance Company for the same period as stated above. The Appellant shall inform the Insurance Company regarding the particulars of the Appellant's Bank Account in which the amount is to be credited by the Insurance Company. The Insurance Company shall credit the amount to the

appellant as directed within one month from the date on which such information is provided to the Insurance Company.

26. The appeal stands disposed of in terms of the above order and directions.

27. There shall be no order as to costs.

28. In lower court records shall be transmitted to Port Blair immediately.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on a priority basis.