SUPREME COURT OF INDIA

Rekha Jain

Vs.

National Insurance Co.Ltd.

C.A.Nos.5373-5375 of 2013

(G.S.Singhvi and V.Gopala Gowda JJ.)

01.08.2013

JUDGMENT

V. GOPALA GOWDA, J.

1. Leave granted by this Court vide order dated 02.07.2013 after condoning the delay in filing the special leave petitions.

2. These appeals are filed by the claimants namely Rekha Jain and T.A. Sebastian. They have questioned the correctness of the judgment and award and order dated 24.2.2011 passed by the High Court of Orissa, Cuttack in MACA No. 579 of 2007 and order dated 10/03/2011 in MC No. 385 of 2011 in MACA No. 579 of 2007 in the aforesaid appeal and final order dated 24.11.2011 in M.A.C.A. No.844 of 2007 urging rival facts and legal contentions.

3. The daughter and the husband of the deceased have filed these appeals seeking just and reasonable compensation on account of the death of the deceased in a motor vehicle accident, which took place on 17.08.2001. The deceased was traveling alongwith her daughter, the first appellant in her Maruti Car bearing Regn. No. OR 15 D-9005. The accident took place on account of rash and negligent driving of the offending truck bearing Regn. No. MP 23 D-0096. The deceased Dr. Grace Jain died on the spot, as she had sustained grievous injuries on account of the said accident. It is stated by the appellants that the deceased was a renowned doctor serving as a lecturer in Odisha College of Homeopathy and Research, Sambalpur and had private practice as well.

4. It is stated in the claim petition and in the evidence that the salary of the deceased was Rs.12,000/- per month. The appellants herein filed claim petition i.e. Misc.(A) Case No.118 of 2002 claiming compensation of Rs.27,00,000/- before the Second Motor Accidents Claims Tribunal, Northern Division, Sambalpur (hereinafter referred to as 'the Tribunal').

5. The owner of the truck (since deleted from the array of parties) appeared and filed identical written statement in the claim petition as that of the written statement filed in Rekha Jain's claim petition. According to him, the driver of the truck had valid driving licence and the same was insured with Respondent - National Insurance Company Limited (hereinafter referred to as the 'Insurance Company'). The owner of the offending vehicle has further stated that his driver was not negligent. A motor cyclist suddenly came in front of the truck overtaking him from its left side and hence the driver had to move to the right side in order to avoid accident with the motor cyclist. In that process the truck hit the Maruti car causing death of the deceased.

6. The respondent-Insurance Company had also filed similar written statement in both the claim petitions denying its liability on the ground that the driver of the offending truck was negligent and that the accident occurred due to the negligence of the driver of the Maruti Car. On behalf of Rekha Jain, the first appellant herself was examined as a witness PW 3 and two other eye witnesses were examined as PW 1 and PW 2 to prove the occurrence of the accident. On the basis of documentary and oral evidence particularly eye witnesses' evidence, the finding of fact was recorded on issue Nos. 2 and 3 that the accident took place on account of rash and negligent driving of the offending truck driver and it was also answered that the claim petition filed by the appellants is maintainable. The Tribunal held that the appellant's mother died and the first appellant was grievously injured due to the accident involving offending vehicle. The Tribunal also recorded the finding of fact holding that the accident took place on account of rash and negligent driving by the driver of the offending vehicle. Consequently, issue No.4 was answered by awarding compensation at Rs.10,62,000/- with 6% interest per annum by accepting the pleading of the appellants that the deceased was a renowned doctor practicing in Government Hospital.

7. The claim petition Misc.(A) Case No. 118/2002 was allowed with interest @ 6% per annum from the date on which the claim petition was filed and the respondents were directed by the Tribunal to deposit Rs.5,00,000/- each for both the appellants for a period of five years with quarterly interest payable to them. The Tribunal also

directed the payment of balance amount and interest on the compensation in equal proportion to both the appellants in cash.

8. Aggrieved by the above said judgment and award both the Insurance Company as well as the appellants filed appeals before the High Court of Orissa, which were numbered as M.A.C.A. No. 579 of 2007 and M.A.C.A. No.844 of 2007. as the Insurance Company is aggrieved by fastening of liability and quantum of compensation and the appellants have prayed for just and reasonable compensation. The High Court after examining the appeal of the Insurance Company, found fault with the compensation awarded by the Tribunal at Rs.10,62,000/- in favour of the appellants taking monthly earnings of the deceased at Rs. 12,000/-, in the absence of material evidence produced on record regarding the proof of her monthly salary. The Tribunal calculated the compensation by deducting 1/3rd out of the monthly salary towards her personal expenses and her contribution to the appellants' family. The same is taken as Rs.8,000/- per month. Hence, her annual income was assessed at Rs.96,000/-. The age of the deceased is recorded at about 51 years. Hence, a multiplier of 11 was used for calculating the loss of dependency of the appellants and Rs.10,62,000/- was awarded by the Tribunal, which included Rs.6,000/- towards general damages. The High Court however, arrived at the conclusion and recorded the finding of fact stating that a compensation of Rs.10,62,000/- is on the higher side and hence, the same was reduced by the High Court to Rs.8,00,000/-.

9. Aggrieved by the same, the appeal was filed by the appellants for modification of the impugned judgment for grant of just and reasonable compensation to them. It is urged that the appeal of the appellants was dismissed by the High Court without examining the case independently and appreciating the pleadings, legal evidence on record and law on the question and without following the criteria for awarding just and reasonable compensation. The correctness of the judgment, awards and order passed on 10.3.2011 in Misc. Case No.385 of 2011 modifying the order dated 24.2.2011 is challenged wherein the modification was only to the extent of the direction given by the High Court that out of the awarded amount, an amount equivalent to 60% shall be kept in fixed deposit in the name of appellants in any nationalized bank for a period of five years and the balance amount should be disbursed to the appellants.

10. However, the High Court has taken Rs.12,000/- per month as the monthly income of the deceased for the purpose of determining the compensation in favour of the appellants. It is urged that this approach of the High Court in reducing the compensation awarded by the Tribunal is erroneous in law. Further, the multiplier

applied by both the Tribunal as well as the High Court is contrary to the multiplier mentioned in the schedule which is applicable for special reasons having regard to the facts and circumstances of the case placing reliance upon the judgment of this Court in the case of United India Insurance Co. Ltd. & Ors. v. Patricia Jean Mahajan & Ors.[1] The relevant paragraph of the judgment reads as under:

> "13. We may refer to the decision in G.M., Kerala SRTC v. Susamma Thomas. In this case while considering the law on the subject, it was observed in para 13 of the Report as follows: (SCC p. 183) "The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last."

11. The Tribunal and the High Court have erred in not awarding just and reasonable compensation in favour of the appellants keeping in view the principles laid down by this Court in various judgments in the matters of motor accidents claims keeping in view the object of compensation which will be the source of the maintenance for them particularly, in respect of the claimant, appellant no.1. The High Court instead of enhancing the compensation though the case is made out in the appeal filed by the appellants for enhancement, has erroneously exercised its jurisdiction and has reduced the compensation from Rs.10,62,000/- to Rs.8,00,000/- without taking into consideration the facts of the case that the deceased was a renowned doctor serving in Odisha College of Homeopathy and Research, Sambalpur, and she also had private practice and had earned good reputation in the area.

12. The above said important aspect of the matter had been ignored both by the Tribunal as well as the High Court in not awarding just and reasonable compensation in favour of the appellants. Therefore, Mr. Sukumar Pattjoshi, the learned Senior Counsel for the appellants has sought for enhancement of compensation as claimed in the claim petition by the appellants.

13. On the other hand, Mr. S.L. Gupta, the learned counsel for the Insurance Company sought to justify the impugned judgment passed by the High Court in its appeal and the appeal filed by the appellants contending that the High Court has rightly considered the facts and legal evidence on record and has modified the impugned judgment of the Tribunal and awarded compensation of Rs.8,00,000/-

with 6% interest per annum and giving direction as contained in the impugned judgment passed in the appeal of the Insurance Company and modifying the same vide order dated 10.3.2011 in the instant appeal regarding 60% of deposit of the awarded amount including the interests. Therefore, he has prayed for dismissal of the appeals as there is no merit.

14. In view of the aforesaid rival factual and legal contentions, the following points would fall for our consideration:

1. Whether the High Court is justified in reducing the compensation from Rs.10,62,000/- to Rs.8,00,000/- with 6% interest per annum?

2. Whether the appellants are entitled for enhanced compensation?

3. What award?

15. We have perused the impugned judgment and evidence on record particularly the evidence of PW 3, the first appellant who is the daughter of deceased. It should have been taken into consideration that the employment of the deceased was a public employment. Therefore, it was a stable employment for a period of another seven years and there could have been revision of wages and promotional benefits accrued in her favour if she was alive. Therefore, for determining the annual income of the deceased, the principles laid down in Sarla Verma & Ors. v. Delhi Transport Corp. &Anr[2] should have been applied to the case of the appellants by taking into consideration the monthly salary of the deceased at Rs.12,000/- to which 30% should have been added as future prospects of income as mentioned above and that much amount could have been taken as monthly income of the deceased for the purpose of determining the compensation towards the loss of dependency of the appellants. The relevant paragraph of the case reads as under:

> "24. In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50

years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

This aspect of the matter is not taken into consideration by the Tribunal while awarding compensation. Nonetheless, it has accepted the claim made by the appellants that the salary of the deceased was Rs.12,000/- per month and the multiplier 11 was applied and awarded compensation of Rs.10,62,000/-. The same has been interfered with by the High Court in the Appeal filed by the Insurance Company though it has no right to challenge the quantum of compensation as it has got limited defence as provided under Section 149(2) of the Motor Vehicles Act in the absence of permission from the Tribunal to avail the defence on behalf of the insurer as required under Section 170(b) of the Act. This principle has been laid down by three judge Bench decision of this Court inNational Insurance Co. Ltd. vs. Nicolletta Rohtagi & Ors.[3] The relevant paragraphs of the judgment read as under:

"15. It is relevant to note that Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub- section (2) of Section 149, it would mean we are adding more defences to the insurer in the statute which is neither found in the Act nor was intended to be included.

16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds."

16. In our considered view the Tribunal and the High Court have erred in not following the principles laid down in Sarla Verma' case (supra) in fixing the monthly income at Rs.12,000/- in the absence of documentary evidence having regard to the fact that the deceased was employed as Lecturer in Odisha College of Homeopathy and Research, Sambalpur and she also had private practice. The Tribunal in exercise of its original jurisdiction has taken Rs.12,000/- as her monthly income and has deducted 1/3rd out of the monthly salary towards her personal expenses and computed the compensation both on the loss of dependency as well as the conventional heads and has awarded Rs.10,62,000/-. The same should not have been interfered with by the High Court in exercise of its appellate jurisdiction. Hence, the impugned judgment, award and order passed in the Misc. Case no. 385/2011 in M.A.C.A No. 579/2007 is required to be interfered with. So also the order dated 10.3.2011 in Misc. Case No.385 of 2011 modifying the earlier direction issued by the High Court to deposit 60% of the awarded amount in any of the Nationalized Bank, is required to be interfered with. Accordingly, both the impugned judgment, award and orders dated 24.2.2011 and 10.03.2011 are hereby set aside by allowing the civil appeals.

17. Having regard to the facts, circumstances and the finding recorded by the Tribunal in its judgment, we restore the same in awarding compensation in favour of the appellants at Rs.10,62,000/- with interest at the rate of 6% per annum. The appeal of the appellants for enhancement is disposed of in the above terms. We further keep the order of the Tribunal dated 20.3.2007 in so far as the directions issued by it for deposit of awarded amount in M.A.C. No. 118 of 2002 are concerned.

18. The appeals are disposed of accordingly. There will be no order as to costs.

[1] 2002(6) SCC 281
[2] 2009 (6) SCC 121
[3] (2002) 7 SCC 456