SUPREME COURT OF INDIA

Josphine James

Vs.

United India Insurance Co. Ltd.

C.A.No.5985 of 2013

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

14.08.2013

JUDGMENT

V. GOPALA GOWDA, J.

1. This civil appeal is directed against the judgment and award dated 13.01.2012 passed by the High Court of Delhi in MAC Appeal No. 433 of 2005 by allowing the appeal of the respondent herein and reducing the compensation awarded by the Motor Accidents Claims Tribunal (in short 'the Tribunal') in suit No. 778 of 2003 urging various facts and legal contentions.

2. The appellant widow is the mother of the deceased who filed claim petition before the Tribunal claiming compensation on account of the death of her son who was aged about 21 years, in a car accident which occurred on 12.06.1998. The car (bearing registration No. DL 2C F 3431), which he was driving from Jaipur to Delhi, was hit by a truck (bearing registration No. RJ 14 G 7596), which was owned by respondent No.2.and insured with respondent No.1.

3. The claim petition was filed by the appellant before the Tribunal claiming compensation from the respondent for the death of her son caused by the accident. The claim was contested by the respondents. Five witnesses were examined including the appellant herein who produced documentary evidence in justification of her claim. The Tribunal accepted the claim of the appellant and awarded compensation of Rs. 9,00,000/- towards the loss of dependency of the appellant which was determined by the Tribunal by applying the multiplier of 15 to the

multiplicand which was arrived at by taking two-third of the monthly salary of the deceased and multiplying the amount by 12 months. Under the conventional heads, the Tribunal also awarded Rs.15,000/- towards funeral expenses and Rs. 50,000/- towards loss of filial affection of the mother. It has further awarded Rs. 3,42,000/- in lump sum towards repair of the appellant's car which met with the accident. In total, a sum of Rs. 13,07,000/- was awarded by the Tribunal as compensation for the death of her son and the damage caused to her car which met with a roadside accident, with an interest at the rate of 6% per annum from the date of filing the petition till the date of actual payment.

4. The said judgment and award of the Tribunal was challenged by the Insurance Company without obtaining permission from the Tribunal under Section 170 (b) of the Motor Vehicle Act, 1988 (in short 'the M.V. Act') urging various legal contentions questioning the correctness of the quantum of compensation awarded in favour of the appellant.

5. The learned Judge of the High Court in the appeal filed under Section 173 of the M.V. Act, 1988, by the Insurance Company, reduced the compensation from Rs. 9,00,000/- to Rs. 6,75,000/- which was arrived at by the following calculation: (Rs. 3750 x 12 x 15) while affirming the rest of the award. The main objection of the appellant was the maintainability of the appeal by the Insurance Company on the ground that it is not open to the Insurance Company to challenge the quantum of compensation awarded by the Tribunal in favour of the appellant. The High Court, by placing reliance upon the judgment of this Court in the case of United India Insurance Co. vs. Bhushan Sachdeva & Ors[1], has held that the words 'failed to contest' in Section 170 (b) of the MV Act must mean failed to file an appeal since appeal is a continuation of the original proceedings. The court also noted that the insured has not filed an appeal and therefore, permitted the Insurance Company to file an appeal for reduction of quantum of compensation as awarded by the Tribunal in favour of the appellant. On the basis of such statement, the compensation awarded by the Tribunal was reduced by allowing the appeal.

6. Aggrieved by the order of the learned Single Judge of the Delhi High Court, the appellant filed Review Petition No. 80 of 2007 in which she has raised the objection on the maintainability of the appeal filed by the Insurance Company for reduction of the quantum of compensation awarded by the Tribunal. The learned counsel for the appellant contended that it is not open for the Insurance Company to challenge the quantum of compensation awarded by the Tribunal unless it files

an application under Section 170(b) of the M.V. Act before the Tribunal for obtaining permission to contest the case on merits. Otherwise, the Insurance Company has only limited right to appeal as per Section 149 (2) of the M.V. Act. The Insurance Company has placed reliance upon the judgment of this Court in the case of Bhushan Sachdeva (supra) decided by two Judge Bench on 18.1.2002. The same came to be over-ruled by a three Judge Bench of this Court in the case of National Insurance Company vs. Nicolletta Rohtagi[2]. Therefore, it is contended by the appellant in the review petition that the judgment passed by the High Court in the appeal of the Insurance Company is contrary to the law laid down by this Court in the Nicolletta Rohtagi's case referred to supra.

7. The learned Judge of the High Court, accepting the legal contentions urged by the appellant, allowed the review petition. But, the learned Judge of the High Court had erroneously reduced the overall compensation from Rs.13,07,000/- awarded by the Tribunal to an amount of Rs. 8,12,000/- by reducing the amount under loss of dependency.

8. Aggrieved by the impugned judgment and award passed by the High Court in MAC Appeal no. 433/2005 and the review petition, the present appeal is filed by the appellant urging certain grounds and assailing the impugned judgment in allowing the appeal of the Insurance Company without following the law laid down by this Court in Nicolletta Rohtagi's case (supra) and instead, placing reliance upon the Bhushan Sachdeva's case (supra). Nicolletta Rohtagi's case was exhaustively discussed by a three judge bench in the case of United India Insurance Company Vs. Shila Datta[3]. Though the Court has expressed its reservations against the correctness of the legal position in Nicolletta Rohtagi decision on various aspects, the same has been referred to higher bench and has not been overruled as yet. Hence, the ratio of Nicolletta Rohtagi's case will be still applicable in the present case. The appellant claimed that interference by the High Court with the quantum of compensation awarded by the Tribunal in favour of appellant and considerably reducing the same by modifying the judgment of the Tribunal is vitiated in law. Therefore, the impugned judgments and awards are liable to be set aside.

9. It is further urged by the learned counsel on behalf of the appellant that the learned Judge of the High Court committed serious error in reducing the quantum of compensation and not considering the future prospects of the deceased. He further contended that the learned Judge of the High Court has erred in not

awarding interest at the rate of 9% per annum as awarded by this Court in Municipal Council of Delhi Vs. Association of Victims of Uphaar Tragedy[4] which was decided on 13.10.2011 whereas the review petition for recalling its judgment was decided on 13.2.2012, but on the other hand, has further reduced the compensation.

10. Another ground of assailing the impugned judgment by the appellant is that the learned Judge of the High Court has ignored the second Schedule to the M.V. Act in view of the decision of this Court in the case of Baby Radhika Gupta Vs. Oriental Insurance Co. Ltd[5]. by reducing the compensation from Rs. 6,75,000/- to 4,20,000/-, under the non-pecuniary damages without taking into consideration the fact that the appellant's age was 41 years at the time when her son met with the accident. The multiplier of 15 taken by the Tribunal is legal and valid by following the decision of this Court in the case of Kerala State Road Transport Corporation Vs. Susamma Thomas[6]. Hence, the learned counsel for the appellant has prayed for allowing this appeal and restoring the judgment and award of the Tribunal wherein it has awarded Rs.9,65,000/- under non- pecuniary damages towards the loss of dependency and also under the conventional heads.

11. The learned counsel for the respondent Insurance Company sought to justify the impugned judgment and award passed by the High Court contending that the appellate court in exercise of its jurisdiction has appreciated the pleadings and evidence on record and reduced the compensation by passing the impugned judgment. Therefore, the same does not call for interference by this Court in exercise of its jurisdiction. Hence, they requested for dismissal of appeal.

12. We have carefully examined the factual rival contentions and perused the record. With a view to find out whether the impugned judgment and award warrant interference by this Court in exercise of its jurisdiction, the said point which calls for our consideration is answered in favour of the appellant for the following reasons:

13. It is an undisputed fact that the son of the appellant died in a motor vehicle accident on 12.6.1998, who was the sole earning member of the family. The respondent driver and insurer were initially impleaded as parties but notice could not be served to the driver despite repeated efforts. The driver was therefore later on deleted from the array of parties on the basis of the decisions of various High Courts including Delhi High Court wherein it was held that non-impleadment of

driver of the offending vehicle is not fatal to the proceedings in view of the fact that the liability of the owner and the insurer of the offending vehicle is joint and several. The insured was placed ex-parte since he remained absent despite the service of notice upon him in the proceeding whereas the Insurance Company filed written statement wherein it has admitted that on the date of accident the offending truck stood duly insured with it and the insured was respondent No. 2 in the proceedings before the Tribunal.

14. The Tribunal has answered the compensation issue on the basis of pleadings and evidence available on record and held that the son of the appellant died in a motor vehicle accident on 12.6.1998 on account of rash and negligent driving of the offending truck. Accordingly, the first issue was answered by it by recording reasons. Issue Nos. 2 and 3 framed by the Tribunal are whether the appellant is entitled to any compensation and if yes, then what should be the amount and who will pay the same. Both of these issues are answered in favour of the appellant. On an appraisal of the oral and documentary evidence particularly, considering the evidence of PW-2 and PW-5 the co-worker and employer of the deceased, the Tribunal placed reliance upon the salary certificate issued by the employer for assessing the monthly income of the deceased. The Tribunal, being a fact finding authority, on the basis of proper appreciation of pleadings and legal evidence on record, has recorded the finding on issue No. 2 and held that the appellant is entitled to compensation of Rs.9,65,000/- by accepting the evidence of the appellant regarding monthly income of the deceased at Rs. 5,000/-which was being earned by the deceased and was sent to his mother- the appellant and her three daughters for their maintenance. The same was not challenged. The loss of dependency determined at Rs.9,00,000/- by taking multiplier of 15, is in conformity with the judgment of this Court in the case of Baby Radhika Gupta (supra).

15. Further, the Tribunal, by applying the principle laid down in the case Susamma Thomas (supra), has awarded Rs.15,000/- towards funeral expenses and Rs.50,000/- for loss of love and affection. Under the heading of pecuniary damages, a sum of Rs. 3,42,000/- is awarded towards the damage caused to the car of the appellant in the accident. In total, a sum of Rs. 13,07,000/- is awarded as compensation in favour of the appellant.

16. The Insurance Company has challenged the correctness of the judgment of the Tribunal before the High Court by filing an appeal. The same was partly allowed

vide judgment dated 8.1.2007 by reducing the monthly contribution given by the deceased son to his mother at Rs.3750/- for her maintenance holding that the mother would not be entitled to more than 50% of the income of the deceased. The sisters of the deceased did not join the appellant as claimants. Hence, the High Court held that no compensation could be awarded to them. Therefore, the High Court awarded a compensation of Rs. 6,75,000/- by applying a multiplier of 15 to the multiplicand.

17. The said order was reviewed by the High Court at the instance of the appellant in view of the aforesaid decision on the question of maintainability of the appeal of the Insurance Company. The High Court, in the review petition, has further reduced the compensation to Rs. 4,20,000/- from Rs. 6,75,000/- which was earlier awarded by it. This approach is contrary to the facts and law laid down by this Court. The High Court, in reducing the quantum of compensation under the heading of loss of dependency of the appellant, was required to follow the decision rendered by three judge Bench of this Court in Nicolletta Rohtagi case (supra)and earlier decisions wherein this Court after interpreting Section 170 (b) of the M. V. Act, has rightly held that in the absence of permission obtained by the Insurance Company from the Tribunal to avail the defence of the insured, it is not permitted to contest the case on merits. The aforesaid legal principle is applicable to the fact situation in view of the three judge bench decision referred to supra though the correctness of the aforesaid decision is referred to larger bench. This important aspect of the matter has been overlooked by the High Court while passing the impugned judgment and the said approach is contrary to law laid down by this Court.

18. In view of the aforesaid reasons, the Insurance Company is not entitled to file appeal questioning the quantum of compensation awarded in favour of the appellant for the reasons stated supra. In the absence of the same, the Insurance Company had only limited defence to contest in the proceedings as provided under Section 149 (2) of the M.V. Act. Therefore, the impugned judgment passed by the High Court on 13.1.2012 reducing the compensation to 4,20,000/- under the heading of loss of dependency by deducting 50% from the monthly income of the deceased of Rs. 5,000/- and applying 14 multiplier, is factually and legally incorrect. The High Court has erroneously arrived at this amount by applying the principle of law laid down in Sarla Verma v. Delhi Transport Corporation[7] instead of applying the principle laid down in Baby Radhika Gupta’s case (supra) regarding the multiplier applied to the fact situation and also contrary to the law

applicable regarding the maintainability of appeal of the Insurance Company on the question of quantum of compensation in the absence of permission to be obtained by it from the Tribunal under Section 170 (b) of the M.V. Act. In view of the aforesaid reason, the High Court should not have allowed the appeal of the Insurance Company as it has got limited defence as provided under section 149(2) of the M.V. Act. Therefore, the impugned judgment and award is vitiated in law and hence, is liable to be set aside by allowing the appeal of the appellant.

19. Further, the award of interest at the rate of 6% per annum on the compensation as has been awarded both by the Tribunal and the High Court is also bad in law for the reason that in the case of Association of Victims of Uphaar Tragedy (supra), this Court has awarded interest at the rate of 9% per annum on the compensation awarded in favour of the appellant. There is no justification for them in not applying the ratio of the abovementioned case to the fact situation of the present case. We therefore, grant interest at the rate of 9% per annum on the compensation amount awarded by the Tribunal as the Insurance Company has been contesting the case without any justifiable reason. Further, the Insurance Company has deprived the appellant of the benefit of her legitimate claim of getting the compensation and she was made to approach the court for determination of the claim even after passing of the award by the Tribunal since the same was contested by the Insurance Company by filing appeal by urging wholly untenable grounds which are not maintainable in law. Accordingly, we allow the appeal by setting aside the impugned judgment and award of the High Court and restore the compensation awarded by the Tribunal of Rs. 13,07,000/- both under the heads of pecuniary and non-pecuniary damages and the said amount carries 9% interest per annum from the date of filing of the application till the date of payment of the amount. We direct the Insurance Company to deposit 50% of the awarded amount with proportionate interest in any of the nationalized Banks of the choice of the appellant for a period of 3 years. During the said period, if she wants to withdraw a portion or entire deposited amount for her personal or any other expenses, then she is at liberty to file application before the Tribunal which may be considered by it and pass appropriate order in this regard. If the amount of compensation has not yet been paid by the Insurance Company to the appellant, the same shall be paid within six weeks by obtaining demand draft in favour of the appellant.

[1] (2002) 2 SCC 265
[2] (2002) 7 SCC 456

[3] (2011) 10 SCC 509
[4] (2011) 4 SCC 481
[5] (2009) 17 SCC 627
[6] (1994) 2 SCC 176
[7] (2009) 6 SCC 121