

Pushkar Mehra

v.

Brij Mohan Kushwaha & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE V.
GOPALA GOWDA HON'BLE MR. JUSTICE C. NAGAPPAN

Civil Appeal No. 8410 Of 2013 (Special Leave Petition (Civil) No. 13420 Of
2012) | 20-09-2013

1. Leave granted.

2. This civil appeal is directed against the judgment and order dated 14.12.2011 passed by the High Court of Delhi at New Delhi in M.A.C. Appeal No. 830 of 2010 whereby the High Court dismissed the appeal of the appellant upholding the compensation awarded by the Motor Accident Claims Tribunal (for short the "Tribunal") in Suit No. 364 of 2009, urging various facts and legal contentions.

3. The appellant-widow is the wife of the deceased who, along with the mother and the children of the deceased, filed claim petition before the Tribunal under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short "the Act") claiming compensation amounting to Rs.25,00,000/- due to the death of her husband namely, Swadhin Mehra in a motor vehicle accident, which took place on 23.10.2004 at about 4.45 p.m. when the deceased was crossing the road. At this time the offending vehicle dumper (bearing No.HR-38F- 8284) loaded with concrete came very fast and stopped, after which the driver of the dumper reversed the vehicle in a rash and negligent manner as a result of which the deceased was crushed under the right side tyre of the dumper causing his death on the spot. The annual income of the deceased was claimed to be Rs.1,25,000/- per annum as he was self-employed in the business of trading in paints and hardware. The claim was contested by the respondents, oral and documentary evidence was produced by the parties in support of their case. The Tribunal accepted the case of the claimants and held that there was rash and negligent driving by respondent No.1-the driver of the offending vehicle which was owned by respondent No.2-the owner and insured with respondent No.3- the

insurer. The Tribunal awarded total compensation of Rs.3,84,760/-. Under the head of loss of dependency, the Tribunal has held that there was no documentary evidence produced by the appellant on record in support of the income of the deceased, and therefore, it has taken his salary to be Rs.2894.90/- per month (which was rounded off to Rs.2895/- per month) as per the wages for unskilled labour under the Minimum Wages Act, 1948. As the deceased was above 50 years old, a multiplier of 11 was applied to quantify the loss of dependency of the appellant. The dependency was taken to be only of two members i.e. the widow and his mother and so 1/3rd of the amount was deducted on account of personal expenses of the deceased. Thus, the amount under the head of loss of dependency came to Rs.2,54,760/-. Under the conventional heads the Tribunal has awarded Rs.10,000/- for loss of consortium, Rs.10,000/- for loss of estate, Rs.1,00,000/- on account of love and affection and Rs.10,000/- for funeral expenses. Thus, the Tribunal awarded a total sum of Rs.3,84,760/- as compensation with interest at the rate of 7.5% per annum on the award amount from the date of filing of the petition till the notice of the deposit of the award amount under Order 21, Rule 1 of C.P.C. with detailed break-up within 30 days of the dispatch/receipt of order whichever is earlier. The Tribunal also held that the compensation amount would first be paid by the respondent No.3 - the Insurance Company who can thereafter recover it from the respondent No.2 the owner of the vehicle on the ground that it has been proved on record that the license possessed by the respondent No.1 - the driver of the offending vehicle was not issued from the concerned RTO and so the insurer is entitled for recovery of the compensation awarded and directed to pay to the appellant as provided under Section 149(2) of the M.V. Act from the owner.

4. The said judgment and award was challenged by the appellant in the High Court seeking enhancement of compensation granted by the Tribunal questioning the correctness of the compensation awarded. The appellant contended that deceased's income was Rs.1,25,000/- per annum as he was carrying on the business of paints and hardware. It was urged by the learned counsel for the appellant that even if there is no evidence to prove that the deceased had an income of Rs.1,25,000/- the fact that the deceased had brought up two sons who were very well placed would be sufficient to show that he had substantial income. It was contended that even if the appellant's case is considered under Section 163-A of the Act, 1/3rd income of the surviving spouse can be taken as the income of the deceased. The High Court stated that neither was it the case of the appellant that the deceased was an income-tax

assessee nor was any document placed on record to show that any income-tax was paid by the deceased. The High Court held as under :-

"5. 1/3rd of the income of the surviving spouse cannot be taken as the income of the deceased for the reason that this petition was not filed under Section 163-A of the Motor Vehicles Act.

Moreover there is a limit of Rs.40,000/- as income if any claimant approaches the Court under Section 163-A of the Act.

6. The Tribunal rightly took the deceased's income as per the Minimum Wages Act. Since there was no dependent on the deceased, in fact there is no loss of dependency and the appellant was entitled to compensation under the head of loss of his estate on the basis of the judgment of Karnataka High Court in A. Manavalagon v. A. Krishnamurthy & Ors. (2005) ACC 304 and of this Court in Keith Rowe v. Prashant Sagar & Ors. MAC App. No.601/2007 decided on 15.01.2010."

Thus, the High Court held that the compensation awarded by the Tribunal was more than adequate and dismissed the appeal.

5. Aggrieved by the impugned judgment and award passed by the High Court in M.A.C. Appeal No. 830 of 2010, the present appeal is filed by the appellant before this Court urging various grounds. It is urged by the learned counsel for the appellant that the High Court has erred in confirming the judgment of the Tribunal by assessing income of the deceased on the basis of minimum wages of an unskilled worker i.e. Rs.2895/- p.m. It is further contended that the appellant examined herself as a witness and stated her income is Rs.11,000/- per month and that she and her deceased husband were maintaining a car. Both the sons are well qualified and employed. It is contended that with an income of Rs.11,000/- + 2895/- = Rs.13,895/-, it cannot be presumed that the appellant was maintaining family of three adults and two children. Both sons have been brought up, given higher education and settled in life. Thus, the statement of the appellant that the deceased was having annual income of Rs.1,25,000/- ought to

have been accepted by the High Court. The High Court has not considered the future prospects in the income of the deceased. The appellant also contended that the Tribunal has erred in not computing the future prospects of the deceased and it has thus failed to take into account future enhancement in earning of the deceased and has also not taken into consideration future forces of inflation. Even minimum wages are increased periodically by the Minimum Wages Committee under the Minimum Wages Act taking various relevant aspects such as price index, inflation and basic needs required for the worker/employee and his family. Thus, the Tribunal ought to have considered this aspect and as per the case of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas & Ors [(1994) 2 SCC 176]., it should have doubled the salary of the deceased while calculating the compensation. The appellant contended that the High Court erred in not accepting the submission for taking the formula as applicable in cases under Section 163-A of the Act, that 1/3rd of the income of the surviving spouse can be taken as the deceased's income. The appellant relied on the cases of Asha Gupta & Ors. v. Ramji Lal & Anr. [I (2003) ACC 272], Reshma Kumari v. Madan Mohan [(2009) 13 SCC 422], A. Manavalagan v. A. Krishnamurthy & Ors. [I (2005) ACC 304] and Keith Rowe v. Prashant Sagar and Ors. [2011 ACJ 1734]. The appellant also referred to the case of Burgess v. Florence Nightingale Hospital [1955(1) Q.B. 349] as cited in the Keith Rowe case (supra).

6. The learned counsel for respondent No. 3, the insurer contended that the amount of compensation to be determined in this case should be just and reasonable and not meager but at the same time it should not be a bonanza. It was further contended that the Tribunal rightly applied the provisions of the Minimum Wages Act for unskilled labour and took the multiplier of 11. It would be clear from the financial background of the claimants that they were not actually dependent on the deceased as the deceased's wife was earning Rs.11,000/- per month and the son based in the U.S.A. was earning \$1,20,000 per annum and the other son based in Mumbai was earning Rs.18,000/- per month besides other perks. All this reveals that the claimants were very well placed in life. It was further contended that the appellant has erroneously placed reliance on the judgments in the cases of Asha Gupta, A. Manavalagan and Keith Rowe referred to supra as the facts are altogether different as in those cases salary was proved by the documentary evidence.

7. We have carefully examined the correctness of the impugned judgment and award passed by the High Court in exercise of its appellate jurisdiction with a view to find out whether the High Court is justified in upholding the quantum of compensation awarded by the Tribunal as legal and valid and further, as to what amount the claimants are entitled to. The Tribunal has regarded the deceased as an unskilled worker and has taken his wages to be Rs.2895/- as per the Minimum Wages Act, 1948, citing absence of evidence as the ground for doing so. The High Court did not interfere with the findings of the Tribunal and dismissed the appeal filed by the appellant requesting enhancement of compensation awarded by the Tribunal. This Court holds that the concurrent finding of the High Court on the determination of quantum of annual income of the deceased by taking Rs.2895/- per month as wages for an unskilled worker is not only an erroneous approach of theirs but also total non-application of mind on their part as it is unlikely that a person who is self-employed in the business of trading in paints and hardware is an unskilled worker. The Tribunal and the High Court should have taken the wages of the deceased to be that of a skilled worker or clerical and non- technical supervisory staff as he was self-employed and running his own business. As per the Order of the Government of NCT of Delhi dated 09.03.2010, the rate applicable in respect of a clerical and non-technical supervisory staff is Rs.7020/- per month. We hold that it would be just and proper for this Court to take Rs.7020/- per month as the income of the deceased, in the absence of evidence to the contrary. The Tribunal has held that since the deceased was aged 54 years, there is no award with respect to future prospects. In this regard, we must refer to the recent case of this Court, of *Rajesh & Ors. v. Rajbir Singh & Ors.* [2013(6) SCALE 563], wherein a three judge Bench held that,

"Having regard to the fact that in case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, fair and equitable. There shall normally be no addition thereafter."

Thus, we have to add 15% to the monthly income of the deceased as future prospects. We deduct 1/3rd of this amount on account of personal expenses of the deceased which he would have spent had he remained alive. We will apply a multiplier of 11. Following the decision of *Rajesh & Ors. v. Rajbir Singh &*

Ors. (supra), Rs.1,00,000/- must be added under the head of loss of consortium and Rs.25,000/- must be awarded for funeral expenses as this Court in the aforesaid case held that Tribunals have been frugal in the award of compensation under the head 'funeral expenses'. As the Tribunal has awarded Rs.1,00,000/- for loss of love and affection, we will not interfere with the same. The other heads under which we have awarded and the calculation would be as per the table given below:

chart

8. Hence, the amount of Rs.9,60,424/- as calculated above, taking into consideration the various heads of losses, should be awarded in favour of appellant. The duty of the Tribunal and the appellate court to determine 'just, fair and reasonable compensation' as held by this Court in a catena of cases is the justification for this Court for awarding compensation in favour of the appellant, when an application for compensation is made under Section 166 of the M.V. Act. We determine just and reasonable compensation by awarding a total sum of Rs.9,60,424/- with interest @ 9% from the date of filing the petition till the date of realization of the amount. We also hold that the compensation amount would first be paid by the respondent No.3 - the Insurance Company who can thereafter recover it from the respondent No.2 - the owner of the offending vehicle on the ground that it has been proved on record that the license possessed by the respondent No.1 - the driver of the offending vehicle was not issued from the concerned RTO and so the insurer is entitled to recovery of the compensation awarded from the owner and thereby we grant right of recovery to the respondent No.3.

9. Accordingly, the appeal is allowed on the above said terms. The respondent No.3 is directed to pay the enhanced compensation in this appeal within six weeks by preparing the demand draft for 50% of the award in favour of the appellant-wife of the deceased and the rest 50% to be divided equally between the two sons of the deceased, Gagan Mehra (petitioner No.2 in the original claim petition) and Samir Mehra (petitioner No.3 in the original claim petition), and thereafter he can recover the same from respondent No.2. There is no order as to costs.