

Civil Misc. Appeal No. 138/2002
Sajjan Bai & Ors. Vs. Alladdin & Ors.

Date of Order ::: _28/09/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. Ashwini chobisa , for appellants (claimants)
Mr. Tripurari Sharma) for respondent Ins.Co.

Instant appeal has been filed for enhancement of compensation granted vide Award dt.05/10/01 passed by Motor Accident Claim Tribunal Bundi ("**Tribunal**") in MACT Case No.159/01 (13/93) .

Claimants are wife and two minor children of deceased Kanhaiyalal, who was a labourer. As per claim petition, accident took place on 29/08/92 because of rash & negligent driving of offending truck No.RJ-14-G-2465 by respondent No.1 (driver), thereby deceased died. Claimants claimed monthly income of deceased Rs.2,500/-.

The Tribunal after taking note of facts placed on record, assessed age of deceased based on post mortem report of 50 years and monthly income of Rs.1050/- and after 1/3rd deduction towards personal expenses, determined monthly dependency of the family as Rs.700/- and applying multiplier of 10, awarded compensation of Rs.1,14,000/- (including Rs.15,000/- towards loss of consortium to wife and Rs.5,000/- each minors children for love & affection to claimants plus Rs.5,000/- towards funeral expenses) with interest @ 9% p.a., from the date of claim petition to 14/04/94 and from 04/04/98 till actual payment, but for intervening period from 15/04/94 to 03/04/98, interest was not granted vide Award dt.05/10/01. Hence this appeal.

Shri Ashwini Chobisa, Counsel for claimants urged that being low-paid employee, looking to numbers of dependents upon the deceased, no personal expenses can be expected to be incurred by him and that apart, interest which has been withheld for intervening period from 15/04/94 to 03/04/98, is also not supported by material on record and thus impugned Award requires interference by this Court.

Contrarily, Shri Tripurari Sharma, Counsel for respondent Insurance Company urged that whatever may be the earning capacity of deceased, certain part of which is spent for personal expenses and what has been deducted by Tribunal is reasonable in the facts of the case and that apart, if claimants consumed unreasonable time to lead evidence in support of their claim, certainly they are not entitled to interest pendente application or for intervening period.

I have considered rival contentions and with their assistance, perused the findings recorded by the Tribunal. The accident is of 29/08/92 and the claim petition was filed U/s 166 & 140 of the Act on 12/01/93, there was no Schedule appended to the Motor Vehicles Act, 1988, which has come into force after amendment from 14th November, 1994. Compensation has to be awarded for welfare of the family since they have lost their sole bread-earner and this fact can also not be brushed aside that what has been lost by family in no manner can be replaced but atleast can be compensated which is just, equitable and permissible under the provisions of the Act.

I am fortified with the view that those who are

low paid person like present deceased with number of dependents, ordinarily cannot think over for their personal expenses and looking to the financial liability of number of dependents in his family, especially in view of his monthly earning assessed by the Tribunal as Rs.1050/-. Hence it is beyond expectation that the deceased would have spent Rs.350/- per month when he had three other family members including two minor children to maintain their livelihood. After the amendment made in November, 1994 in S.163-A of the Act, has provided Schedule for guidance. As per 2nd Schedule to the Act, even for non-earning members, annual income of Rs.15,000/- has been assessed with no deduction for their personal expenses and in recent decision of this Court in **Shreelal Vs. Surya Kant 2005(3) WLC 707** while following the decision of Apex Court in **Manju Devi Vs. Musafir Paswan (2005(1) TAC (SC) 609)**, observed that up to the age of 15 years, multiplier of 15 is to be applied and when the legislature in 2nd Schedule has not made any difference in application of multiplier for the death of non-earning member. The Apex Court in **Manju Devi Vs. Musafir Paswan (supra)**, wherein the deceased was a boy of 13 years, the Apex Court took his annual income of Rs.15,000/- being a non-earning member as per second Schedule and therefrom no amount has been deducted for his personal expenses and after applying multiplier of 15, awarded compensation to a sum of Rs.2,25,000/- under the head of loss of economic dependency to the family.

In view of settled legal position (supra) and taking note of the fact that the deceased was 50 years of age and was a low paid labourer, and the average age of

an Indian which is considered to be atleast 70 years, multiplier of 13 would be appropriate in terms of Schedule appended to the Act, instead of 10 adopted by the Tribunal, and monthly dependency of the family be determined to Rs.950/- instead of Rs.700/- as assessed by the Tribunal.

As regards quantum of compensation towards love & affection to children besides consortium to claimant wife, in all Rs.30,000/- (including funeral expenses) has been awarded by the Tribunal, which is just and reasonable and it requires no interference by this Court. In the facts of the present case, I consider that the claimant be paid Rs.1,50,000/- in total which include Rs.25,000/- awarded towards consortium, love & affection to claimants and in my opinion, that will be just and reasonable compensation to meet their financial dependency. Thus claimants are entitled to Rs.1,50,000/- as lump sum compensation instead of Rs.1,14,000/- awarded by the Tribunal.

Further I do not find any justification in the impugned Award whereby interest for intervening period from 15/04/94 to 03/04/98 was declined by the Tribunal. Ordinarily interest is always carried from the date of claim petition. The reasons attributed by the Tribunal for not granting interest for the intervening period in my opinion are not germane. Hence the claimants are also entitled to the interest denied by the Tribunal.

Consequently, this appeal is allowed and the claimants are entitled for enhanced compensation for a sum of Rs.36,000/- (Rs.1,50,000/- minus Rs.1,14,000/- awarded vide impugned Award) and the claimants shall also

be entitled for interest @ 9% p.a., on the amount of compensation of Rs.1,14,000/- awarded by Tribunal for intervening period from 15/04/94 to 03/04/98 also. However, total compensation enhanced by this Court (supra), shall carry interest @ 9% p.a., from the date of filing of claim application till its actual payment. Enhanced compensation with interest including for disputed intervening period order supra shall be deposited by the respondent Insurance Company through A/c payee bank draft/pay order before the Tribunal within one month.

The Tribunal is further directed to deposit the enhanced compensation & interest in FDR for three years in Nationalised Bank in name of claimant-wife who will be entitled to receive monthly interest on FDR supra as well as full amount of FDR on its maturity.

No order as to costs.

(Ajay Rastogi), J.

K.Khatri/138CMA2002.