

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

S. B. Civil Misc. Appeal No.1141/2000

(United India Insurance Co. Ltd.

Vs.

Smt. Bidami and ors.)

Date of Order :: 29th July, 2010

HON'BLE MR. JUSTICE MAHESH BHAGWATI

Mr. Ashish Sharma for the appellant.

Mr. Rakesh Chandel for respondent No.1 to 5

Mr. Gajendra Sharma for respondent No.7.

Challenge in this appeal is to the judgment and award dated 22nd October, 1999, rendered by the Motor Accident Claims Tribunal, Kotputli, whereby the learned Tribunal decreed an amount of Rs.12,04,000/- as compensation in favour of the respondents No. 1 to 6 and against the appellant and respondents No. 7 & 8.

2. Contextual facts of the case depict that on 20th September, 1995 at about 6.00 AM, Pokhar (here-in-after to be referred as 'deceased') aged 29 years, a teacher employed by the State government, was going on Scooter on the National Highway at Shahpura. It is alleged that one Truck bearing registration No. RJ-14-G-1839 driven by its driver rashly and negligently emerged from behind and dashed

against the Scooter resulting into the death of Pokhar on the spot. The claimants filed a claim petition on 5th January, 1995 before the Tribunal and the Tribunal decreed the claim petition as indicated here-in-above.

3. Heard the Learned counsel for the parties and carefully perused the relevant material on record including the impugned award.

4. Learned counsel for the appellant concentrated his arguments on the income of the deceased, his future prospects and the income having considered by the Tribunal for the purpose of reckoning the amount of compensation. Learned counsel took me through the salary certificate Ex.18 issued by the B.D.O. Panchayat Samiti, Viratnagar and canvassed that the deceased Pokhar Mal Jat, who was a teacher in a Government School, was drawing the salary of Rs.3,397/- per month but the Learned Tribunal having considered the future prospects and adding the Annual Grade Increments plus giving the benefit of fixation on the service of 9, 18 and 27 years determined Rs.8,000/- to be the income of the deceased and thus computed the amount of compensation which is contrary to the settled principals of law.

5. Learned counsel further canvassed that generally the actual income of the deceased at the time of his death should be taken into consideration for the purpose of reckoning the amount of compensation. Apart this, an addition of 50% of actual salary to the actual salary income of the deceased could also be considered towards future prospects where the deceased had a permanent job. The Learned Tribunal has erred in considering the monthly income of the deceased as Rs.8,000/- on the basis of future promotions, wrongly added the annual grade increments and benefits available after completing the service of 9,18,27 years. Thus, the amount of compensation rendered by the Learned Tribunal is abysmally high which needs to be reduced to a great extent. Learned counsel contended that the amount of compensation may be computed in the light of the judgments of the Hon'ble Supreme Court. He has cited the case of **Sarla Verma Vs. DTC** reported in 2009 (6) SCC, 121, in support thereof.

6. E-converso, the Learned counsel for the claimants defended the impugned award and stated the same to be just and proper. Learned counsel contended that after the death of

Pokhar Mal, two Pay commissions have recommended the increase in the salary of Government employees. Had the deceased survived he would have availed all these benefits and his salary would have gone more than Rs. 8,000/- per month today. Learned Tribunal has rightly considered Rs. 8,000/- to be the monthly income of the deceased and from no stretch of imagination, the amount of compensation computed by the Tribunal can be termed to be abysmally high. The impugned award being just and apt, warrants no intervention and thus the appeal deserves to be dismissed.

7. Having reflected over the submissions made at the bar and carefully scanned the relevant material on record, it is noticed that Pokhar Mal was only 29 years of age at the time of death and he had a large family to support. He was employed as a teacher in a Government School and the Block Development Officer, Panchayat Samiti, Viratnagar is found to have issued a salary certificate, which demonstrates that he was getting a salary of Rs. 3,397/- per month.

8. Basically only three facts need to be established by the claimants for assessing compensation in the case of death:

- (a) age of the deceased;
- (b) income of the deceased; and
- (c) the number of dependents.

9. The issues to be determined by the Tribunal to arrive at the loss of dependency are :

- (i) additions/deductions to be made for arriving at the income;
- (ii) the deduction to be made towards the personal living expenses of the deceased and
- (iii) the multiplier to be applied with reference to the age of the deceased.

10. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

11. It is not in dispute that the monthly income of the deceased Pokhar Mal was Rs. 3,397/- as per the salary certificate Ex.18. Generally, the actual income of the deceased less income tax should be the starting point for calculating the compensation. The question is whether actual income at the time of accident should be taken as the income or whether any addition should be made by taking note of future prospects?

12. In the case of Sarla Verma (Smt) and

others Vs. Delhi Transport Corporation and Anr. reported in (2009) 6 SCC 121, the Hon'ble Apex Court has held thus:

"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."

13. In the light of the above observation of the Hon'ble Apex Court if we take Rs. 3,397/- to be the monthly salary of the deceased and add 50% of actual salary to the actual salary income of the deceased towards future prospects, the income of the deceased shall be considered to be Rs. 5,100/- per month.

14. Now, the next question emerges as to how much of the amount should be deducted as personal and living expenses of the deceased from his considered income? The Hon'ble Apex Court in Para No.30 of the Judgment of Sarla Verma's case (Supra) has held as under:

"Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{\text{rd}}$) where

the number of dependent family members is 2 to 3, one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is 4 to 6, and one-fifth ($1/5^{\text{th}}$) where the number of dependent family members exceeds six."

15. In the instant case, the number of dependent family members is found to be six. The Hon'ble Apex Court has suggested that the deductions towards personal and living expenses should be $\frac{1}{4}$ where the number of dependent family members is four to six. Thus placing reliance on the judgment of 'Sarla Verma', the loss of dependency is computed thus:

Monthly salary income of the deceased=	Rs. 3397/-
Additional 50% of actual salary	= Rs. 1698/-
Total income to be considered	= Rs. 5095/-
	say Rs. 5100/-

16. It is desirable to take $\frac{1}{4}$ of income from the monthly income of the deceased towards his personal and living expenses. The deceased was 29 years of age at the time of his death. He falls in the age group of 25-30 years and thus, the multiplier of 18 can be applied as per second schedule appended to the Motor Vehicles Act, 1988.

17. In view of above, the loss of dependency is computed thus:

Rs. 5100 X 12 X 18 =	Rs. 11, 01, 600/-
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1/4th deductions towards personal and living expenses of the deceased shall be = Rs. 2, 75, 400/-.

Thus, total loss of dependency is as under:

Rs. 11, 01, 600/- - Rs. 2, 75, 400 = **Rs. 8, 26, 200/-**

15. Thus, the claimants-respondents are entitled to get Rs. 8, 26, 200/- from the appellants No. 7 & 8 towards the loss of dependency.

16. Learned Tribunal awarded Rs. 20, 000/- to claimant-respondent No. 1 towards consortium and Rs. 30, 000/- towards deprivation of love and affection of two children. The amount is raised to Rs. 30, 000/- and 40, 000/- respectively. In addition, I deem just to award an amount of Rs. 5, 000/- towards funeral expenses which has not been taken care of by the Learned Tribunal.

17. In the ultimate analysis the claimants-respondents No. 1 to 6 are held entitled to claim Rs. 9, 01, 200/- from the appellant respondents No. 7 & 8 jointly and severally. The amount of compensation under the impugned award is reduced from Rs. 12, 04, 000/- to Rs. 9, 01, 200/-/-

18. For the reasons stated above, the appeal is allowed in part and the impugned award is modified to the following effect:

"The claimant respondent Nos. 1 to 6 are held entitled to get Rs.

9,01,200/- from the appellant respondents No. 7 & 8 jointly and severally instead of Rs. 12,04,000/-. Rest of the terms under the impugned award shall remain unchanged. "

19. The impugned award stands modified as indicated here-in-above.

20. There shall be no order as to costs.

(MAHESH BHAGWATI)J.

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