THE HIGH COURT OF TRIPURA
<u>A G A R T A L A</u>

<u>MAC App. No. 43 of 2009</u>

Claimant-Appellant:

Smti Sarmila Debbarma,
D/o. Late Braja Kumar Debbarma, Resident of Vill Joyram Sardar Para, P.S-Jirania, West Tripura District.

By Advocate :

Mr. P.S. Roy, Adv.

Respondents :

1. Sri Narayan Das,
S/o. Late Ramesh Chandra Das, Resident of Vill. Mohanpur, P.O-Majlishpur, Ranirbazar, P.S-Ranirbazar, West Tripura District.
(Owner of vehicle No. TR-01B-2833-Max)

2. The Oriental Insurance Co. Ltd.
Kaman Chowmuhani, Agartala, West Tripura District. (Insurer of vehicle No. TR-01B-2883-Max)

By Advocate :

Mr. P. K. Debnath, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **9th February, 2015.**

Whether fit for reporting :

Yes	No
√	

<u>JUDGMENT & ORDER (ORAL)</u>

This appeal for enhancement of compensation is directed against the award dated 08.06.2009 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in TS(MAC) No. 434 of 2006 whereby the learned Tribunal has awarded a sum of Rs.1,82,000/- only in favour of the claimant, Smt. Sarmila Debbarma.

[2] Briefly stated, the undisputed facts are that Smti. Sumitra Debbarma died as a result of a motor vehicular accident. The claim petition was filed by her husband who died during the pendency of the claim petition and thereafter the daughter who was aged about 20 years was brought on record. In the claim petition it was alleged that the deceased was having an income of Rs.7,000/- per month from business. Even in para-21 it is alleged that the deceased Sumitra Debbarma was a business woman. However, the claim petition is totally silent as to what was her business. There is not a single wishper what business Sumitra Debbarma used to do. When a detailed claim petition has been filed giving all the details I fail to understand why it would not be stated what business the deceased was doing.

[3] The first issue is what was the age of the deceased? The FIR was filed by Braja Kumar Debbarma, the original claimant and in the FIR, the age of the deceased is shown as 45 years. In the post mortem report the body has been identified by Braja Kumar and age is again mentioned as 45 years. In the list of witnesses attached with the police challan the name of the husband Braja Kumar Debbarma is mentioned and his age is shown as 50 years and he is shown to be in Government service. In the claim petition, it was mentioned that the age of the deceased is 35 years and the claimants have also produced one school transfer certificate dated 2.11.2006 i.e. after the date of accident and in this it is mentioned that her date of birth is 19.02.1972 which would meant that she was little more than 34 years of age at the time of the accident. The daughter swore the affidavit on 11th July, 2008 and in this affidavit her age is mentioned as 20 years meaning thereby that she was born in 1988. This would mean that the deceased was only 16 years when she gave birth to her daughter or 15 years when she got married. This appears to be difficult to believe. The original school certificate was not produced. There is a conflict between the ages given in the post mortem report and the age given by the husband in the FIR and the age as reflected in this transfer certificate. This transfer certificate has also not been proved by calling the Principal of the school or the original register in which the date of birth is mentioned. In a case like the present one where there is such divergence with regard to the age some better evidence should have been led. Even so, I feel that keeping into consideration all these factors especially the age of the daughter, the age of the deceased would have been somewhere between 35 to 40 years.

[4] Next come the issue with regard to the income of the deceased. As stated above, in the claim petition it was stated that she was a business woman but no details of the business were mentioned. We must remember that the claim petition filed by the husband who was alive at the relevant time and the husband in the claim petition has not stated anything about the business of his wife. It is not even stated that she was a tailor or running a tailoring shop.

[5] The claimant's daughter stepped into the witness box and according to her, her mother at the relevant time was aged about 34 years and earning Rs.5,000/- per month by running a tailoring shop at Dukmali Bazar of TTAADC, Khumulwng, West Tripura. No doubt this fact is stated in the affidavit but the claim petition is totally silent in this regard. Some certificate of the President of the Bazar Committee appears to have been filed but the same has not been exhibited either in the statement of the claimant or by examining the President of the Bazar Committee. Therefore, it is not possible to hold that the deceased was a tailor.

[6] Surprisingly the daughter when she appeared in the witness box and filed her affidavit has made the following statement:

> **"5. That, my mother was only a earning member in our family, because my father was a illness person. After few days ago my father was expired. After the death of my mother I am passing my days with starvation and various types of mental shock, agony etc. For the purpose of above family troubles like mental shock, pain, agony etc. I have claimed the Hon'ble Court for an amount of Rs.5,00,000/-(rupees five lakhs) only."**

This is obviously a false and untrue statement, because admittedly the father was in a Government service. Assuming as has been urged before me that the father was unwell but if he was in Govt. service he would have been earning and the statement of the daughter that because her father was ill her mother was the only earning member on the face it is false. As such much reliance cannot be placed on the statement of this witness while dealing with other aspects of the matter. Therefore, I am not inclined to believe the story that the mother was running a tailoring shop and doing business. Having held so, even if the deceased was a house wife the compensation assessed is very much on the lower side.

[7] Reliance placed by the learned counsel on the judgment of the Delhi High Court in ***Royal Sundaram Alliance Insurance Co. Ltd. Vrs. Manmeet Singh and others: 2012 ACJ 721*** is totally misplaced because in that case the number of children were as many as five and the deceased had also left behind her husband. In the present case the husband died during the pendency of the petition and it is only the claim of the daughter which survives. All these facts have to be taken into consideration while assessing compensation.

[8] As far as the judgment of the Apex Court in ***Kalpanaraj and others Vrs. Tamil Nadu State Transport Corporation : 2014 ACJ 1388***

is concerned in my view keeping in view the fact that it is only the daughter who is the claimant the amount has to be awarded keeping in view this fact.

[9] The Apex Court in ***Arun kr. Agarwal vs. National Insurance Company (AIR 2010 SC 3426)*** held as follows:

> **"24. It is not possible to quantify any amount in lieu of the service rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.**
>
> **32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning / surviving spouse for the purpose of computing the compensation. Though, section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others, (AIR 1994 SC 1631 : 1994 AIR SCW 1356) (supra), U.P. S.R.T.C. v. Trilok Chandra (supra), Sarla Verma (Smt) and others v. Delhi Transport Corporation and another, (AIR 2009 SC 3104 : 2009 AIR SCW 4992) (supra) and also take guidance from**

> **the judgment in Lata Wadhwa's case, (AIR 2001 SC 3218 : 2001 AIR SCW 3086). The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker."**

[10] Learned counsel for the respondents has relied upon the judgment of the Chhattisgarh High Court in ***Smt. Jhuniya Bai & Others Vrs. Ashok Kumar Dhruvanshi and Others: AIR 2012 Chhattisgarh 134.*** In view fact that this Court has specifically decided this issue in a number of cases and this Court is following the judgment of the Apex Court in ***Agarwal's*** case (supra) which deals with the case of a House wife, it is not necessary to deal with this issue in detail.

[11] The occurrence took place in the year 2009 and, therefore, the value of the services rendered by the deceased to her family at that time can be assessed at least at Rs.3,000/- per month. If the accident had taken place in 2015 the assessment of the income of a housewife would be much higher. What has been assessed is the contribution of the wife to the household. I have made no deduction from the amount of Rs.3000/- because the future prospects have been taken into consideration. So, the annual loss of dependency works out at Rs.36,000/-. The age of the deceased was between 35 to 40 years and as per the judgment of the Apex Court in ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. (AIR 2009 SC 3104)*** the appropriate multiplier would be 15 and the compensation, therefore, works out at Rs.5,40,000/- on account of loss of dependency.

[12] The father has died and therefore, no consortium can be awarded because consortium is payable only to the spouse and not to the children. The claimant herself has claimed that Rs.50,000/- was spent on cremation and sardh ceremony etc. and that is taken to be the loss of the estate. The claimant-daughter is also held entitled to Rs.20,000/- for loss of the love and affection of her mother. A lesser amount is been granted because the claimant was already almost a major and would soon have got married. The total compensation is, therefore, assessed at Rs.6,10,000/-.

[13] In view of the above discussions, the appeal is allowed and the award is enhanced from Rs.1,82,000/- to Rs.6,10,000/- i.e. by Rs.4,28,000/-. The insurance company has already paid the amount awarded by the learned Tribunal. It is therefore, directed to deposit the enhanced amount of Rs.75,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till deposit of the amount in the Registry of this Court within four months from today.

Since the claimant is a young girl, out of the amount deposited only Rs.1,00,000/- be released to her and the remaining amount shall be kept in a fixed deposit for a period of five years and shall be released to her on expiry of five years or in case of a marriage on an application being filed before this Court.

[14] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE