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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1255 of 2007

The oriental insurance company limited through the divisional manager division office oriental insurance company, Gitanjali Bhavan, Main Road Korba (C.G).

---- Appellants

Versus

1. Smt. Gouri Bai w/o late R.D.Shriwas, aged 46 years.
2. Leeladhar Shriwas S/o Late R.D. Shriwas, aged 25 years.
3. Nagendra Shriwas s/o late R.D.Shriwas, aged 23 years.
4. All respondents no.1 to 3 resident of LIG 47, Shivaji Nagar, Korba (C.G).
5. Rajkumar @ Raju Sahu S/o Jageshwar Sahu, aged 29 years, resident of Sitamani Chowk, Korba (C.G)
6. Nareshdas s/o Kanhaiyadas, aged 25 years, resident of Dhodipara, Korba (C.G).

---- Respondents

For Appellant : Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates.

For respondents/Claimant: Shri Amiykant Tiwari, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

18/07/2017

1. This is insurer's appeal under Section 173 of the Motor Vehicles Act against the award dated 02.03.2007 passed by the Additional Motor Accident Claims Tribunal (FTC) Korba (for short, the Tribunal), in Claim Case No.80/2006.
2. There is cross objection also filed by the claimants/respondents No.1 to 3 seeking for enhancement of compensation awarded by the tribunal.
3. The ground of challenge by the Insurance Company is the quantum.

According to Insurance Company since the claimants are the mother and two major brothers of the deceased, grant of compensation to the claimants was not proper. Further, it was also alleged that the deduction made towards personal expenses of 1/3rd is also not proper. It ought to have been 50% considering the facts that the claimants are the mother as well as major brothers of the deceased. He relied upon the judgment of Supreme Court in case of Sarala Varma & ors. Versus Delhi Transport Corporation & another, 2009 (6) SCC 121 for the purpose of deduction being made at 50% towards personal expenses.

4. Counsel for the respondents however opposing the appeal submits that the present is a case where the deceased Rameshwar died an accidental death that took place on 26.07.2005. That he was the employee of the electricity board and he got employment on compassionate ground on the death of his father. The deceased was the sole earning member in the family and all the claimants before the tribunal where solely dependent upon the deceased and therefore deduction of 1/3rd towards personal expenses was justified and does not warrant interference.

5. It is further submitted by the counsel for the respondents that the compensation awarded by the Tribunal rather deserves to be enhanced and the amount awarded be modified suitably on the ground that the Tribunal has not properly taken into account the salary which the deceased was drawing and has calculated the compensation taking wages to be Rs.7,000/-. He refer to document

Ex.A-7 which is a salary slip of the deceased. The gross salary of the deceased was Rs.9024/- and accordingly calculation should have been made at the wages of the deceased to be Rs.9,000/- and he prayed for enhancement suitably.

6. He further alleges that he was a employee of Electricity Board, the Tribunal also had not taken into account future prospects for the purpose of grant of compensation and thus prayed for award being modified.

7. Having considered the rival contentions put forth on either side and on perusal of the records, this court finds that there is no allegation of any breach of policy conditions. As is reflected from the contention that the only grievance is in respect of deduction of 1/3rd being made towards personal expenses which ought to have been 50% as per Sarla Varma's case.

8. At this juncture for the purpose of deciding the objection raised by the Insurance Company assailing the award, it would be relevant to refer to paragraph of the judgment of the Supreme Court in case of Sarla Varma (Supra), which has also been relied upon by the consel for the Insurance Company. The Supreme Court in the said judgment in very categorical terms has held that in a given case, the Tribunal/Court can deviate from normal rule of deduction of 50% towards personal expenses. The Supreme Court has further held that where the family of the bachelor is largely dependent on the income of the deceased, his personal and living expenses could be restricted to 1/3rd and the contribution to the family members to be deducted as 2/3rd.

9. For ready reference, the relevant portion of the judgment of the Supreme Court is reproduced herein as under-

> “26. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardize the deductions to be made under the head of personal and living expenses of the deceased. This lead to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was a married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction, got statutory recognition under Second Schedule to the Act, in respect of claims under Section 163A of the Motor Vehicles Act, 1988 (`MV Act' for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline.
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> 31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.
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> 32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

10. In the given legal position as it reflects from the judgment, if we compare the said ratio with the facts of the present case, what clearly is explicit from the record is that the deceases Rameshwar himself was an employee who got employment under compassionate

appointment. The compassionate appointment is given to the family members of the deceased taking into consideration the penury status of the family members. Further, the person who was granted compassionate appointment himself has died as a result of an accident and therefore, the family must have been left to total loss of income for their sustenance. Further, from the evidence which have come on record, it does not show that the Insurance Company has proved the fact that the claimants No.2 & 3 were not dependent upon the income of the deceased and which also does not appear to be considering their age.

11. In the aforesaid factual backdrop it has to be inferred that all the claimants were dependents upon the income of the deceased. If we take into consideration the observations of the Supreme Court as referred in preceding paragraph, this court has no hesitation in reaching to the conclusion that the finding of the Tribunal warrants interference and the appeal so far as Insurance Company is concerned, the same being devoid of merit is rejected.

12. The Insurance Company at this Juncture raised an objection that the cross objection of the respondents is not maintainable, and the same has also been filed at belated stage.

13. The said objection of the Insurance Company also is not sustainable and deserves to be rejected for the reason that it is not a new ground which has been raised by the Insurance Company. Such ground has been raised on many occasions in the past. The law has already been settled in catena of decisions of this court which shows that

cross objection/appeal preferred by the claimant is maintainable. Further, what is also relevant to be considered at this juncture is that sub-section 3 of section 243 of the Madhya Pradesh Motor Vehicles Rules 1994 clearly envisages that Orders 21 and 24 of the first schedule of the Civil Procedure shall "*mutatis mutandis*" apply to the appeals preferred to the High Court under section 173 of the Motor Vehicles Act. When the statutes itself provides for the applicability of orders 21 and 41 of CPC so far as appeal before the High Court is concerned, there cannot be any doubt in the mind of this court that the cross objection/appeal of the claimants is not maintainable before the High Court. Such ground raised therefore stands rejected.

14. So far as the cross appeal preferred by the claimants are concerned, all that this Court has to see is whether the Tribunal has taken wages of the claimant to be proper for the purpose of calculating the compensation and whether the Tribunal was justified in not considering the component of future prospects to be added in the compensation.

15. So far as issue of grant of future prospect for the purpose of compensation is concerned, it is no longer res integra in the light of the decision in Sarla Verma (Supra) and also the subsequent decision which has been re-iterated by the Supreme Court till Rajesh & Ors. Vs. Rajvir & Ors. The claimant would be entitled for compensation under the head of future prospects also and it is held that the Tribunal ought to have considered 50 percent of yearly salary of the deceased for the purpose of calculating the compensation.

16. Now we venture into the issue of what would had been the monthly salary which the Tribunal should have taken. Ex. A/7 which has been brought on record clearly depicts the gross earing of the deceased to be Rs.9024/-. Of this, if we deduct the amount that he has received towards HRA, Washing and other Allowances, the said amount comes to Rs.611/-. Further, if we also add the amount of penal interest which the deceased received of Rs.200/-, the same would together come to Rs.811/-. Thus, the only amount which may not otherwise fall as part of wages is Rs.811/-and after deducting Rs.811/- from the salary of Rs.9024/-, the net figure reaches to Rs.8213/-.
17. For the purpose of calculating the wages, this court feels it proper for taking the monthly wages of the deceased to be Rs.8000/- instead of Rs.7000/- as has been taken by the Tribunal.
18. If we calculate the compensation payable to the claimants taking the wages of the deceased to be Rs.8000/- and by adding the amount of compensation which the claimants would have received towards 50 percent future prospects, the total amount would be Rs.25,92,000/- of which if we deduct 1/3rd, the remaining amount would be Rs.17,28,000/-.
19. Thus, the claimants shall be entitled for a total compensation of Rs.17,28,000/-in place of Rs.10,08,000/- as awarded by the Tribunal i.e. Rs.7,20,000/- over and above what has been awarded under loss of dependency.
20. The above enhanced amount of compensation of Rs.7,20,000/- shall

carry interest at the rate quantified in the award. Rest of the conditions mentioned in the award shall remain intact.

21. The oriental insurance company limited is granted two months time to deposit the above enhanced amount of compensation before the concerned claims Tribunal.

Sd/-
(P. Sam Koshy)
Judge

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