IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1187 OF 2016
WITH
CIVIL APPLICATION NO. 2883 OF 2016

The Manager, United India
Assurance Co. Ltd. .. Appellant
vs.
Smt. Suman Anandrao Patil & Anr. .. Respondents

Mr. Ketan Joshi for Appellant.
Mr. V. V. Mohite for Respondent No. 1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 08 February 2017
Date of Pronouncing the Judgment : 17 February 2017

JUDGMENT :-

1] Heard learned counsel for the parties. At their request and with their consent, the appeal is disposed of finally, at this stage itself.

2] This appeal is directed against judgment and award dated 29 August 2015 made by the MACT, Karad, in Motor Accident Claim Petition No. 35 of 2010.

3] The claimants are the parents of Pramod, who met with a fatal accident on 16 November 2009, when, truck bearing Registration no. MH-14-AH-6270 dashed against the motor cycle on which he is riding along with his friend Rohit. Pramod was aged 26 years on the date of the fatal accident and was serving as a Project Engineer with Clearpack India (P) Ltd. Andheri, Mumbai. During the pendency of the claim petition, Pramods's father – claimant no. 2

Anandrao Patil, also expired. The MACT by the impugned award, has awarded compensation of Rs.21,25,000/-, which according to appellant Insurance Company is excessive. Hence, the present appeal.

4] Mr. Joshi, learned counsel for the appellant has submitted that the MACT was not justified in including conveyance allowance of Rs.800/- and advance against medical allowances of Rs.1,000/- in determination of net take home salary of deceased Pramod. Further, Mr. Joshi submits that there is an error apparent on face of record in determining the multiplier on the basis of the age of the deceased Pramod, who was a bachelor at the time of his demise. Relying upon the decision of this court, in ***United India Insurance Co. Ltd. vs. Shobha Amarsingh Rajput & Ors***.[1] Mr. Joshi submits that in such a case the multiplier has to be determined on the basis of the average age of the dependents i.e. the parents in the present case. On such basis, the multiplier in the present case, would be 13 and not 17. Mr. Joshi submits that if suitable directions are made following these principles, the compensation amount works out to Rs.14,97,150/- and that there was no justification in awarding any amount in excess of the said amount by the MACT.

5] Mr. Mohite, learned counsel for the respondent / claimant submits that the multiplier of 17 was applied by the MACT on the basis of the decision of the Hon'ble Apex Court in the case of ***Sarla Verma (Smt.) & ors. vs. Delhi Transport Corporation & Anr.***[2] and therefore, there is no infirmity in the matter. Further, he submits that in this case an amount of hardly Rs.80,000/- has been awarded towards loss of love and affection, medical expenses and funeral expenses, which is, contrary to the decisions of the Supreme Court,

1 2016 (4) ACC 407
2 (2009) 6 SCC 121

including the decision in the case of *Sarla Verma* (supra). He submits that the respondent – claimant is the mother of deceased Pramod. Her husband has also expired during the pendency of proceedings before the MACT. She had no other son, other than Pramod who died in the accident. The accident took place on 16 November 2009 and upto 21 November 2009 Pramod was in the hospital, battling for life. Despite, evidence on record, a sum of hardly Rs.20,000/- has been awarded for medical expenses. For all these reasons, Mr. Mohite submitted that there is no case made out to interfere with the impugned award. In any case, Mr. Mohite submitted that this court, in the exercise of its powers under Order XLI Rule 33, is required to award enhanced compensation towards loss of love and affection, medical expenses and funeral expenses, so that, there is no necessity to interfere with the impugned award on the basis of application of any alleged incorrect multiplier.

6] The rival contentions now fall for my determination.

7] The claim petition in which the impugned award has been made was initially instituted by the parents of the deceased Pramod who was 26 years of age and serving as a project engineer with Clearpack India (P) Ltd. Andheri, Mumbai, on the date he met with the accident i.e. on 16 November 2009. Pramod expired on 21 November 2009, after battling for life in Birla Memorial Hospital. During the pendency of the proceedings before the MACT, Anandrao Patil, father of Pramod, also expired. Both the parents of deceased Pramod were aged 50 years on the date of filing the claim petition. If the multiplier is required to be adopted on the basis of the age of the claimants, since, Pramod was a bachelor at the time of his demise, then, such multiplier would be 13 as contended by Mr. Joshi.

8] This court in *United India Insurance Co. Ltd. vs. Shobha Amarsingh Rajput & Ors. (supra) has held that the multiplier has to be adopted on the basis of average age of the parents, in a situation where the deceased, on account of whose demise the claim petition came to be filed, was a bachelor.* The adoption of multiplier on the basis of the age of the deceased therefore, will not be correct in the facts and circumstances of the present case, where admittedly Pramod was a bachelor at the time of his unfortunate demise in the accident. The MACT was therefore, not right in adopting the multiplier of 17, because the correct multiplier in a case of this nature would be 13.

9] Although, there is some substance in the contention of Mr. Joshi that conveyance allowance and an advance against medical allowances, which amounts to Rs.1,800/- ought not to have been included in determination of net take home salary. In the facts and circumstances of the present case, there is no necessity to order such deductions. This is because this aspect has been considered in great detail by the MACT in paragraphs 18 to 20 of the impugned award and it cannot be said there is any gross or serious error in the matter of determination of the net take home salary of deceased Pramod. The MACT has rightly placed reliance on the decision of the Hon'ble Apex Court in the case of ***Shyamwati Sharma vs. Karam Singh***[3] and held that there need not be any deductions towards GPF, life insurance premium, repayments of loan etc., even though such deduction may appear on the salary slip of the deceased or the victim. There is no hard and fast rule as such in this regard and in a given case, the entire package cum salary may have to be considered. In this case, Pramod, who was only 26 years of age at the time of his demise was employed as a

3 (2010) 12 SCC 378

project engineer in a private limited company. There is evidence that he was mechanical engineer and in good health. There is really no reason to make any further deductions out of the net take home salary of Rs.17,532/- as determined by the MACT in the impugned award.

10] Thus, there is no infirmity in treating the annual income of deceased Pramod at Rs.2,15,973/- after making deductions towards tax liability. The MACT was also entirely justified in making addition of Rs.1,07,986/-, which corresponds to 50% of the annual income, towards future prospects. The total income of deceased Pramod, was therefore required to be taken as Rs.3,23,959/-. There is also no infirmity in deducting a sum of Rs.1,61,979/- towards personal and living expenses of the deceased Pramod, who was bachelor at the time of his unfortunate demise. All this is consistent with the law laid down by the Hon'ble Apex Court in the case of ***Munna Lal Jain & Anr. vs. Vipin Kumar Sharma & Ors***.[4]

11] Mr. Joshi is however right that the multiplier in the present case has to be 13 and not 17 as adopted by the MACT. Therefore, by adopting multiplier of 13, the compensation amount towards loss of dependency comes to Rs.21,05,727/-. To that extent, appropriate modification is warranted in the impugned award which has determined loss of dependency at Rs.27,53,660/-.

12] Towards loss of love and affection, the MACT has awarded an amount of Rs.50,000/- only. This is totally inadequate. In the case of *Sarla Verma* (supra), it is now quite well settled that substantial compensation is to be awarded towards conventional damages like loss of consortium, loss of love and affection and

4 2015 (6) SCC 347

funeral expenses. In ***Shashikala & Ors. vs. Ganga Lakshmamma & Anr***.[5], the Hon'ble Apex Court, in paragraph 17 whilst dealing with an accident which took place on 14 December 2006 has observed thus :

> *"17. With respect to the award of compensation towards conventional heads, the tribunal has awarded only Rs.10,000/- towards loss of consortium and Rs.10,000/- towards love and affection, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral charges. The High Court totally awarded Rs.45,000/- towards conventional heads such as loss of estate, loss of love and affection, loss of consortium, transportation of dead body and funeral expenses. In various decisions, this Court has held that substantial compensation is to be awarded towards conventional damages like loss of consortium, loss of love and affection and funeral expenses. In Rajesh and Ors. vs. Rajbir Singh & Ors., and Jiju Kuruvila & Ors. vs. Kunjujamma Mohan & Ors., this Court has awarded substantial amount of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Following the same, Rs.1,00,000/- is awarded towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the minor children and Rs.25,000/- towards funeral expenses and Rs.25,000/- towards loss of estate totalling to Rs.2,50,000/-. Thus, the compensation awarded to the claimants is enhanced to Rs.19,32,310/-."*

13] Further, compensation towards loss of love and affection, in a situation of this nature, does not have to necessarily be Rs.1,00,000/- only but has to be minimum of Rs.1,00,000/-. Further, such compensation has to be awarded both, to the mother as well as the father in the present case.

14] The material on record establishes that Pramod was the only son of the claimants. During the pendency of the claim petition, even the father has expired leaving behind the mother to fend for

5 (2015) 9 SCC 150

herself, in old age. Obviously, the loss towards love and affection of the only child, is, incapable of being computed by any material or mandatory terms. Deceased Pramod in this case, was only 26 years of age at the time of his demise. He was a mechanical engineer having a very stable job. He died as a bachelor, in fact, under the tragic circumstances. In such a situation, compensation towards loss of love and affection ought to have been at least Rs.1,50,000/- per claimant, which means total compensation under this head should have been Rs.3,00,000/- and not merely Rs.50,000/- as determined by the MACT. The duty of this court is to determine just compensation. In the exercise of powers under Order XLI Rule 33 of CPC, it is permissible for the appeal court to award additional compensation as against any particular head, if, it is noticed that just compensation has not been awarded. Such addition, does not, at least, in the present case, exceeds the total compensation otherwise awarded by the MACT in the impugned award.

15] Besides, in this case, there is evidence on record which establishes that the deceased Pramod met with an accident on 16 November 2009 and was admitted at Birla Memorial Hospital at Thergaon. After battling for life, Pramod expired on 21 November 2009. In fact, he was moved to YCM Hospital at Pimpri and was pronounced dead upon arrival. The autopsy report details reveal the head injuries suffered by Pramod and the complications arising therefrom. The trauma which the claimants themselves must have gone through, is unimaginable. Despite all this, the MACT has awarded an amount of only Rs.20,000/- towards medical expenses. This is grossly inadequate and this amount, in the facts and circumstances of the present case, is required to be enhanced to

Rs.1,00,000/-. Further, award of compensation at the rate of Rs.10,000/- towards funeral expenses is quite inadequate and this amount is also required to be enhanced to Rs.25,000/-. The total amount therefore, comes to Rs.25,30,727/-.

16] From out of the aforesaid amount, 25% deduction is required to be made towards the finding of contributory negligence, which has not been challenged by the respondent – claimant. This means, the total amount of compensation payable to the respondent – claimant works out to Rs.18,98,045.25 paise, which can be safely rounded upto Rs.19,00,000/-.

17] The impugned award is therefore modified by substituting the compensation amount of Rs.21,25,000/- with Rs.19,00,000/-. Save and except such modification, the impugned award shall bind the parties and to that extent, is upheld.

18] The appeal is partly allowed in the aforesaid terms. There shall be no order as to costs. Civil application does not survive and is disposed of accordingly.

19] The amount of Rs.25,000/- deposited in this court may be transmitted to the MACT at Karad. The amount of compensation if deposited before the MACT, may be paid to the respondent – claimant in accordance with the impugned award dated 29 August 2015, as modified by this order.

20] All concerned to act on basis of authenticated copy of this order.

Chandka **(M. S. SONAK, J.)**