

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 630 OF 2014
WITH
CIVIL APPLICATION NO. 3597 OF 2013
IN
FIRST APPEAL NO. 630 OF 2014

M/s. Bajaj Alliance General Insurance
Co. Ltd.

...Appellant

Versus

Smt.Prabhavati Hiranman Babar & Anr.

...Respondents

.....

Mr. M.M.Sathaye for the Appellant.

Ms. Komal Sawant i/b. Mr. A.M. Gokhale for Respondent No.1.

.....

CORAM: MRS.MRIDULA BHATKAR, J.
DATE OF RESERVED: FEBRUARY 21, 2018
DATE OF PRONOUNCEMENT: FEBRUARY 24, 2018

JUDGMENT

1. Admit. By consent of the parties, the Appeal is heard finally and decided at the stage of admission, as short issue is involved.

2. This Appeal is directed against the judgment and award dated 17.09.2012 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No. 3229 of 2008 thereby allowing the

claim application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the said Act”). The original claimant is a widow of the deceased Hiranman Babar, who died in a vehicular accident on 24.09.2008. On 24.09.2008, at 9.45 a.m. when he was crossing the road, one auto rickshaw bearing no. MH-03-M-429 gave dashed to Hiranman. Due to accident, he has sustained severe injuries and died soon. At the time of accident, he was 53 years old. He was working in the Office of Tahasildar, Mulund, Mumbai as a Peon and was drawing salary of Rs. 11,500/- p.m. Therefore, the original claimant has claimed compensation of Rs. 10 lakhs. After notice, opposite party/ owner did not appear and, therefore, the matter was proceeded ex-parte against him. The appellant/ insurance company appeared, filed written statement and contested the averments made in the claim application. The issues were framed by the Tribunal. The original claimant stepped in the witness box. So also, one Sudhir Madhavrao Chaudhari, who is working in the office of Tahasildar as a Senior Clerk, was examined on the point of service and salary. The original claimant relied on the police papers. The appellant/ insurance company examined one Sachin Kashiram Hiwale, who is working as a Clerk in the Office of Regional Transport Office, and produced a copy of smart card driving licence

of the driver of the offending auto rickshaw. The learned Member of the Tribunal, after considering the oral as well as documentary evidence, held opposite party and insurer jointly and severally liable to pay compensation of Rs. 9,82,925/- along with interest @ 7.5% p.a. from the date of filing of the petition till realization of the said amount. Being aggrieved by the said judgment and award, the insurance company has filed this Appeal.

3. The learned Counsel for the appellant/ insurance company has submitted that the insurance company has challenged the judgment and award on two grounds that the learned Member of the tribunal should not have been adopted multiplier 9 to calculate the loss of dependency. He has further submitted that the deceased was a government employee and he was getting fixed salary. He has further submitted that the deceased was due for retirement after two years and, therefore, the Tribunal should not have been adopted multiplier 9 for two years. He has further submitted that the deceased would have got full salary only for more two years and after his retirement he was supposed to get pension amount. Hence, the amount of compensation should have been reduced on that

basis. He has raised another objection that the original claimant was receiving pension after the death of her husband and, therefore, her loss of dependency was compensated to that extent. He has further submitted that the learned Member of the Tribunal ought to have deducted the amount of pension from the amount of compensation. He has further submitted that the amount of compensation granted by the Tribunal is on the higher side and, therefore, the impugned judgment and award passed by the learned Member of the tribunal needs to be partially set aside. In support of his submission, he has relied on the judgment of this Court ***dated 22.04.2010 in First Appeal No. 1003 of 2005*** in the case of ***Smt. Sushma Sudhakar Kadam & Ors. Vs. Waman S/o. Shrawan Zanke & Ors.***

4. Per contra, the learned Counsel for respondent no.1/ original claimant opposed this Appeal. She supported the impugned judgment and award passed by the Tribunal. She has submitted that the learned Member of the Tribunal has calculated the amount properly by considering all aspects of the age, income and dependency. She has further submitted that the amount of pension cannot be deducted from the amount of compensation. In support of her submission, she has relied on the judgment of the Supreme

Court in the case of ***Vimal Kanwar and others V. Kishore Dan and others*** reported in ***2013 ACJ 1441***.

5. Heard submissions. Perused the impugned judgment and award. The fact of death of Hiranman Babar in road accident on 24.09.2008 is not disputed. He was pedestrian and the offending auto rickshaw dashed him when he was crossing the road. Mainly two grounds of challenge are for consideration. Firstly, whether the learned Member of the tribunal should have applied the principle of split multiplicand and secondly, whether the amount of pension should have been deducted from the amount of compensation.

6. The first point involves the age of the deceased, who was 56 years old at the time of the accident. As per the schedule given in the case of ***Smt. Sarla Varma and Others V/s. Delhi Transport Corporation and Another*** reported in ***(2009) 6 Supreme Court Cases 121***, if the deceased is between the age group of 56-60, then multiplier 9 is adopted. In the present case also, the learned Member of the Tribunal has fixed a correct multiplier 9. The objection of the learned counsel for the appellant/ insurance company in fact is not about the multiplier, but it pertains to multiplicand in view of the age

of the deceased and the nature of his service. The deceased was working as a Peon in the Office of Tahasildar hence government employee. At the time of accident, he was drawing salary of Rs. 11,500/- p.m. and the tenure of his service was fixed upto 58 years as per the government service Rules. The insurance company has no grievance in giving the compensation by adopting multiplicand in accordance with his monthly salary i.e., Rs.11,500/- p.m. only for two years till his age of 58, however, the objection is raised in respect of further seven years. After two years i.e., after superannuation the deceased would not have earned the same salary, but his earning was bound to reduce. The deceased was supposed to get pension, which is bound to be lesser than his salary. Hence, it was argued that for a period of seven years the multiplicand is to be fixed not on the basis of his salary, but on the basis of his pension.

7. These arguments may appear correct, but after close scrutiny of the facts and on applying the principles of law under the Motor Vehicles Act and calculating the amount of compensation, the arguments are found fallacious and hence, not acceptable. While calculating the pecuniary damages, it cannot be restricted to the

salary and pension of the deceased. The date of superannuation of the government employee is always fixed. However, two factors cannot be ignored. Firstly, there is always rise in the salary consequently pension also increases after every ten years i.e., on implementation, directions and recommendation of the pay commission. After retirement, a person may survive minimum 10 to 15 years i.e., upto 65 to 75 years. Secondly, after superannuation at the age of 58, considering the longevity of the life of the individuals due to advanced medical science, the person may get benefit of such pension for more years. Therefore, it is not desirable to restrict the multiplicand for a period of two years upto the amount of salary of the deceased and thereafter, by splitting it cannot be fixed at a lesser amount i.e., pension amount. The principle of split multiplier can be applied in appropriate case, but I am of the view that it is not a fit case to take recourse of split multiplier.

8. The second point was whether the amount of pension receivable by the original claimant i.e., widow of the deceased is subjected to deduction while calculating the amount of compensation. The government employee is entitled to get pension

for the services rendered by him/her during his/her service. The pension is a financial security to the employee if job is pensionable. After the death of the employee, the spouse is also entitled to receive family pension as per the rules. The pension is the statutory financial benefit for which the spouse is entitled to. The cause of death of the employee may be sickness or any other disease or natural or unnatural death. The accident may be one of the causes. After the death of the employee due to any reason, the pension is receivable by the spouse. However, the compensation is payable to only for a particular class of death where the cause is an accident. The amount of compensation is related to the accidental death, but the amount of pension is related to only death. The payment of compensation is based on contractual liability between the insured and insurer and the payment of pension is a statutory obligation of the Government/State or employer under the Act/ Rules. Thus, these two liabilities/ obligations are different, cannot be merged, as the amount of compensation is not a substitute in any manner for the amount of pension. This contractual liability of the insurance company is recognized under the statute hence the insurance company has to pay compensation. In the case of **Smt. Sushma Sudhakar Kadam** (*supra*), this was not the issue before the Single

Judge of this Court. There is a passing reference where pension is deducted from the amount of compensation. I rely on the ratio laid down in the case of **Vimal Kanwar and others** (*supra*) wherein the Supreme Court has considered the issue whether the salary receivable by claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction. The Supreme Court has held as under:-

"Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as 'pecuniary advantage' that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act".

Thus, income gained out of pension is not a pecuniary advantage purported in the Motor Vehicles Act and hence, not liable for deduction. If a person dies due to the dash given by the vehicle validly insured with the insurance company, and the claimant proves the cause of death and income, then the insurance company is

liable to pay compensation as per standardized formula laid down in the case of **Sarla Varma** (*supra*) and also in the case of **National Insurance Company Limited Versus Pranay Sheti and Ors.** reported in **AIR 2017 SC 5157**. Therefore, I am of the view that the learned Member of the Tribunal has taken correct approach in not deducting the amount of pension receivable by the original claimant from the amount of compensation. Hence, First Appeal is dismissed.

9. In view of dismissal of the First Appeal, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)