08.03. 2024
Item No.15
n.b.
Ct. no. 551

FMA 668 of 2022

Smt. Chandrika Biswas @ Selin Biswas & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Jayanta Banerjee,
Mr. Argha Bhattacharya,
Mr. Asish Kumar Sasmal,
.....for the appellants.
Mr. Rajdeep Bhattacharya,
Mr. Debasish Banerjee,
... for the respondent.

This appeal has been preferred against the judgment and order dated February 18, 2021 passed by the learned Judge, Motor accident Claims Tribunal, 4th Court. Krishnagar, Nadia in M.A.C. Case No.211 of 2007.

The brief fact of the case is that on February 9, 2007 at about 20.30 hours while deceased after meeting his mother was returning towards his own residence by his own cycle through NH 34 near Begopara in front of the house of Peter Mallick one offending vehicle bearing no.WGE 2377 Truck coming from Kolkata side running at a very high and excessive speed proceeding towards the same direction lost control and knocked down the deceased resulting in the instantaneous death of the deceased.

The claimants being the widow, son, minor daughter and the mother of the deceased preferred an application under Section 166 of the M.V. Act before the learned

Tribunal for getting compensation against the Insurance Company on the ground that the offending vehicle was insured under the policy of the Insurance Company at the time of accident.

The claim was contested by the Insurance Company by filing written statement.

After hearing the parties and after receiving the evidence, the learned Tribunal has awarded a sum of Rs.39,78,040/- towards the compensation and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award, the present appeal has been preferred by the claimants/appellants. After service of notice of appeal, the Insurance Company appeared and file one cross appeal by the leave of this Court.

It is further fact of the case that the award passed by the learned Tribunal was satisfied by the Insurance Company prior to filing cross-appeal.

Mr. Banerjee, learned advocate appearing on behalf of the appellants submits that the appeal was preferred only on the point of quantum. Learned Tribunal has awarded the compensation by fixing the future prospect to the tune 30% adding to the established income of the deceased but addition of future prospect was not made at the time of calculation. He submits that there was arithmetic error in calculating the compensation. So, the future prospect must be allowed to be added in this case.

He further argued that the learned Tribunal has deducted1/3rd of the income of the deceased towards his the personal living expenses. He argued that there are four(4) claimants at the time of filing of the instant claim application. They are widow, son of the deceased, minor daughter of the deceased and the mother of the deceased. The mother of the deceased died during the pendency of the claim application. The present appellants/claimants are substituted at the place of the mother of the deceased as there are no other legal heirs left.

Mr. Benerjee argued that personal and living expenses of the deceased is to be calculated according to the number of the claimant. In this case, the number of claimants are four(4), so, the deduction towards the personal expenses according to the observation of the Hon'ble Supreme Court in **Sarala Verma Vs. Delhi State Transport Corporation Ltd.** would be 1/4th. He further argued that the learned Tribunal has committed error by deducting 1/3rd on the ground that only three(3) dependent are left at time of awarding the compensation. Mr. Benerjee further argued the principle is to be looked into in this case that the award is to be calculated at the date death of the deceased not at the date of passing the judgment. He further argued that that the parameters of awarding the compensation as per view of the Hon'ble Supreme Court according to the other guideline from the date of death of the deceased. So, in this case, the award passed by the learned Tribunal is erroneous. The deduction towards the personal expenses would be $1/4^{th}$ instead of $1/3^{rd}$.

Mr. Bhattacharjee, learned advocate appearing on behalf of the Insurance Company submits that the Insurance Company has nothing to say about the arithmetic error appearing in the part of the calculation of the learned Tribunal. He further argued that the learned Tribunal has committed no error by deducting the $1/3^{rd}$ of income towards the personal and living expenses of the victim. He submits at the time of passing the impugned award, the learned Tribunal has considered the fact that the dependents living at the time of passing the award are three(3). So the learned Tribunal has correctly deducted $1/3^{rd}$ towards personal and living expenses of the victim according to the observation of the Hon'ble Supreme Court in **Sarala Verma(supra)**.

Heard the learned advocates. It appears that there are some arithmetic error for not adding future prospect with the impugned award. So, the future prospect which was assessed by the learned Tribunal has to be added to the income of the deceased.

In considering the deduction towards the personal and living expenses, the situation arise in this particular case that at the time of filing of the claim application, there are four dependents, at the time passing impugned award there are three dependents. Let me consider the observation of the Hon'ble Supreme Court in **Sarala Verma(supra)** regarding such issues. In deciding such issue, the Hon'ble Supreme Court has considered the statutory guideline in the second schedule of Section 163A of M. V. Act and also perused the observation of Hon'ble Supreme Court in **Susamma Thomas**, **U.P. SRTC Vs. Trilok Chandra, Fakeerappa & Anr. Vs. Karnataka Cement Pipe Factory & Ors.** and after deciding all authorities the Hon'ble Supreme Court is of view that

"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 dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

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 the family of the bachelor is large and dependent 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."*

So, it is the view of the Hon'ble Supreme Court that the where the deceased was a bachelor and the claimants are the parents, the deduction would be 50% as personal living expenses because it is assumed that the bachelor would tend to spend more on himself. It is further observed the Hon'ble Supreme Court where the …. Of the bachelor is large and depended on the income of the deceased as in the case where widow mother and large number of another non-earning sisters or brothers. His personal and living expenses may be restricted $1/3^{rd}$ and contribution to the family will be taken to be $2/3^{rd}$.

So, it is not specifically clear that what would be a date for considering for assessing the present deduction of deceased. It is the direction of the legislature that the claim application has to be filed before the learned Tribunal and the learned Tribunal has to assess the entire facts and circumstances of the case and its attending circumstances, the learned Tribunal had to pass just and proper compensation. The just and proper compensation towards the claimants entitle them to get the benefit of that legislation. Such benefit is assessed by the learned Tribunal at the timer of passing the Judgment. It may clear that at the time of filing of the claim application there may have several aspects regarding the income avocation and the number of the dependences but the learned Tribunal has to asses the compensation on the basis of attending facts and circumstances which comes after taking evidences and all matters on record.

The same issue was raised before the Hon'ble Supreme Court in **Kiriti and Anr. Vs. Oriental Insurance Co. Ltd.** reported in **(2021) 2 SCC 166**, wherein the Apex Court has held that:

"9. We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact where four dependants of the deceased and not three. The subsequent death of the deceased's dependant mother ought not to be a reason for deduction of motor accident compensation. Claims and legal liabilities crystallize at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like now the appellant claimants cannot rely upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependant during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties,

as it is legally settled that advocates cannot throw away legal rights or enter into arrangements contrary to law."

"10. Any compensation awarded by a court ought to be just, reasonable and consequently must undoubtedly be guided by principles of fairness, equity and good conscience. No only did the family of the deceased consist of suptuagenarian parents, but there were also two toddler girls, ages merely 3 and 4 years; each of whom requires exceptional care and expenditure till they reach the stage of self-dependency. Tragically, in addition to the married couple, the negligence of the driver also extinguished the life of the family's third child who was a foetus in Poonam's womb at the time of the accident. Thus, the appropriate deduction for personal expenses for both Vinod and Poonam ought to be 1/4th only, and not 1/3rd as applied by the Tribunal and the High Court, more so when there were four family members dependent on the deceased."

So, it is clear findings of the Apex Court that claims and legal liabilities crystalized at time of accident itself, and changes post thereto ought not to ordinarily affect pending proceedings.

Following the observations of the Apex Court, in my view, the award passed by the learned Tribunal regarding the living expenses of the deceased is not incorrect. In this case deduction towards the personal living expenses of the deceased would be 1/4th instead of 1/3rd.

In considering the cross appeal filed by the Insurance Company after satisfying the award, Mr. Bhattacharya, learned advocate appearing on behalf of the Insurance Company submits that the Insurance Company has satisfied the award considering the poor condition of the claimant but the Insurance Company has preferred the cross appeal on the ground that the income assessed by the learned Tribunal was not correct.

Mr. Banerjee, learned advocate appearing on behalf of the claimant submits that the cross appeal filed by the Insurance Company is not maintainable after satisfying the award. The Insurance Company cannot be filed nay appeal or cross appeal against the award, which was satisfied by them. In support contention he cited the decision of Hon'ble Supreme Court as well as the Division Bench of the Court as follows:

Bherusingh & Ors. Vs. Mahesh & ors. reported in **2014 ACJ 642, Labhoo Vs. Yakub & Ors.** reported in **2013 ACJ 2636** and judgment of Division Bench of this Court passed in **Monoj Chatterjee Vs. Kailash Agarwal & Ors.(FMAT 602 of 2019**)

Heard the learned advocate considering the fact and circumstances of the case as mentioned above it appears to me that law has been settled by the Hon'ble Supreme Court that after filing of the appeal by the claimant for enhancement of the award and the Insurance Company after satisfying the award before the learned Tribunal, cannot prefer any appeal or cross appeal challenging the said award. I am of a clear view that the Insurance Company is debarred to challenge award, which has already been satisfied by them without any rider. So the cross appeal preferred by the Insurance Company appears to be not maintainable.

Considering the above aspect, it appears to me that the award passed by the learned Tribunal requires modification. **Just and proper compensation is recusted as follows:**

Income	Rs.34,800/-
Add Future prospect 30%	Rs.10440/-
Total	Rs.45,240/-
Annual income (45,240 X12)	Rs.5,42,880/-
Deduction 1/4th	Rs.1,35,720/-
Total	Rs.4,07,160/-
Multiplier 14(4,07,160 X 14)	Rs.57,00,240/-
Add general damages	Rs.70,000/-
	Rs.57,70,240/-
Amount paid	Rs.39,78,040/-
Total Balance	Rs.17,92,200/-

The Insurance company is directed to pay the balance awarded sum together with interest 6% per annum from the date of filing of the claim application i.e. May 2, 2007 through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit, the office of the learned Registrar General, High Court, Calcutta shall disburse the amount in the name of the appellants equally.

The payment of compensation is subject to the ascertainment of payment of deficit court fees, if any.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit court fee, if any.

Accordingly, FMA 668 of 2022 is disposed of.

Connection applications, if any, are disposed of.

LCR be send down immediately.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)