In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Mr. Justice Jayanta Kumar Biswas
and
The Hon'ble Mr. Justice Sahidullah Munshi

F.M.A. No.1215 of 2007
Sri Sasadhar Mishra & Anr.
v.
National Insurance Company Ltd. & Ors.

Mr. Mr. Krishanu Banik ... for the appellants.

Mr. Afroz Alam ... for the respondents.

Heard on: February 28, 2014.

Judgement on: February 28, 2014.

Jayanta Kumar Biswas, J:- The claimants in MACC No.569 of 2005 in the Motor Accidents Claims Tribunal, Paschim Medinipur are the appellants. They are aggrieved by the award dated February 28, 2007. They are questioning the adequacy of the compensation.

The appellants are the parents of one Prakash Kumar Mishra. Claiming fault liability compensation they filed an application before the claims tribunal under s.166 of the Motor Vehicles Act, 1988 on July 29, 2005.

The appellants' case was this. A motor vehicle accident killed Prakash on October 22, 2004. The accident happened due to rash and negligent driving of two vehicles:–No.WB-11A-5357 (a bus) and No.WB-02Q-3597 (a Tata Sumo). Prakash was travelling in the Sumo. He was 32 and self-employed. He used to earn ₹12,000 per month. The bus was covered by a valid policy issued by the insurance company. The owners of the bus and the insurance company became liable to pay ₹16 lakh with interest and costs.

The insurance company contested the case by filing a written statement. It denied and disputed the correctness of all material facts. The owners of the

offending vehicle chose not to contest the case. In proof of the case the first appellant testified as PW1 and an eyewitness to the accident was examined as PW2. The appellants exhibited copies of FIR, charge-sheet, seizure list, post-mortem report, the victim's income tax return for the assessment year 2003-2004, secondary examination admit card, electrical engineering diploma certificate, electrical supervisor's certificate of competency and pan card.

The claims tribunal held as follows:–

The appellants proved that the accident happened on October 22, 2004 due to rash and negligent driving of the offending vehicle, and that in the accident Prakash was killed. The income tax return proved that at the date of his death Prakash, a self-employed person, used to earn on an average ₹1.2 lakh p.a. At that date his mother was 59. Hence multiplier 8 would apply. One-third should be deducted towards personal and living expenses and two-thirds on the grounds that PW1 was getting ₹5,800 monthly pension. The appellants would get ₹2,000 funeral expenses. The insurance company would pay 5% p.a. interest if it failed to pay within the time mentioned in the award.

Accordingly, the claims tribunal calculated the compensation in the following manner:– ₹1,20,000 (annual income) – ₹40,000 (towards personal and living expenses) = ₹80,000 × 8 (multiplier) = ₹6,40,000 – ₹4,26,667 = ₹2,13,330 rounded up to ₹2,13,400 + ₹2,000 (funeral expenses) = ₹2,15,400.

Mr. Banik appearing for the appellants has argued as follows. The claims tribunal could not deduct any amount citing monthly pension received by the first appellant. The deduction could not be more than 50% of bachelor Prakash's determined annual income. The appellants are also entitled to future prospects and 50% of the income should be added on this account. The claims tribunal ought to have chosen the multiplier 9 following Sarala Verma table and granted interest from the date of filing of the application till the date of payment.

Mr. Alam appearing for the insurance company has been helped by Mr. Das. His submissions are as follows. Personal and living expenses could not be more than 50%. The claims tribunal determined income on the basis of gross income, not net. In view of the decisions of the Supreme Court no amount on

account of future prospects can be added to the income of a victim who was a self-employed person. The multiplier was rightly chosen. Interest issue has already been decided by this court. The appelllants were entitled to interest.

Prakash's income-tax return (Ex8) proved that during the year 2003-2004 his gross income was ₹1,37,845, tax payable on income was ₹14,256 and net income after payment of tax was ₹1,26,284. Prakash was a self-employed person. The claims tribunal held that it would be appropriate to hold that at the date of his death his average annual income was ₹1,20,000. Hence we are unable to accept that the claims tribunal determined Prakash's income without taking into consideration the tax payable on his gross income.

As to multiplier, the claims tribunal chose 8 on the basis that Prakash's mother, the second appellant, was 59 at the date of the accident in which Prakash was killed. It chose the multiplier on the basis of the provisions of the Second Schedule to the Motor Vehicles Act, 1988. It passed the award on February 28, 2007.

In view of Reshma Kumari & Ors. v. Madan Mohan & Anr., 2013 ACJ 1253, the courts and tribunals are to choose the multipliers specified in column 4 of Sarla Verma table and it is to be applied to all pending matters as well. Sarla Verma was given on April 15, 2009, i.e., after the claims tribunal passed the award. But in view of the direction in Reshma Kumari, the Sarla Verma table is to be applied to this case pending in this court in appeal. hence mulitplier 9 specified in column 4 of Sarla Verma table will apply to the case.

On future prospects, Mr. Banik and Mr. Das have cited:–

Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 ACJ 1298 (a two-Judge Bench decision given on April 15, 2009); Santosh Devi v. National Insurance Co. Ltd. & Ors., 2012 ACJ 1428 (a two-Judge Bench decision given on April 23, 2012); Reshma Kumari & Ors. v. Madan Mohan & Anr., 2013 ACJ 1253 (a three-Judge Bench decision given on April 2, 2013); Rajesh & Ors. v. Rajbir Singh & Ors., (2013) ACC 841 (SC) (a three-Judge Bench decision given on April 12, 2013); and Sanjay Verma v. Haryana Roadways, 2014(1) T.A.C. 711 (SC) (a three-Judge Bench decision given on January 29, 2014).

In view of the principle stated in para.11 of Sarla Verma report nothing is to be added on account of future prospects to the income of a victim who was self-employed or was on a fixed salary except in a rare and exceptional case involving special circumstances. This principle stated in Sarla Verma by a two-Judge Bench was not accepted by the two-Judge Bench that gave the decision in Santosh Devi.

In Santosh Devi expressing its inability to accept the principle stated in Sarla Verma, the Supreme Court said, "...it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

The three-Judge Bench that gave the decision in Reshma Kumari approved the principle stated in Sarla Verma. It, however, did not consider Santosh Devi. A few days after Reshma Kumari Rajesh was given.

Considering Sarla Verma and Santosh Devi, but without considering Reshma Kumari, in Rajesh the three-Judge Bench clarified saying, "the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects;" and said that while the addition should be 30% if the deceased was in the age group of 40-50, it would be 15% if the victim was in the age group 50-60; but that normally there should be no addition if the victim was above 60.

Sanjay Verma is the latest decision and the three-Judge Bench has given it after considering Sarla Verma, Santosh Devi, Reshma Kumari and Rajesh. In Sanjay Verma, the Supreme Court has not only stated for the first time that

addition on account of future prospects will be applicable to injury cases as well, but has very clearly stated that the addition on account of future prospects principle will apply to a claim case arising out of death or injury of a self-employed victim. The Supreme Court has explained what the expression "exceptional and extra-ordinary circumstances" referred to in Sarla Verma and Reshma Kumari should mean.

We are, therefore, of the view that the law on future prospects addition declared by the Supreme Court from time to time has now taken a shape, and that it is the one stated in Sanjay Verma. The evident conflict between the principles stated in Reshma Kumari and Rajesh (both three-Judge Bench decisions) should not create any trouble in deciding which principle should be followed by us. We are of the clear opinion that the principle stated in Santosh Devi, Rajesh and at last in Sanjay Verma is the one that we should follow.

In view of the above-noted analysis of the five decisions cited to us, we are of the view that in this case the appellants are entitled to a 50% addition on account of future prospects.

The deduction and interest issues have already been decided by this court after considering almost all the relevant decisions of the Supreme Court. The deduction issue has been decided on February 24, 2014 in FMA No.158 of 2007 (National Insurance Co. Ltd. v. Chhabirani Samanta & Anr.) and the interest issue has been decided on January 29, 2004 in FMA No.1346 of 2013 (Niva Devi v. New India Assurance Company Limited & Anr.).

After examining the law laid down by the Supreme Court from time to time, this court has held that in a claim case arising out of the death of a bachelor victim and in which the parents of the victim are the claimants, in the absence of evidence showing the victim's actual contribution to the family, it will be just and proper to deduct 50% for his personal and living expenses.

As to interest, this court has examined the decisions of the Supreme Court given from time to time and has held that a claimant successful before a claims tribunal is entitled to interest under s.171 of the Motor Vehicles Act, 1988. This court has also decided what should be the rates in cases in which awards were passed from 1985 till January 29, 2014. At this date Niva Devi decision was given. According to the decision, the appellants are entitled to 8% p.a. interest.

We, therefore, hold that the appellants are entitled to the following compensation:– ₹1,20,000 (the victim's annual income) + ₹60,000 (addition on account of future prospects) = ₹1,80,000 – ₹90,000 (50% deduction towards the victim's personal and living expenses) = ₹90,000 × 9 (Sarla Verma column 4 multiplier) = ₹8,10,000 + ₹2,000 (funeral expenses) + ₹2,500 (loss of estate) = ₹8,14,500 + 8% p.a. interest on the amount from July 29, 2005 till the date of payment.

For these reasons, we allow the appeal and order as follows. The award of the claims tribunal is modified saying that the insurance company is liable to pay the appellants ₹8,14,500 compensation with 8% p.a. interest from July 29, 2005 till the date of payment. It shall pay after deducting the paid amounts, with interest till the respective payment dates, within four weeks from the date this order is served. Records shall be sent to the tribunal at once. No costs. Certified xerox.

S.R. (Jayanta Kumar Biswas, J.)

(Sahidullah Munshi, J.)