GAHC010170082017

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./459/2018

ORIENTAL INSURANCE COMPANY LTD
HAVING ITS REGD OFFICE AT ORIENTAL HOUSE, A-25/27, ASAF ALI ROAD, NEW DELHI- 110002 AND REGIONAL OFFICE AT GUWAHATI- 7, REP. BY THE REGIONAL MANAGER

VERSUS

SAHAB ALI and 5 ORS
S/O- LATE MUKTAL

2:MEHERON NESSA
W/O SAHAB ALI

3:BANIS ALI
S/O SAHAB ALI

4:PINJIRA KHATUN
D/O SAHAB ALI

5:SAJIDA KHATUN
D/O SAHAB ALI ALL ARE RESIDENT OF VILL- LACHANGA P.O. CHARCHARIA P.S. KALGACHIA DIST. BARPETA
ASSAM
PRESENTLY RESIDING AT- SIJUBARI CHARIALI
P.O. and P.S. HATIGAON
GUWAHATI - 38
DIST. KAMRUP M
ASSA

Advocate for the Petitioner : MR. S DUTTA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

JUDGMENT

Date : 02-02-2022

Heard Mr. S. Dutta, learned counsel appearing for the applicant. Also heard Mr. S. Ahmed, learned counsel for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 whereby the legality and propriety of the judgment and award dated 27.05.2016 passed by the MACT No. 2, Kamrup(M), Guwahati in MAC case No. 1064/2014 has been put to challenge.

3. On 05.04.2014 at about 4 pm, the deceased was hit by a tractor bearing registration No. As-19C-1926. The death was instant.

4. The claim application under Section 166 of the Motor Vehicles Act was filed before the learned tribunal seeking a compensation of Rs.41,65,000/-.

5. The opposite parties contested the claim application by filing the written statements wherein they pleaded routine defences.

6. On the basis of the pleadings of the parties, the tribunal framed the following three issues:-

I. *Whether on 25.04.2014, at about 04:00 P.M., a motor vehicular accident took place at village Amguri on PWD road, under Kalgachia police station, in the district of Barpeta, Assam, due to rash and negligent driving of the driver of the vehicle No.AS-19-C-1926?*

II. Whether Meher Ali sustained grievous injuries on his head, chest and other parts of his body and was died due to the accident in question?

III. Whether the claimants are entitled to get compensation as prayed for? If so, from whom and to what extent?

7. The claimant examined two witnesses but the opposite party did not adduce any evidence. On the basis of the evidence on record, the tribunal awarded a compensation of Rs.5,00,000/-.

8. Mr. Dutta has submitted that the learned tribunal awarded Rs.5,00,000/- after considering the matter under Section 140 of the Motor Vehicle Act, 1988. According to Mr. Dutta, under Section 140 of the Motor Vehicles Act, a sum of Rs. 50,000/- can only be awarded as a compensation.

9. I have bestowed my anxious consideration to the submissions made by the learned counsels of both sides.

10. At this stage, I am of the opinion that the paragraph 27 of the judgment is relevant and it is quoted as under:-

> *In view of the above, in the instant case, as the deceased was merely a 20 years' old boy, the ends of justice will be served if an amount of Rs. 5,00,000/- (Rupees five lakh) only, is awarded as compensation to the claimants, which I award accordingly. Further, in view of the* ***Sarla Verma*** *(supra), as only the mother can be considered to be a dependant of the deceased Meher Ali, she only would receive the said compensation amount.*

11. In *Sarla Verma v. DTC*, (2009) 6 SCC 121, the Supreme Court has held

that compensation awarded does not become “just compensation” merely because the Tribunal considers it to be just.

12. The House of Lords in Devies v. Powell Duffryn Associated Collieries Ltd., (1942) AC 601 at p. 617 (I), through Lord Wright observed:

> *"It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into, a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt".*

13. Then the Privy Council, through Lord Simon, in Nance v. British

Columbia Electric Rly. Co., Ltd., (1951) AC 601 has held—

"The claim to damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the maintenance of his wife and family?

x x x x Secondly, in addition to any sum arrived at under the first head, the case has been argued on the assumption, common to both parties, that according to the law of British Columbia it would be proper to award a sum representing such portion of any additional savings which he would or might have accumulated during the period for which, but for his accident, he would have lived, as on his death at the end of this period would probably have accrued to his wife and family, by devolution either on his intestacy or under his will, if he made a will.

X X X X A figure having been arrived at under first head, there

should be added to it a figure arrived at under the second head. The question there is what additional amount he would probably have saved during the.....years if he had so long endured, and what part, if any, of these additional saving his family would have been likely to inherit".

14. In Sarla Verma (supra), the Supreme Court has held as under --

"*The general principles*

10. Before considering the questions arising for decision, it would be appropriate to recall the relevant principles relating to assessment of compensation in cases of death. Earlier, there used to be considerable variation and inconsistency in the decisions of courts and tribunals on account of some adopting the Nance method [Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC)] enunciated in Nance v. British Columbia Electric Railway Co. Ltd. [Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC)] and some adopting the Davies method [Davies v. Powell Duffryn Associated

Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] enunciated in Davies v. Powell Duffryn Associated Collieries Ltd. [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)]

11. The difference between the two methods was considered and explained by this Court in Kerala SRTC v. Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] . After exhaustive consideration, this Court preferred the Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] to the Nance method [Nance v. British Columbia Electric Railway Co. Ltd., 1951 AC 601 : (1951) 2 All ER 448 (PC)] .

12. We extract below the principles laid down in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] : (SCC p. 177e)

"In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death."

"*9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.*

10. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then

that should be capitalised by multiplying it by a figure representing the proper number of years' purchase."

"13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

"16. It is necessary to reiterate that the multiplier method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage

therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years—virtually adopting a multiplier of 45—and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible."

15. The Apex Court further held ---

14. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accidents Claims Tribunal(s). If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among the Tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and

distrust in the system.

16. Compensation awarded does not become "just compensation" merely because the Tribunal considers it to be just. For example, if on the same or similar facts (say the deceased aged 40 years having annual income of Rs 45,000 leaving his surviving wife and child), one Tribunal awards Rs 10,00,000 another awards Rs 5,00,000, and yet another awards Rs 1,00,000, all believing that the amount is just, it cannot be said that what is awarded in the first case and the last case is just compensation. "Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.

17. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment,

consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , this Court stated: (SCC p. 185, para 16)

"16. … The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation."

16. The method of computation of just compensation is now standardized in claim cases. The Supreme Court preferred Davies (supra) principle, which held that the actual pecuniary loss of each individual entitled to sue

can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source comes to him by reason of the death. The pecuniary loss has to be ascertained by first determining the monthly income of the deceased, then deducting there from the amount spent on the deceased, and thus assessing the loss to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier.

17. Basically only three facts need to be established by the claimants for assessing compensation in the case of death:

(a) age of the deceased;

(b) income of the deceased; and

(c) the number of dependants.

18. The issues to be determined by the Tribunal to arrive at the loss of dependency are:

(i) additions/deductions to be made for arriving at the income;

(ii) the deduction to be made towards the personal living expenses of the deceased; and

(iii) the multiplier to be applied with reference to the age of the deceased.

19. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

20. Awarding compensation by a motor accident claims tribunal is not a matter of charity. The tribunals are required to follow the standardize procedures for awarding compensation.

21 Here I find that the tribunal did not follow the standardized procedure to grant compensation to the claimant. The compensation granted by the tribunal is based on the personal opinion of the tribunal. This is not permitted by law. I have already mentioned hereinbefore that granting compensation in motor accident claim cases is not a matter of charity nor the compensation awarded become “just compensation” merely because the Tribunal considers it to be just.

22. Now this Court is of the view that the impugned judgment is not sustainable in law. Therefore, the judgment dated 27.05.2016 passed by the MACT No.2, Kamrup(M), Guwahati in MAC case No. 1064/2014 is set aside.

23. The claim case is remanded to the learned tribunal for passing a fresh judgment after hearing oral argument of both sides.

24. Send back the LCR.

JUDGE

Comparing Assistant