

Manusha Sreekumar & Ors. Vs. The United India Insurance Co. Ltd.

Civil Appeal No. 7593 of 2022 arising out of Special Leave Petition (C) No. 28833 of 2019
2022-01-01 | Surya Kant, J.
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Full judgment text

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Surya Kant, J.

1. Leave granted.

2. The present appeal arises out of the judgment dated 23.07.2019 passed by the High Court of Kerala, in an appeal preferred by the Respondent (hereinafter, "Insurance Company") against the award dated 26.07.2018 of the Motor Vehicle Accidents Claims Tribunal, Pala (hereinafter, "Tribunal"). The High Court allowed the appeal and has reduced the compensation amount of Rs. 32,39,000/granted to the Appellants by the Tribunal to Rs. 19,70,000/. The issue involved in the instant matter primarily relates to the determination of quantum of compensation awarded under various heads by the Tribunal and the High Court.

A. FACTUAL BACKGROUND:

3. On 21.02.2015, the dreams and aspirations of the 32yearold Deceased (Sreekumar) shattered when he met with a fatal accident that occurred while he was riding his motorcycle bearing Registration No. KL36C9198 through Thalayolaparambu to Ernakulam Road, Kerala. At the time of the accident, the offending car bearing Registration No. KL07BB5053 was insured by the Respondent Insurance Company and was allegedly driven in a rash and negligent manner. The car came from the opposite direction and dashed into the motorcycle driven by the Deceased. As a result of the impact, Sreekumar fell and sustained serious injuries. Though concerted efforts were made to save the Deceased's life, unfortunately, he succumbed to his injuries on the way to the hospital.

4. Swaddled in the grief of the untimely death of their breadwinner, Appellants approached the Tribunal seeking compensation for their loss. It may be noted that the first Appellant is the wife of the Deceased, the second Appellant is their minor son, and the third Appellant is the mother of the Deceased. Appellants jointly preferred a claim petition under section 166 of the Motor Vehicles Act, 1988 (hereinafter, "the Act") seeking compensation of Rs. 64,15,000/with interest. The Insurance Company confuted the claim contending that the accident occurred due to negligence of the Deceased. The amount of compensation claimed under various heads was also alleged to be excessive.

5. The Appellants stood their ground by stating that they were entitled to compensation for 'loss of dependency' as the Deceased was a selfemployed man who donned multiple hats so as to provide a comfortable living for his family. According to the Appellants, the Deceased was a fish vendorcumdriver and was earning at least Rs. 25,000/per month. Appellants produced various documentary pieces of evidence before the Tribunal to prove the Deceased's financial capacity while he was alive.

These were (i) a course certificate showing that the Deceased had completed two years course in electronic mechanic trade; (ii) a job training certificate at Sun Generic Cables Pvt. Ltd.; (iii) Passport of the Deceased indicating that he was employed in the Sultanate of Oman between 18.11.2007 and 17.11.2011; (iv) a certificate to show that the Deceased received rent from a shop in the Municipal market shopping complex; (v) a job offer letter dated 11.12.2014 from the United Kingdom, offering the position of a Telecom Rigger; (vi) bank statements of the Deceased and (vii) certificate of Kerala Motor Transport Workers Welfare Fund Board.

6. Taking into consideration the aforementioned documentary evidence concerning the Deceased's income, the Tribunal concluded that he was a skilled labourer. It was also observed that the Deceased was earning from the rent he received from the room leased out to conduct fish vending business. The Tribunal opined

that the Deceased was a driver and accordingly fixed his monthly income at Rs.14,000/. Additionally, assuming that the Deceased received at least Rs.3,500/as rent, the Tribunal calculated his final notional income as Rs.17,500/(Rs. 14,000 + Rs. 3,500). The Tribunal fixed the total compensation of loss of dependency along with various other heads at Rs. 32,39,000/and awarded interest at the rate of 9% per annum from the date of filing of petition till the realisation of awarded compensation.

7. The Insurance Company filed an appeal before the High Court challenging the quantum of compensation granted by the Tribunal. Though the High Court concurred with the Tribunal in finding that the Deceased died in an accident caused due to rash and negligent driving of the car which was insured by the Insurance Company, it disagreed with the Tribunal primarily on three counts. Firstly, compensation granted under the head of 'loss of dependency'; secondly, compensation under the head of 'pain and suffering' and finally, compensation under the head of 'loss of love and affection'. For ease of reference, the table supplied below elucidates the compensation granted by the courts below under various heads:

SL. No.

Head of claim

Amount awarded by the High Court

Amount awarded by the Tribunal

1.

Loss of dependency

Rs. 17,92,000/-

Rs. 31,36,000/-

2.

Pain and sufferings

Rs. 15,000/-

Rs. 30,000/-

3.

Loss of consortium to the first Appellant

Rs. 40,000/-

Rs. 40,000/-

4.

Loss of love and affection to the second Appellant

Rs. 50,000/-

Not allowed

5.

Loss of love and affection to the third Appellant

Rs. 40,000/-

Not allowed

6.

Transport to hospital

Rs. 3,000/-

Rs. 3,000/-

7.

Funeral expenses

Rs. 15,000/-

Rs. 15,000/-

8.

Loss of estate

Rs. 15,000/-

Rs. 15,000/-

Total Compensation

Rs. 19,70,000/-

Rs. 32,39,000/-

8. In relation to the first count, the High Court was swift in concluding that in the absence of any evidence to establish the income of the Deceased, the Tribunal had erroneously fixed his notional income at Rs. 14,000/per month. The High Court viewed that in the decisions of Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd.¹ and Syed Sadiq and Ors. v. Divisional Manager, United India Insurance Co. Ltd.², this Court, in situations where the monthly income of persons could not be established using independent evidence, fixed it at Rs.4,500/and Rs. 6,500/for accidents that took place in the years 2004 and 2008, respectively. On that premises, the High Court posited that since the accident took place in 2015, the maximum monthly income that could have been reckoned is Rs. 10,000/-. The compensation under the head of 'loss of dependency' was thus reduced to Rs. 17,92,000/-.

9. Regarding the second count, the High Court scaled down the compensation granted by the Tribunal under the head of 'pain and suffering' from Rs. 30,000/to Rs. 15,000/-. The reasoning employed by the High Court for this was that except in cases wherein the death was not instantaneous, the conventional amount to be granted would be Rs. 15,000/-.

10. In relation to the third count, the High Court granted Rs. 50,000/and Rs. 40,000/under the head of 'loss of love and affection' to the second and third Appellants respectively, which was denied by the Tribunal.

11. Consequently, the High Court substantially reduced the compensation granted by the Tribunal from Rs. 32,39,000/to Rs. 19,70,000/-. The aggrieved Appellants are now before this Court.

B. CONTENTIONS:

12. We have heard learned counsel for the parties at a considerable length and meticulously perused the documents on record. The liability of the Insurance Company to pay the compensation is not in dispute here. Nor there is any discordant concerning the compensation awarded under various heads save and except for 'loss of dependency' and/or under the nonconventional heads.

13. Mr. Thomas P. Joseph, learned senior counsel for the Appellants vehemently argued that the High Court erred in placing reliance on the decisions of this Court to assess the 'loss of dependency' based on notional income as, in all those cases, not even a single piece of evidence was led regarding the income of the victim. However, in the instant case, the Appellants produced sufficient documentary evidence to prove the income of the Deceased. Moreover, it is trite that the power of the Appellate Court to undertake a factfinding exercise and interfere with the reasoning of the Tribunal is limited.

The same is done only when the findings are perverse or there is a material omission on the part of the Tribunal. He also brought to our notice, Schedule B of the Kerala Motor Transport Workers' Payment of Fair Wages Act, 1971 (hereinafter, "Kerala Fair Wages Act") as per which a 'driver' is classified as a 'Skilled worker' under Category IIISkilledB. This Act was supplemented with the notification G.O. (Ms.) No. 123/2015/LBR dated 04.09.2015 issued by the Government of Kerala (hereinafter, "Notification") wherein, the pay scale for the year 2015 for each category of workers in Schedule B of the Act has been stipulated. Learned Senior Counsel for the Appellant contended that the Deceased being a registered transport motor driver, was entitled to be considered as a 'driver' as defined under the Kerala Fair Wages Act and his income was to be fixed in terms of the Notification, referred to above.

14. Per contra, learned counsel for the Insurance company urged that the High Court was right in reducing the compensation amount in the absence of any definite proof of income and such a finding of fact does not call for any interference. He further argued that the High Court erred in granting compensation of Rs.90,000/under the head of 'loss of love and affection' as this Court in National Insurance Co. Ltd. v. Pranay Sethi and Ors.³, has not granted any sum under such like 'nonconventional head'. Learned counsel relied on the decision of this Court in Cholamandalam M/s General Insurance Company Ltd. V. Aarifa & Ors.⁴ and The New India Assurance Co. Ltd. V. Somwati & Ors.⁵, wherein no amount under the head of 'loss of love and affection' has been held payable.

C. ANALYSIS

15. From the aforesaid discussion, two issues arise for consideration of this Court:

(i) Whether the High Court was right in reducing the monthly income of the Deceased from Rs. 17,500/to Rs.10,000/, for want of sufficient documentary evidence?

(ii) Whether the High Court was right in awarding compensation under the 'nonconventional heads' which is impermissible as per Pranay Sethi?

C.1 Determination of Compensation for loss of dependency.

16. While determining compensation under the Act, section 168 of the Act makes it imperative to grant compensation that appears to be just. The Act being a social welfare legislation operates through economic conception in the form of compensation, which renders way to corrective justice.⁶ Compensation acts as a fulcrum to bring equality between the wrongdoer and the victim, whenever the equality gets disturbed by the wrongdoer's harm to the victim. It also endeavors to make good the human suffering to the extent possible and to also save families which have lost their breadwinners from being pushed to vagrancy. Adequate compensation is considered to be fair and equitable compensation. Courts shoulder the responsibility of deciding adequate compensation on a case-to-case basis. However, it is imperative for the courts to grant such compensation which has nexus to the actual loss.

17. This Court, in the case of Sarla Verma and Ors. v. DTC and Ors.⁷, laid down an objective formula for calculating just compensation. According to the dictum, the three factors that need to be established are: (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents.

18. Further, the issues that are 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." The purpose of standardising these determinants was to bring uniformity to the decisions and settle claims without delay.

19. Applying the above parameters to the instant case, there exists sufficient evidence to show that the Deceased, undoubtedly, was a fish vendor cum driver with a valid license. The certificate issued by the Kerala Motor Transport Workers Welfare Fund Board, certifying the Deceased as the driver of light motor goods vehicle bearing Registration No. KL36B7822 under the ownership of one Shri Prakashan has been proved on record. Further, the Deceased had also paid all his subscriptions to the Board from April 2012 until the month he died. We find no reason to doubt that the Deceased was a driver at the time of his death.

This Court in Chandra Alias Chanda Alias Chandraram and Anr. v. Mukesh Kumar Yadav and Ors.⁸, has aptly held that in the absence of a salary certificate, the minimum wages notification along with some amount of guesswork that is not completely detached from reality shall act as a yardstick to determine the income of the deceased. In this context, keeping in view the import of section 57 of the Indian Evidence Act, 1872, we take judicial notice of the provisions of the Kerala Fair Wages Act, especially section 2 thereof which defines the following expressions:

" 2. Definitions. In this Act, unless the context otherwise requires,

(a) "employer" means in relation to any motor transport undertaking, the person who or the authority which, has the ultimate control over the affairs of the motor transport undertaking, and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent or by any other name, such other person ;

(b) "motor transport undertaking" means a motor transport undertaking including a private carrier engaged in carrying passengers or goods or both by road for hire or reward ;

(c) "motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk; cash clerk, depot clerk, time keeper, watchman, or attendant ;

(d) "fair wages" means the rate of wages payable to the motor transport workers specified in the Schedule to this Act or the agreed rate of wages whichever is higher."

20. Schedule B Category III of the Kerala Fair Wages Act classifies a driver as a "Skilled worker". Reading this in conjunction with the Notification that came into effect from 01.01.2015 which amended Schedule A of the Kerala Fair Wages Act, prescribing a minimum pay scale of the workers listed in Schedule B, it is apparent that a 'driver' in Kerala earned a minimum of Rs. 15,600/in 2015. It appears to us that the aforesaid Act and the notification issued thereunder were not brought to the notice of the Tribunal or the High Court. As a result thereto, the High Court could not be cognizant of the statutory mandate prescribing minimum wages for a skilled worker like 'driver', and thus, erred in fixing the income of the Deceased at Rs.10,000/. We are therefore inclined to fix the income of the Deceased notionally at Rs. 15,600/per month.

21. As regard to the rental income of the Deceased from leasing out a room for the conduct of fish vending business, notionally fixed at Rs.3,500/by the Tribunal, we find no valid reason for making such additions to the income of the Deceased as the rental income would be transferred to his legal heirs, who will continue enjoying the benefits derived from it.

22. The final notional income of the Deceased must thus be fixed at Rs.15,600 /(Rs. 1,87,200/per annum). Since the Deceased was of 32 years old at the time of his death, the multiplier applicable in the instant case would be 16, and 40% of increase for future prospects deserves to be added as the Deceased was selfemployed. Onethird of the Deceased's income would be deducted towards his personal expense as he had three dependents. Hence, the compensation payable to the Appellants under the head of loss of dependency would amount to Rs.27,95,520/(Rs. 15,600 x 140/100 x 12 x 16 x 2/3).

C.2 Determination of compensation under nonconventional heads.

23. In all fairness, it may be noted that, Ld. Counsel for the Insurance Company has urged that the High Court ought not to have granted any compensation to the Appellants, under the 'nonconventional heads' which is impermissible as per the dictum of this Court in Pranay Sethi (supra). We are however, not inclined to entertain this plea for the simple reason that the Insurance Company has not chosen to file any appeal against the judgment of the High Court. Having acquiesced, the Insurance Company cannot turn around and question a paltry amount of compensation awarded to the Appellants under the 'nonconventional heads'. However, question of law, in this regard, is kept open. D.

CONCLUSION:

24. In light of the above discussion, the appeal is allowed in part.

25. We grant Rs. 27,95,520/as the total 'loss of dependency' on account of the income of the Deceased being calculated at Rs. 15,600/i. e. Rs.1,87,200/per annum. Upon adding the remaining amount granted by the High Court under different heads, the total compensation granted to the Appellant comes to Rs. 29,73,520/(Rs.27,95,520/+ Rs. 1,78,000/). 26. The Insurance Company is directed to pay the enhanced compensation amount of Rs. 29,73,520/to the Appellants along with interest at the rate of 9% per annum from the date of filing of the claim petition till the date of realisation. The aforesaid amount shall be apportioned among the Appellants in the ratio fixed by the Tribunal in the award. The Insurance Company shall pay the said amount either by way of demand draft in favour of the Appellants or deposit the same before the Tribunal, after deducting the amount already paid by it, if any, within six weeks from the date of receipt of the copy of this judgment.

27. The judgment under appeal of the High Court is, thus, set aside. The appeal is disposed of along with any pending applications in above terms.

1 (2011) 13 SCC 236.

2 (2014) 2 SCC 735.

3 (2017) 16 SCC 680.

4 Civil Appeal No. 6020/2019 vide order dt. 01.08.2019.

5 SLP(Civil) Diary No. 30766/2019 vide order dt. 24.09.2019.

6 See Gregory C. Keating, 'Distributive and Corrective Justice in the Tort Law of Accidents' (2000) 74 S Cal L Rev 193.

7 (2009) 6 SCC 121.

8 (2022) 1 SCC 198.

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