

(2001) 03 BOM CK 0125

Bombay High Court

Case No: First Appeal No. 924 of 1989

Harish A. Sadarangani and
Another

APPELLANT

Vs

M/s. Reliance Textiles Industries
Ltd. and Oriental Insurance Co.
Ltd.

RESPONDENT

Date of Decision: March 2, 2001

Acts Referred:

- Motor Vehicles Act, 1988 - Section 92

Citation: (2002) ACJ 745 : (2001) 3 ALLMR 410 : (2001) 4 BomCR 275 : (2001) 3 BOMLR 222 :
(2001) 2 MhLj 913

Hon'ble Judges: R.M. Lodha, J

Bench: Single Bench

Advocate: Mr. L.V. Kapse, for the Appellant; Mr. A.R. Iyenger and Mr. N.M. Godbole, for
the Respondent

Judgement

R. M. Lodha, J.

This first appeal is directed against the judgment and award passed by the Motor Accidents Claims Tribunal for Greater Bombay on the ground of inadequate compensation awarded to the claimants (appellants herein).

2. Shri Atmaram P. Sadarangani (since deceased), Shri Harish A. Sadarangani and Ashok A. Sadarangani (for short "claimants") made claim application in the Court of Motor Accidents Claims Tribunal for Greater Bombay against the present respondents for compensation in the sum of Rs. 1 lac by way of general and special damages with interest at the rate of 12% p.a. thereon from the date of filing of this application till realisation and costs for the death of Smt. Maya Atmaram Sadarangani in the motor accident. On 19.5.1987 at about 3.30 p.m. or so, Smt. Maya Sadarangani along with others were walking along chowpatty from the south north direction. When they reached Thakkar restaurant, a motor car bearing

registration No. MFC-1278 came from behind with speed and dashed Smt. Maya Sadarangani from behind as a result of which Smt. Maya was thrown at a distance of about 20 to 25 feet and instantaneously died. The original claimant No. 1 Shri Atmaram P. Sadarangani is her husband, while the other claimants are her sons. The original claimant No. 1 - Atmaram P. Sadarangani died during pendency of claim petition and, therefore, his name has been deleted. The claimants averred in the claim petition that the deceased Maya was about 65 years old and enjoyed good health. She was doing household duties as house wife and was taking care of and looking after the claimants as well as her grandchildren and but for her death she would have survived for at least 15 to 20 years. The claimants claim the consolidated amount of Rs. 1 lac for the loss of service of the deceased, loss of expectation of life, loss of consortium, shock suffered by her and for other losses.

3. The opponents resisted claimants claim petition. The Tribunal, after recording the evidence and hearing the parties, passed an award of Rs. 28,000/- together with future interest at the rate of 12% p.a. from the date of application till the whole amount was paid. The Tribunal observed that Rs. 15,000/- has already been deposited as per order u/s 92-A and. therefore, interest is only payable on balance of Rs. 13,000/- from the date of application till realisation. The Tribunal also awarded proportionate costs.

4. Mr. Kapse, learned counsel for the appellants - claimants assailed the quantum of compensation awarded by the Tribunal on the following grounds :-

(i) that quantification of the loss of service of Maya at the rate of Rs. 150/ - per month is grossly low looking into the status of the family and the services she was rendering;

(ii) that multiplier of 10 years is unjust. According to him though the deceased was 65 years old, in view of the life expectancy as per the figures by Registrar General (Government of India) (1976-80), a female of 60 to 65 years is expected to live for a further period of 17 years;

(iii) that the Tribunal erred in not awarding the consortium generally estimated in the sum of Rs. 15000/- since her husband was alive at the time of accident and he only died during the pendency of claim application due to the shock of untimely death of his wife; and

(iv) that the Tribunal ought to have awarded special damages for funeral in the sum of Rs. 7500/-.

5. The learned counsel submitted that the Motor Vehicles Act envisages the compensation to be just and fair compensation and the compensation awarded by the Tribunal in the facts and circumstances being inadequate cannot be said to be just and fair and, therefore, needs to be enhanced. In support of his contentions, the learned counsel for the claimants relied upon a judgment of Division Bench of

this Court in *Abdulkadar Ebrahim Sura v. Kashinath Moreshwar Chandant*; the judgments in *Yerra Varalakshmi and Ors. v. M. Nageswara Rao and Ors.*; *Hardeo Kaur and Ors. v. Rajasthan State Transport Corporation and Anr.* and *General Manager, Kerala State Road Transport Corporation v. Mrs. Susamma Thomas and Ors.*

6. At the outset, it may be observed that there is no dispute that the deceased Maya dies in the accident caused by rash and negligent act of the driver of motor car owned by opposite party No. 1 (respondent No. 1 herein) and insured with opposite party No. 2 (respondent No. 2 herein). The only question that falls for determination in this first appeal is whether the award of compensation by the Tribunal is inadequate and needs to be interfered with by this Court in appeal. According to the claimants own case the deceased Maya was 65 years old at the time of accident. She was house wife. The claimants have claimed compensation not for the loss of income due to the death of deceased Maya, but for loss of services of the deceased; for loss of expectation of life; for loss of consortium, for shock suffered and for other losses. One of the claimants Harish A. Sadarangani has examined himself in support of their claim and he has deposed that the deceased Maya was fully fit and managing all household affairs. He has deposed that she was main controlling person in the family and due to her death, we have lost her services to the household. He has also deposed that due to sudden demise of his mother, the health of his father started deteriorating and he died of heart attack. His father was medical practitioner. While he is employed with the Air India. The other claimant- his brother - is also medical practitioner. He has stated that Rs. 7500/- was spent for the funeral and obsequies of deceased Maya. Mrs. Neetu. wife of Harish Sadarangani has also been examined by the claimants. But her evidence is mainly in relation to rash and negligent act of the driver of the motor car MFC 1278 due to which her mother-in-law died in accident. The claimant Harish in his deposition has not stated specifically the money value of the services rendered by deceased Maya. What he was stated is that his mother was managing all household affairs and she was main controlling person. In the claim application also not a word is stated about the money value of the services rendered by deceased Maya and the amount of loss suffered under this head. It is only across the bar during the course of arguments, the learned counsel appearing for the claimants argued that the quantification of the services of deceased Maya may be taken at Rs. 500/- per month. The Tribunal was not persuaded by the said argument by observing that there is absolutely no basis for the same. The Tribunal on its own fixed Rs. 150/- per month towards loss of services of Maya. For want of any definite evidence about the money value of the services rendered by the deceased, the loss under the head, "loss of services rendered due to the death of deceased" cannot be fairly assessed. Though the estimation of the Tribunal at the rate of Rs. 150/- per month towards the loss of services of Maya is conjectural, the same cannot be interfered with in appeal for want of any specific evidence by the claimants on that count. Merely because the

deceased husband was medical practitioner and her two sons are well placed in life and the fact that family was fairly established family, in the absence of any definite evidence, the loss for the services rendered by the Maya cannot be assessed at Rs. 500/- per month as was argued by the learned counsel for the claimants before the Tribunal or before me. In this view of the matter, though the estimation by the Tribunal at Rs. 150/- per month for the loss of services of Maya is conjectural, it does not call for any interference. Incidentally I may refer to the judgment of the Division Bench of this Court relied upon by the learned counsel for the claimants. In Abdulkadar Sura's case (supra) the two ladies died. Both were house wives and were aged between 45 to 50 years. Dealing with the aspect of compensation for the loss of services rendered by the two ladies, the Division Bench of this Court disallowed the damages on the ground that the loss was neutralised by the saving on account of the expenses incurred on her maintenance. In paragraph 10 of the said report, the Division Bench observed thus :

"10. Claim under each section may be under different heads. In this case u/s 1 the only claim made is for loss of services and companionship. As to this, Mr. Shah's next contention was that the learned Judge ought to have awarded damages for loss of services of the deceased to the applicants and also to applicant No. 1 in each case for loss of consortium because of the death of the deceased. Now, the applicant in the first case comes forward to say that he was spending about Rs. 50 or Rs. 60 on clothes of the deceased and about Rs. 100 for her food. Because of her death, he had lost the services rendered by her and he had to employ servants to do the service. It appears, however, from his evidence that it is difficult to assess damages on this ground. No doubt, money value for the services which she rendered and in order to obtain which he had to engage servants, has to be fixed. But then cases also show that if there is any benefit by the death, then that also must be considered in computing the damages. Having regard to the fact that now he would not be required to spend for the expenses of his wife, the Court below declined to give him any damages on this ground. We think, the learned Judge was right in refusing to award him damages under this head. The same applies to the applicant in the other case."

7. I do not deem it necessary to deal with the question whether the loss of services rendered by the deceased was neutralised by the savings on account of the expenses incurred on her maintenance since the opposite parties have not challenged the award, but suffice it to observe that no interference is called for in the amount of Rs. 150/- per month assessed by the Tribunal for the loss of services by the deceased Maya to the claimants.

8. The contention raised by the learned counsel for the appellants that multiplier of 10 applied by the Tribunal is unjust has no merit whatsoever. The deceased was admittedly 65 years of age at the time of her death. Her husband died within one and half years of her death. The expectation of life as per figures of Registrar

General [Government of India) (1976-80) strongly relied upon by the learned counsel for the appellants showing the future life expectation of a lady of 60 to 65 years for a further period of 17 years by Itself would not render the multiplier of 10 unjust. In General Manager, Kerala State Road Transport Corporation v. Suit. Susamma Thomas and Ors. (supra). the Apex Court explained the concept of multiplier. The Apex Court referred to Halsbury's Law of England in Vol. 34, para 95 wherein multiplier is explained thus :

"As to multiplier, Halsbury states :

The calculation depends on selecting an assumed rate of interest. In practice about 4 or 5 per cent is selected, and inflation is disregarded. It is assumed that the return on fixed interest bearing securities is so much higher than 4 to 5 per cent that rough and ready allowance for inflation is thereby made. The multiplier may be increased where the plaintiff is a high tax payer. The multiplicand is based on the rate of wages at the date of trial. No interest is allowed on the total figure.

However, the multiplier is a figure considerably less than the number of years taken as the duration of the expectancy. Since the dependents can invest their damages, the lump sum award in respect of future loss must be discounted to reflect their receipt of interest on invested funds, the intention being that the dependents will each year draw interest and some capital (the interest element decreasing and the capital drawings increasing with the passage of years), so that they are compensated each year for their annual loss, and the fund will be exhausted at the age which the Court assesses to be the correct age, having regard to all contingencies. The contingencies of life such as illness, disability and unemployment have to be taken into account. Actuarial evidence is admissible, but the Courts do not encourage such evidence.

9. The Apex Court further stated the principle of multiplier thus :The multiplier represents the number of years purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000/-. If a sum of Rs. 1,00,000/- is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rupees 10,000/- would be 20. Then the multiplier, i.e., the number of years" purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital fund also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.

10. Applying the aforesaid principle, by no stretch of imagination the multiplier of 10 applied by the Tribunal can be said to be low looking to the age of the deceased as well as the age of the claimants. As a matter of fact, the multiplier of 10. in the facts and circumstances of the case, is on the higher side.

11. As regards the third contention of the learned counsel for the appellants that Tribunal ought to have awarded loss of consortium, I find some merit in the said contention. Admittedly, the husband of deceased Maya was alive at the time of her death in the accident. He lost companionship of his wife. Though he died after filing of the claim application, but then he became entitled to the compensation for loss of consortium on the date of death of his wife. The husband so long as he lived after the death of his wife was deprived consortium et seriatim i.e. her society and service. The original claimant No. 1 i.e. husband of the deceased was therefore entitled to damages for loss of consortium which I assessed at the rate of Rs. 7500/-. The Tribunal was not justified in rejecting the claim of the claimants under the head "loss of consortium" on the ground that since the husband is dead, the other claimants are not entitled to claim that amount. The Tribunal overlooked the fact that cause of action for claim of loss of consortium accrued on the death of Maya and the relevant date for claiming compensation by the husband (original claimant No. 1) for loss of consortium was the date on which the claim application was made and merely because during pendency of claim application, the husband died, the claim under that head could not have been denied to his legal representatives.

12. As regards the claim of special damages for funeral of the deceased, there is no specific amount averred in the claim application under the said head. Though in the evidence, P.W. 2 - Harish A. Sadarangani has stated that Rs. 7500/- were spent for funeral and obsequies of his mother, no document in support thereof has been produced and proved. There is total want of pleading and proof regarding claim of special damages for funeral.

13. The Tribunal has awarded Rs. 18,000/- towards compensation payable for the loss of services, Rs. 7500/- for the loss of expectation of life. Rs. 2500/- for the loss of love and affection which is maintained and in addition thereto a sum of Rs. 7500/- is awarded for loss of consortium.

14. In the result, first appeal is partly allowed. The award passed by the Tribunal is modified by enhancing the same to the sum of Rs. 37,500/-. An amount of Rs. 15,000/- has already been deposited by the insurer u/s 92-A. On the remaining amount of Rs. 20,500/- the opposite parties to pay interest at the rate of 12% p.a from the date of application till realisation. The appellants are entitled to costs from the respondents to the extent of enhancement of compensation in the appeal.

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