(2011) 02 BOM CK 0151

Bombay High Court (Aurangabad Bench)

Case No: First Appeal No. 225 of 1997

Smt. Samina Siddiqui and Others	APPELLANT
Vs	
Sk. Saleem and Others	RESPONDENT

Date of Decision: Feb. 25, 2011

Citation: (2012) ACJ 1197 : (2011) 2 ALLMR 803 : (2011) 4 BomCR 625 : (2011) 3 MhLj 610 : (2011) 2 TAC 558

Hon'ble Judges: Shrihari P. Davare, J

Bench: Single Bench

Advocate: A.A. Dabir, for the Appellant; V. Kudmulwar, for Respondent No. 1, V.A. Shinde, for Respondent No. 2, D.S. Kulkarni holding for S.L. Kulkarni and A.A. Joshi, for the Respondent

Judgement

Shrihari P. Davare, J.

The challenge in this appeal is to the judgment and award, dated 18.9.1996, rendered by the learned Member, Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No. 226 of 1992, which has been filed by the original claimants for the enhancement of compensation. The Appellants herein are the original claimants i.e. the heirs and legal representatives of deceased Hafizuddin; whereas Respondent No. 1 Shaikh Saleem Sk. Mehboob is the driver of offending vehicle Matador, bearing registration No. MH20/A3638 and Respondent No. 2, namely Raosaheb Kadam is the owner of the said Matador.Respondent No. 3 New India Insurance Company is the insurance company of the said Matador, however, Respondent No. 4 Ravan is the ownercumdriver of the motor cycle and the deceased was the pillion rider, to which the offending vehicle Matador dashed, and Respondent No. 5 is the Oriental Insurance Company i.e. the insurance company of the said motor cycle, bearing registration No. MAA6425.

2. The facts, which gave rise to the present appeal, can be briefly stated that on 11.5.1992 at about 6.00 p.m., Respondent No. 4 Ravan was riding the motor cycle, being registration No. MAA6425 and the deceased Hafizuddin accompanied with

him as a pillion rider to his field to take the measurement of the well, as the deceased Hafizuddin was allegedly serving as a Junior Engineer with the Panchayat Samiti. After taking the measurement and while returning to Aurangabad, they reached near Deogiri Dhaba on PhulambriKhultabad road and the offending vehicle i.e. Matador bearing registration No. MH20/3636 coming from opposite direction came on its wrong side and hit the said motor cycle, and thereby both the rider i.e. Respondent No. 4 and the pillion rider the deceased Hafizuddin sustained injuries. Accordingly, both were admitted into the Government Medical College Hospital, Aurangabad. Thereafter deceased Hafizuddin was shifted to Pune Hospital under the care of Dr. Bafna and further he was shifted to Rubi Hall Clinic, where he expired on 5.6.1992. According to the Appellants, the deceased Hafizuddin was drawing salary of Rs. 2,200/per month, and therefore, they claimed compensation of Rs. 5,00,000/from the Respondents.

3. However, Respondent Nos. 1 and 2 remained absent, although served, and therefore, the petition proceeded against them ex parte; whereas Respondent Nos. 3, 4 and 5 filed the written statement and opposed the claim of the Appellants. Respondent No. 3 denied that the accident took place on account of rash and negligent driving of the Matador and stated that there was negligence on the part of the motor cyclist. However, the insurance policies of Respondent No. 3 in respect of the offending vehicle Matador and Respondent No. 5 in respect of the motor cycle were valid and subsisting.

4. Basing upon the rival pleadings, learned Member of the Tribunal framed the issues. After considering and assessing the evidence adduced and produced by the parties, the Tribunal granted compensation of Rs. 2,50,000/along with 12 per cent per annum interest thereon from the date of filing of the petition till its realisation and directed Respondent Nos. 1 to 3 to pay the sum of Rs. 2,00,000/along with the interest jointly and severally to the Petitioners/Appellants herein; whereas Respondent Nos. 4 and 5 were directed to pay the sum of Rs. 50,000/jointly and severally along with interest to the Petitioners/Appellants herein. It was further directed by the Tribunal that the no fault liability amount shall be deducted by the Respondents from the aforesaid payable amount to the claimants by the judgment and award, dated 18.9.1996. Being aggrieved and dissatisfied by the said judgment and award, the Appellants i.e. original claimants have preferred the present appeal assailing the same and prayed for enhancement therein.

5. It was canvassed by the learned Counsel for the Appellants that deceased Hafizuddin was the Junior Engineer with the Panchayat Samiti and was drawing salary of Rs. 2,200/per month, who had put in 12 years of service, and accordingly, he was as good as a permanent employee of the Panchayat Samiti, and therefore, 50 per cent of the salary was required to be allowed and added towards future prospects as per the judgment in the case of Smt. Sarla Varma and Ors. v. Delhi Transport Corporation and Anr. reported at 2009 (2) TAC 677 (S.C.), but same was

not done by the Tribunal. Moreover, according to the learned Counsel for the Appellants, the multiplier applied by the Tribunal, considering the age and the income of deceased Hafizuddin, was 10, but same was incorrectly applied. However, as enunciated in the afore said judgment of Smt. Sarla Varma, considering the age and monthly salary of deceased Hafizuddin, the proper multiplier would be 15, and same is required to be applied while calculating the compensation awarded to the Appellants. It is further canvassed by the learned Counsel for the Appellants that the Tribunal erred in taking into account the family pension of Rs. 700/, which was being received by Appellant No. 1 i.e. wife of deceased, as well as the Tribunal has taken into account the amount of Rs. 30,000/received by her towards Group Insurance Scheme after death of her husband, while fixing the pecuniary loss sustained by the Appellants. However, learned Counsel for the Appellants submitted that the family pension amount earned by Appellant No. 1 for the benefit of her family and the said Group Insurance Scheme amount received by her cannot be taken into account while calculating the pecuniary loss sustained by the Appellants and the dependency, relying upon the case of Lal Dei and Ors. v. Himachal Road Transport, reported at 2008 (1) ALL MR 432 (S.C.).

6. It is also submitted by the learned Counsel for the Appellants that the Appellants incurred total medical expenses of Rs. 56,000/, but same was not considered by the Tribunal while calculating the compensation amount awarded to the Appellants. Accordingly, the learned Counsel for the Appellants urged that the Appellants deserve to be awarded enhanced compensation amount as claimed by them.

7. The learned Counsel for the Respondents canvassed that the deceased Hafizuddin had 7 dependants, and therefore, in view of the ratio laid down in the case of Smt. Sarla Varma''s case (cited supra), 1/5th amount is required to be deducted from the salary of deceased Hafizuddin towards his personal expenditure while calculating the dependency and compensation awarded to the Appellants. It is also canvassed by the learned Counsel for the Respondents that since the Appellants failed to prove and establish the medical expenses, the Tribunal rightly awarded the lump sum compensation of Rs. 25,000/towards the medical expenses, Rs. 10,000/towards consortium, Rs. 10,000/towards love and affection and Rs. 5,000/towards funeral expenses, and no interference therein is called for. According to the learned Counsel for the Respondents, the date of birth of deceased Hafizuddin is 1.5.1955 and considering his date of death i.e. 5.6.1992, his age is required to be construed as 37 years, and not 35 years as taken up by the Tribunal while fixing the multiplier and further calculating the compensation awarded to the Appellants. It is further submitted by the learned Counsel for the Respondents that the proportionate liability of 80 per cent fixed upon Respondent Nos. 1 to 3 and liability of 20 per cent fixed upon Respondent Nos. 4 and 5 in respect of awarded amount of compensation to the Appellants, considering the alleged contributory negligence, is also incorrect. According to the Respondents, the rate of interest of 12 per cent per annum awarded to the Appellants from the date of petition till its realisation is also

excessive and exorbitant and said rate of interest is required to be awarded at the rate of 8 per cent per annum. Accordingly, learned Counsel for the Respondents urged that there is no necessity of any enhancement in the compensation awarded to the Appellants and the present appeal deserves to be dismissed.

8. With the assistance of the learned Counsel for the parties, I have perused the evidence adduced and produced by the respective parties, as well as heard the submissions advanced by the learned Counsel for the parties anxiously, and also considered the ratios laid down and observations made in the judgments cited by the learned Counsel for the parties carefully, and it is the matter of record that the date of birth of deceased Hafizuddin is 1.5.1955 and he joined the employment of the Panchayat Samiti as Assistant Engineer on 23.3.1979 and met with the accident on 11.5.1992 and succumbed to the injuries in the hospital on 5.6.1992, and therefore, it is apparently clear that the age of the deceased Hafizuddin at the time of accident was about 37 years. According to the salary certificate, dated 29.6.1995, produced along with the list Exh.48, it is apparent that the gross salary of the deceased Hafizuddin was Rs. 2,255/and deductions therein were Rs. 610/and net emolument earned by him was Rs. 1,645/.However, the deductions in the salary need not be taken into consideration while computing the compensation and as per the said salary certificate, the salary of deceased Hafizuddin can be construed at Rs. 2,200/per month. Moreover, it is a matter of record that the deceased Hafizuddin joined the employment of Panchayat Samiti on 23.3.1979 and was working with the said employer for about 12 years and PW1 Samina i.e. widow of deceased Hafizuddin has stated in her deposition that recently he was promoted as Assistant Engineer, and therefore, considering the said aspects, and in the absence of contrary evidence on record, the employment of deceased Hafizuddin can be construed as good as permanent employment. Taking into consideration the afore said aspects and applying the parameters of the case of Smt. Sarla Varma (supra), 50 per cent of the salary is required to be added towards future prospects, which was not done by the Tribunal while calculating the compensation awarded to the Appellants.

9. Moreover, admittedly, there were 7 dependants upon deceased Hafizuddin, and therefore, as enunciated in the above referred judgment of Smt. Sarla Varma, 1/5th amount is required to be deducted from the salary of deceased Hafizuddin towards his personal expenditure while calculating the dependency and compensation awarded to the Appellants which was not done by the Tribunal while rendering the impugned judgment.

10. Moreover, the Tribunal considered the pecuniary loss sustained by the Appellants at Rs. 2,000/per month, which was not done correctly, since while calculating the annual pecuniary loss sustained by the Appellants herein, the Tribunal took into consideration the family pension of Rs. 700/per month drawn by the wife of deceased Hafizuddin and also the amount of Rs. 30,000/received by her

on account of Group Insurance Scheme after the death of her husband, but the said amounts cannot be taken into account while calculating he pecuniary loss sustained by the Appellants and the dependency, relying upon the afore mentioned case of Lal Dei (supra), as the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death and the heirs receive family pension even otherwise than the accidental death. There is no corelation between the two aspects, and hence, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants.

11. That takes me to the vital aspect of the matter i.e. the application of proper multiplier, since the Tribunal, after taking into consideration the age of the deceased Hafizuddin and considering the loss of dependency scaled down the suitable multiplier as 10 and based its calculation of compensation thereon.

12. However, taking into consideration the uniform and standardised method approved by Hon''ble Supreme Court in Smt. Sarla Varma''s case and considering the age of the deceased Hafizuddin 37 years, the proper multiplier to be applied would be 15 and not 10, which was applied by the Tribunal for computation of quantum of compensation, i.e. operative multiplier, prepared in the case of Susamma Thomas, clarified in Trilok Chandra''s case and adopted in the case of Smt. Sarla Varma.

13. Undisputably, the Appellants failed to prove the medical expenses, although claimed to the tune of Rs. 56,000/, and therefore, the Tribunal rightly granted the lump sum amount of Rs. 25,000/towards the medical expenses and conveyance of the deceased to and from Pune, as well as the Tribunal has rightly allowed the amount of Rs. 10,000/towards the loss of consortium and Rs. 10,000/towards the loss of love and affection to which the children have suffered, as well as rightly granted the amount of Rs. 5,000/towards the funeral expenses and no interference therein is called for.

14. Besides that, considering the contents of the first information report and the panchanama i.e. Exhs. 40 and 41 respectively, the Tribunal came to the conclusion that the offending vehicle i.e. the Matador hit the motor cycle driven by Respondent No. 4 Ravan whereon deceased was riding as pillion rider, coming on the wrong side, and apportioned the 80 per cent liability upon Respondent Nos. 1 to 3 and 20 per cent liability upon Respondent Nos. 4 and 5 by awarding the compensation of Rs. 2,00,000/from Respondent Nos. 1 to 3 and Rs. 50,000/from Respondent Nos. 4 and 5, and also considered the aspect of contributory negligence, and no interference is called for in respect of the apportionment of the liability of 80 per cent upon Respondent Nos. 1 to 3 and 20 per cent upon Respondent Nos. 4 and 5.

15. Keeping in mind all the afore said aspects and applying the said parameters to the instant case, the compensation to be awarded by the Appellants can be

calculated in the following terms.

16. Accordingly, the Appellants are entitled for the enhanced compensation of Rs. 2,75,200/, and as mentioned herein above, 80 per cent liability thereof shall be upon Respondent Nos. 1 to 3 and remaining 20 per cent liability of the said enhanced compensation shall be upon Respondent Nos. 4 and 5.

17. According to the impugned judgment and award dated 18.9.1996, the learned Member of the Tribunal awarded future interest to the Appellants at the rate of 12 per cent per annum from the date of filing of the claim petition i.e. from 10.8.1992 till its realisation. However, I am of the view that grant of interest interest at the rate of 8 per cent per annum on the said enhanced amount from the date of petition till its realisation would meet the ends of justice.

18. In the circumstances, the Appellants shall be entitled for total enhanced compensation of Rs. 2,75,200/-; out of which, 80 per cent amount i.e. Rs. 2,20,160/shall be paid by Respondent Nos. 1 to 3 jointly and severally and 20 per cent amount i.e. Rs. 55,040/shall be paid by Respondent Nos. 4 and 5 jointly and severally, with interest at the rate of 8 per cent per annum from the date of filing of the claim petition i.e. 10.8.1992 till its realisation, subject to payment of deficit court fee.

19. In the result, the present appeal is allowed partly with proportionate costs and Respondent Nos. 1 to 3 are directed to pay jointly and severally enhanced compensation of Rs. 2,20,160/to the Appellants and Respondent Nos. 4 and 5 are directed to pay jointly and severally enhanced compensation of Rs. 55,040/to the Appellants, along with interest of 8 per cent per annum from the date of filing of the claim petition i.e. 10.8.1992 till its realisation, subject to payment of deficit court fee by the Appellants.