

Chaya and Others Vs. Suresh and Another

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Court : Mumbai Aurangabad

Decided On : Jun-27-2014

Judge : T.V. Nalawade

Appeal No. : First Appeal No. 985 of 2012

Appellant : Chaya and Others

Respondent : Suresh and Another

Judgement :

1) Admit.

2) Notice after admission made returnable forthwith. Heard both the sides for final disposal.

3) The appeal is filed against the judgment and award of Claim Petition No.202/2008 which was pending before the Ad-hoc District Judge-2 and Ex-officio Member of Motor Accident Claims Tribunal, Latur. In a petition filed by the present appellants under section 166 of the Motor Vehicles Act for compensation in respect of death of husband of appellant No.1, the Tribunal has granted compensation of Rs.7,07,224/-. The appeal is filed for enhancement of compensation.

4) It is the case of the appellants / original claimants that deceased was serving as a labour at Makni Dam in Irrigation Department of the State Government and he

was permanent employee. It is contended that on the date of the death he was drawing monthly salary of Rs.8,128/-. It is contended that he was aged about 50 years. It is the case of the claimants that they were all depending on the deceased for their livelihood. The claimant No.1 widow of the deceased aged about 45 years, one major son, two minor issues and the father of the deceased had filed the claim. The youngest issue was aged about 12 years. Though a son was major it was contended that he was not making any income. On various counts it was contended that the claimants are entitled for compensation of Rs.9,70,364/- but the claim was restricted to Rs.6,00,000/-.

5) Before the Tribunal, claimant No.1 examined herself and she relied on police papers and on other record like the salary certificate in respect of salary which was actually drawn by the deceased for the month of May 2008 and also on certificate showing that with effect from 1-1-2006 6th Pay Commission Report was made applicable and after revision of the pay scale of the deceased the gross salary for the month of May 2006 was Rs.12,140/-. Standard deduction of Rs.30/- towards professional tax was shown. One witness from the Department was examined to prove that with effect from 1-1-2006 the pay was fixed and accordingly arrears of salary were given. The claimants also produced school leaving certificate to show that the deceased was born on 1-6-1958.

6) The judgment and Award of the Tribunal shows that mistake was committed by the Tribunal in calculation of loss of dependency. Initially compensation of Rs.3,58,612/- was awarded and after giving application by the claimants the Tribunal presumed it had committed mistake in calculating the loss of dependency and then the aforesaid amount was awarded. This Court has gone through the new calculation made by the Tribunal also and it can be said that the new calculation was also not as per the law laid down.

7) It cannot be disputed that only the standard deductions can be deducted from the gross salary for ascertaining the actual income of the deceased. (Reliance is placed on judgment reported as **2010 (4) TAC 29 (SC) - Shyamwati Sharma v. Karam Singh**). The amount deducted towards professional tax is standard deduction and similarly the amount payable towards income tax is also proper

deduction. Other amounts like amount deducted towards recovery of advances, amount deducted for premium of insurance or for payment of loan taken by the deceased cannot be considered. This is again reiterated by the Apex Court in the case reported as **2009 AIR SC 3104 (Sarla Verma v. Delhi Transport Corporation and Others)**.

8) As per the aforesaid salary certificates, the gross salary of the deceased lastly drawn was Rs.12,140/- and after considering the standard deduction and rounding of the figure, it can be said that the monthly income of the deceased was Rs.12,000/-. In the case of Sarla Verma (cited supra) the Apex Court has laid down that, if the age of the deceased was between 40 and 50 years then income can be increased by 30%. The Apex Court has made it clear that there should be no addition where age of the deceased is more than 50 years. In the present case, the accident took place on 5-6-2008 and date of birth of the deceased was 1-6-1958. It can be said that the deceased had completed age of 50 years just 4 days prior to the date of the accident. In any case the Apex Court has laid down in the case of Sarla Verma (supra) that as there has to be uniformity and Tribunal cannot grant compensation on hypothetical considerations. If in the present case 30% increase in income is presumed though the deceased had completed 50 years of age then there would not remain uniformity and even after completion of one more month after 50 years of age, the claimants may claim increase of 30%. So, this Court holds that, increase of 30% cannot be given.

9) In the case of Sarla Verma the norms for deduction for personal expenses of deceased are also given. Considering the size of the family of the deceased which included 3 adult persons including the deceased and two minors, who can be called as dependents on the income of the deceased, it can be said that one-fourth deduction from the income of the deceased on the count of personal expenses is permissible. Thus, there is loss of Rs.9,000/- per month to the claimants. In the aforesaid case the Apex Court has also given procedure for ascertaining the multiplier. In view of the age of the deceased which was 50 years and the age of the claimants this Court holds that 13 is the proper multiplier. Deceased would have done hard work at least for 5 years after retirement. However, in the present case 13 or 11 cannot be adopted as multiplier for the salary income, multiplicand.

The deceased was in Government service and he was to retire after completion of 58 years. Thus 8 years service was left and so only in respect of 8 years there was loss of aforesaid dependency. In view of this circumstance, 8 needs to be adopted as multiplier for aforesaid multiplicand. As per the law laid down in the aforesaid case it can be said that loss of income for the period of 13 years needs to be considered. After deducting 8 from the proper multiplier which was 13, it can be said that for 5 more years the deceased would have made some income for the family. It can be presumed that the deceased would have made income of Rs.3000/- after retirement and one-fourth amount from that can be deducted for personal expenses. So it can be said that for remaining multiplier of 5 years there was monthly loss of Rs.2250/-. As per the calculation the loss of dependency in respect of the first period of 8 years comes to Rs.8,64,000/- and in respect of second period of 5 years the amount comes to Rs.1,35,000/-. Thus, total loss of dependency comes to Rs.9,99,000/-. In view of ratio of Sarla Verma (supra) an amount of Rs.10,000/- can be given on the count of loss of consortium, amount of Rs.5000/- can be given towards loss of estate and an amount of Rs.5000/- can be given on the count of funeral expenses. Thus, the total amount of compensation comes to Rs.10,19,000/-.

10) Learned counsel for the Insurance Company submitted that in view of the observations made by the Hon'ble Apex Court in the case of Sarla Verma itself increase in the pay scale due to implementation 6th Pay Commission cannot be considered. This Court has gone through the facts of the reported case. The death had taken place on 18-4-1988. There was implementation of the pay commissions during pendency of the proceedings on 31-12-1999 and on 1-10-2005. In view of these circumstances the Apex Court held that the actual income at the time of death should be taken as the income and the possible increase in salary in future of the deceased due to revision of pay cannot be considered. To take care of such loss the Apex Court has given increase of income by 50% for lower age group and increase of income by 30% for age group of 40 to 50 years.

11) The facts of the present case are different. The evidence given shows that on 1-1-2006 the deceased was to get the pay scale as per the 6th Pay revision. Thus it was due and it was actually given though the report of the pay commission was

accepted subsequently by the Government and fixation was done subsequently. In view of this circumstance, the actual salary of the deceased on the day of death was Rs.12,140/- per month. This Court holds that, if the pay revision was due before death, then the circumstance that revision took place subsequently cannot be taken into consideration and it needs to be presumed that pay of the deceased was fixed as per the revised pay scale which was actually done though subsequently. So the submission made by the respondent Insurance Company is not acceptable.

12) In view of the discussion made, this Court holds that the just compensation in the present case is Rs.10,19,000/-. This Court holds that interference is warranted in the decision given by the Tribunal. In the result, following order is made :-

13) The Appeal is allowed. The judgment and award of the Tribunal is modified for enhancing the compensation to Rs.10,19,000/-. As original claimant No.2 is dead, nothing is to be given to him. Disbursement of the remaining amount and apportionment is to be made as per the decision given by the Tribunal. Other part of the decision including rate of interest is kept in tact. The claimants are to pay Court fees in respect of additional amount which they are getting.

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