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Court : Rajasthan

Decided On : Oct-05-2007

Reported in : 2008ACJ863

Judge : R.C. Gandhi, J.

Appellant : Gyarasi Devi and ors.

Respondent : Ramesh Kumar Yadav and ors.

Judgement :

R.C. Gandhi, J.

1. The deceased in this appeal is the victim of a road accident. The claim petition preferred by the claimants was contested by the other side. The impugned award has been passed by Claims Tribunal relying upon the evidence led by the parties and challenged by the appellants on the sole ground that the proper multiplier according to the Second Schedule appended to the Motor Vehicles Act, 1988 (hereinafter 'the Act of 1988'), has not been made applicable for determining just compensation.

2. Heard learned Counsel for the parties and perused the record.

3. There is not much to be dilated upon by the court as the controversy is specific with regard to the application of multiplier. Section 163-A, by Act 54 of 1994 was

inserted in the Motor Vehicles Act introducing Second Schedule which provides a formula/Table to determine compensation by specific multiplier. The Supreme Court has approved the multiplier as a structured formula for determining just compensation vide its judgment delivered in case titled General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas : AIR 1994 SC1631 . To determine just compensation, the emphasis has been laid by Apex Court for application of multiplier, structured formula. It is noticed in the judgment that the deceased was of 38 years of age. The claim petition was filed by the widow, parents and children of the deceased. The Tribunal determined the compensation as Rs. 58,760 and the High Court enhanced it to Rs. 2,64,000. The Apex Court disagreed with the reasoning of the High Court and relying upon the various judgments such as Pickett v. British Rail Engineering Ltd. 1980 ACJ 261 (HL, England), summarised the issue in para 11 of the judgment which reads as under:

(11) 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 uncertainty of future life and awarded 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 for the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. 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. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be 'just', the statutory determination of a 'just'

compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases.

4. A similar issue was also before the Apex Court in case titled *Arati Bezbaruah v. Dy. Director General, Geological Survey of India* : [2003]1SCR1229 . In this case, the question of multiplier was in dispute. Deceased at the time of accident was 40 years of age and multiplier of 15 was applied. While dealing with the application of multiplier, the Apex Court observed in paras 11, 12 and 14 which reads as under:

(11) It is now a well settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation of the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.

(12) The victim at the relevant time was 40 years of age. The Tribunal and the High Court, therefore, cannot be said to have committed an error in applying the multiplier of 15. The only question which is required to be considered now is as to how the multiplicand should be arrived at.

(14) Having regard to the prospects and advancement of the future career, a higher estimate of the yearly income at Rs. 45,000 would not be out of place. From the said amount, one-third of the gross income towards personal living expenses should be deducted. Thus, the amount of Rs. 30,000 should be determined as the loss of dependency. The said sum should be capitalised by applying the multiplier of 15, which comes to Rs. 4,50,000.

5. It is made out from the aforesaid judgments that the compensation has to be determined taking into consideration the yearly income and the multiplier as contained in Second Schedule appended to the Act of 1988. The approach adopted by the Tribunal ignoring the application of specific multiplier is unjustified and deprecated. Such an approach has not been approved by the Supreme Court.

6. Some of the learned advocates have submitted that where the age of deceased victim is for instance 40 years at the time of accident, the multiplier of 16 should be applied instead of 15. There is substance in the plea. The age of 40 years means 40 plus. The Schedule also indicates the slab as 'above 35 years but not exceeding 40 years'. Therefore, where the age is for instance, 30, 35, 40 or 50 as indicated in the Schedule, it has to be reckoned as plus and the multiplier to be applied accordingly.

7. In this appeal, the deceased was of 53 years of age at the time of accident. His yearly income has been determined by the Tribunal as Rs. 88,000. Tribunal applied multiplier of 5, whereas according to the Second Schedule appended to the Act of 1988, multiplier of 11 ought to have been applied. On application of multiplier of 11, loss of dependency comes to Rs. 9,68,000 instead of Rs. 4,40,000.

8. There is no uniformity also in awarding interest. The claimants need to be paid uniformly. So far as the interest is concerned, the deviation therefrom appears to be discriminatory and needs to be corrected and taken care. The Supreme Court in case titled Tamil Nadu State Trans. Corporation Ltd. v. S. Rajapriya : AIR 2005 SC2985 , has awarded interest at the rate of 7.5 per cent per annum. Therefore, the claimants shall be paid interest at the rate of 7.5 per cent per annum.

9. There is also no uniformity in awarding compensation for loss of consortium to the spouse and compensation to children for love and affection.

10. In some cases, they have been paid Rs. 2,000 to Rs. 5,000. Therefore, to maintain uniformity, it is directed that the spouse of the deceased shall be paid Rs. 10,000 as compensation and children of the deceased Rs. 5,000 each as compensation for love and affection. The impugned award on other counts is

maintained.

11. Appeal is partly allowed. Award shall stand modified to that extent as indicated hereinabove.

12. No order as to costs.

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