

Maya Devi and ors. Vs. the Oriental Insurance Company Ltd. and ors.

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Court : Delhi

Decided On : Jul-18-2011

Judge : Reva Khetrapal, J.

Acts : [Motor Vehicles Act, 1988](#) - Section 173

Appeal No. : MAC. APP. 595/2010

Appellant : Maya Devi and ors.

Respondent : The Oriental Insurance Company Ltd. and ors.

Advocate for Def. : Mr. J.P.N.Shahi, Adv.

Advocate for Pet/Ap. : Mr. Kundan Kumar Lal, Adv.

Judgement :

1. The present appeal has been filed under Section 173 of the [Motor Vehicles Act, 1988](#) against the judgment and award dated 07.09.2009 passed by Motor Accidents Claims Tribunal, Dwarka Courts, Delhi in MACT No. 889/08.

2. The brief facts leading to the filing of the present appeal are that on 07.03.2006, one Shri Vijender Singh met with an accident while travelling on his motorcycle bearing no. DL-9SN-4753 alongwith his wife, Smt. Maya Devi. The said Shri Vijender Singh (hereinafter referred to as "the deceased") died as a result thereof, whereas Smt. Maya Devi suffered injuries on her person. Two separate claim

petitions bearing MACT No.887/08 and 889/08 were filed, the former by Smt. Maya Devi claiming compensation in respect of the injuries sustained by her and the latter seeking compensation for the death of her husband Shri Vijender Singh. Both these petitions were filed against the driver, owner and insurer of the offending vehicle, bearing No.HR-55-0936. The Tribunal decided both the said petitions by a common judgment and award dated 07.09.2009, awarding a sum of ` 99,000/- and ` 18,85,000/- in respect of Petitions No.887/08 and 889/08 respectively. The claimants in the Petition No. 889/08, that is, the widow, children and father of the deceased, being aggrieved by the manner of computation of compensation by the Tribunal have filed the present appeal for enhancement of compensation.

3. It emerges from the record of the Claims Tribunal that the learned Tribunal, for the purpose of computing compensation payable to the appellants, took into consideration the revised salary of the deceased in the sum of ` 11,533/-, excluding therefrom the travelling allowance of ` 600/-, that is, ` 11,533/- - ` 600/- = ` 10,933/-, rounded off to ` 11,000/-. Adding thereto 50% towards the future prospects of the deceased in consonance with the judgment of the Supreme Court in the case of Smt. Sarla Verma & Ors. Versus Delhi Transport Corporation and Anr. (2009) 5 SCR 1098, the Tribunal arrived at a sum of ` 16,500/- as monthly salary of the deceased. Thereafter, the Tribunal, observing that the widow of the deceased had been given the job of a „Beldar by the Delhi Jal Board on compassionate grounds and was being given a monthly salary of ` 3,500/- per month, deducted the said amount from the monthly salary of the deceased. From the resultant amount of ` 13,000/-, the Tribunal deducted 1/4th towards the personal expenses of the deceased and calculated the monthly dependency of the appellants to be in the sum of ` 9,750/- (that is, ` 13,000 - ` 3,250 = ` 9,750) and the annual dependency in the sum of ` 1,17,000/-. Augmenting the said multiplicand by the multiplier of 15, the total loss of dependency was calculated by the Tribunal in the sum of ` 17,55,000/- (that is, ` 1,17,000 x 15). In addition to this, the Tribunal also awarded a sum of ` 1,00,000/- towards the loss of love and affection, ` 10,000/- towards loss of consortium, ` 10,000/- towards funeral expenses and ` 10000/- towards the loss of estate of the deceased. In all, the Tribunal awarded a sum of ` 18,85,000/- to the appellants.

4. The only ground on which the aforesaid computation of compensation has been challenged by the appellants is that the Tribunal while calculating the loss of dependency of the appellants erred in reducing the salary of the deceased by a sum of ` 3,500/-, being the earnings of the widow from her employment as „beldar (labourer) with the Delhi Jal Board. The learned counsel for the appellants contended that the widow who used to be a housewife prior to the death of her husband is now required to work extra hard to look after her family. It is further contended by the counsel that there are cases where the appointment on compassionate grounds is made after the passing of the award by the Tribunal, in which situation the person being given employment on compassionate grounds would be better off, as the compensation granted to such a person would be higher because no deduction would have been made by the Tribunal, and as such it would lead to discrimination between two similarly situated persons.

5. In support of his aforesaid contention, the learned Counsel for the appellants has relied upon the decision of the Delhi High Court in the case of National Assurance Company Ltd. v. Smt. Neelam and Ors. 2009 ACJ 992. The learned counsel for the respondent- Insurance Company, on the other hand, relied on the judgment of the Supreme Court in the case of Bhakra Beas Management Board v. Smt. Kanta Aggarwal and Ors. (2008) 11 SCC 366.

6. Before advertng to the said decisions cited at the bar it is proposed first to refer to the celebrated judgment of the Honble Supreme Court in the case of Helen C. Rebello & Others Versus Maharashtra State Road Transport Corpn. & Anr. (1999) 1 SCC 90, wherein the Supreme Court discussed the aspect of balancing of pecuniary advantage accruing to the victims of motor accidents against the pecuniary loss suffered by them to arrive at the compensation payable to them by the tortfeasor (s) under the Motor Vehicles Act, 1939. In the said judgment, the Apex Court explained that since the compensation payable under the Motor Vehicles Act is only on account of accidental injury or death and not on account of any other death, the balancing can also be done only in respect of that pecuniary gain/advantage which co-relates with the accidental injury or death. If pecuniary advantage from whatever sources accruing to the claimants are allowed to be set off against the compensation payable to them under the Motor Vehicles Act, the

same would dilute all possible benefits conferred on the claimants and would be contrary to the spirit of the law and the liability of the tortfeasor would be unjustifiably reduced. The Court, in the said case, inter alia, made the following apposite observations: (SCC Page Nos. 109-113)

"..... The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving motor vehicle. would not be covered under the Motor Vehicles Act. Thus, the application of general principle under the common law of loss and gain for the computation of compensation under this Act must co-relate to this type of injury or deaths, viz, accidental. If the words "pecuniary advantage' from whatever source are to be interpreted to mean any form of death under this Act it would dilute all possible benefits conferred on the claimant and would be contrary of the spirit of the law.

..... Thus, it would not include that which claimant receives on account other form of deaths, which he would have received even apart from accidental death.How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any provisions of law. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the

accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly, family pension is also 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. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction.

When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter se between them and not to which, there is no semblance of any co-relation.For all these consideration we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving restricted meaning to the provisions of the Motor

Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intends of the legislature under various provisions of the Motor Vehicles Act, 1939. "

7. While this Court is conscious of the fact that the aforesaid decision was rendered by the Supreme Court with respect to the amount of life insurance policies received by the victims of motor vehicular accidents, there is no denying the fact that the principles enunciated therein would equally apply to a case where the widow or any other family member of the person who died in a motor accident has been given employment by the employer of the deceased on compassionate grounds. Infact, this Court and other High Courts have consistently applied the said principle to cases of compassionate appointment.

8. The first of these cases is the decision of this Court in the case of National Assurance Company Ltd. v. Smt. Neelam and Ors. 2009 ACJ 992, on which case the Appellant has also relied. In this case, the Insurance Company had challenged the award of the Tribunal and one of the grounds taken was that the family of the deceased was getting family pension and the widow had been given employment on compassionate grounds by the employer of the deceased. This Court rejected the said contentions of the Insurance Company and to support its decision, it referred to the decision rendered by the Supreme Court in Helen C. Rebello (supra) and to the following pertinent observations made by a Division Bench of the Karnataka High Court in the case of Smt. Lalitha and Anr. Versus Dashanbhat Haribansh Bhat and Others, AIR 1998 Kant 344:

"9. In our view, the Tribunal has gravely erred in denying the compensation under the head 'loss of dependency' to appellant 1 because of her appointment on compassionate grounds in the place of the deceased. The Tribunal erred in recording a finding that the salary earned by appellant 1 would compensate for the loss of salary which was being earned by the deceased. Whatever salary she got after employment was in lieu of services rendered by her. The same does not mean that there

was no loss of dependency. While the husband was earning she must have employed herself gainfully in the house-hold work. Salary earned by the deceased was in lieu of the services rendered by him and because of his death loss was caused to the estate resulting in loss of dependency to the appellants. Salary earned by appellant 1 was due to the work put in by her and could not be adjusted or treated as compensation for the loss of earning of the deceased. Salary earned by appellant 1 could not be equated with the compensation she was entitled to on account of the death of her husband. While determining the compensation under the head loss of dependency/loss to the estate, the Courts have to examine as to what was the loss caused to the estate of the deceased or to the dependants for the income which was contributed by the deceased to them. To the extent of loss of the income which was being contributed by the deceased to the dependants, the dependants are entitled to be compensated. Simply because one of the family members was given employment in the place of the deceased on compassionate grounds, the loss of dependency would not be off-set against the income earned by the dependents from the appointment given to him/her on compassionate grounds. The income earned by the dependant would be for the services rendered by him/her independently of the loss to the estate caused due to the death of the deceased."

9. In the case of National Insurance Company Ltd. v. Smt. Manju Bala 2009 ACJ 1665, this Court again referred to the decision of Helen C. Rebello (supra) and rejected the contention of the Insurance Company that since the widow of the deceased had been given employment on compassionate grounds, her resultant income was liable to be deducted from the compensation granted to the claimants under the head "loss of income". The following pertinent observations were made:

"9. From the above decision it is clear that just because the wife had got employment on the compassionate ground, compensation is not liable to be reduced. Compassionate employment is given by the employer and the quantum of compensation has nothing to do with the same and it is altogether on a different ground the said thing is given. It has also to be remembered that even if husband dies a natural death, the wife would be entitled to employment under the compassionate scheme, if the scheme so provides or at the wish of employer."

10. It may be noted that similar view has been expressed by various other High Courts including the Kerala High Court, the Andhra Pradesh High Court and the Gauhati High Court inter alia in the following cases:

- (i) United India Insurance Co. Ltd. v. Bindu and Ors. I(2007) ACC 688 (DB). (Kerala High Court)
- (ii) APSRTC v. G. Jana Bai II (2001) ACC 716(DB). (Andhra Pradesh High Court)
- (iii) Kanika Hazarika and Ors. v. Sreeram Barthkumar and Ors. 2002 ACJ 159(DB). (Gauhati High Court)
- (iv) State of A.P. and Anr. v. K. Pushpalatha and Ors. IV (2006) ACC 592. (Andhra Pradesh High Court)
- (v) Laxmi Devi Dwivedi v. State of Madhya Pradesh 2005 ACJ 106 (DB). (Madhya Pradesh High Court)

11. Adverting now to the decision of the Supreme Court in the case of Bhakra Beas (supra), relied upon by the Insurance Company, a perusal of the said judgment shows that the widow of the deceased had been provided compassionate appointment and she was getting a salary of nearly ` 4,700/- and, in addition residence was also provided to her. The Supreme Court on the facts of

the case came to the conclusion that the award as made was extremely high and the concept of just compensation has been lost sight of. It held as under:

"14. In view of what has been stated above, the High Court's judgment is clearly unsustainable. However, the accident took place more than 14 years back and it would not be desirable to send the matter back to the Tribunal for fresh consideration. A sum of rupees five lakhs has been deposited vide this Court's order dated 1.11.2004. We are of the considered view that in view of the background facts, it is just and proper that the sum of Rupees five lakhs already deposited shall be permitted to be withdrawn by the claimants in full and final settlement of the claim relatable to the death of the deceased. It is for the Tribunal to fix the quantum of fixed deposit and the amount to be released to the claimants."

12. At this juncture, it deserves to be noted that the judgment in the case of Helen C. Rebello (supra) was rendered by a Bench consisting of two learned Judges. The decision in Bhakra Beas case (supra), which was also rendered by a two-Judge Bench, does not purport to and has nowhere, expressly or impliedly, overruled the judgment rendered in the Helen C. Rebello's case (supra), and thus the principles enunciated in the latter case still hold good. It is only on the facts of the case that the court in the former case deemed it proper to restrict the claim of the claimants, being the widow and the children of the deceased, to a sum of ` 5,00,000/- already deposited by the appellant, as against the sum of ` 8,48,160/- which had been awarded by the Tribunal. This Court is, therefore, not inclined to accept as a general rule that in every case where the widow or any family member of the deceased has been given compassionate employment, the resultant remuneration should be deducted from the monthly dependency of the claimants. [See also the case of Reliance General Insurance Co. Ltd. v. Urmila Devi & Ors. (2009) 4 AWC 4020 (DB)].

13. It must be understood that the salary as a result of compassionate appointment is not given as charity or without having to do anything in return.

Rather, the person being given employment on compassionate grounds is required to render services to the employer, like any other employee. Further, it may also be mentioned herein that even in the absence of being given compassionate employment, the family members of the deceased may find it necessary to take up an employment to earn their living. Should the income in that case be reduced from the loss of dependency of the claimants? The answer quite clearly is „No. The compassionate appointment of a family member in the erstwhile establishment of the deceased ought, therefore, to be treated at par with any other employment that the said member might have to take up to meet the financial crisis brought about by the death of the breadwinner of the family. A compassionate appointment does not in any manner compensate for the loss suffered by the claimants or reduce the hardship caused to the claimants by the death of the deceased.

Furthermore, it can not be ignored in the instant case that the widow, who was a housewife, will now be required to work twice as hard in order to enable her to attend to her official functions and to look after the family. Then again, while the deceased had been employed as an Assistant Pump Operator earning a salary of ` 8,500/-, the widow was appointed as a "beldar" at a salary of ` 3,500/- per month only, which essentially means that she will be working as a labourer.

14. In the light of the above, the compensation awarded to the appellants deserves to be re-computed without making any deduction of the salary of the deceased from her employment with the Delhi Jal Board. Accordingly, taking the salary of the deceased to be in the sum of ` 16,500/- as assessed by the Tribunal, and deducting therefrom one-fourth towards the personal and living expenses of the deceased, the monthly dependency of the appellants comes out to ` 12,375/- per month or ` 1,48,500/- per annum. Augmenting the said multiplicand by the multiplier of 15 (as applied by the Tribunal and to which there is no challenge by the appellants), the total loss of dependency awardable to the appellants comes to ` 22,27,500/-. Adding thereto, non pecuniary damages in the sum of ` 1,30,000/- as awarded by the Tribunal the total compensation comes to ` 23,57,500/- (Twenty three lakhs fifty seven thousand and five hundred only).

15. The award amount is enhanced accordingly. The respondent No.1 is directed to deposit the award amount as enhanced within four weeks from today with interest @ 7.5% per annum on the enhanced amount from the date of filing of the petition till the date of realisation.

16. The appeal stands disposed of in the above terms.

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