

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 14th MARCH, 2017

S.B. : HON’BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.24 of 2015

Appellant : The Branch Manager,
National Insurance Company Limited,
Gangtok Branch,
NH 31-A,Gangtok,
P.O. & P.S. Gangtok,
East Sikkim.

versus

Respondents : 1. Shri Pankaj Kumar Balabhai Kapadia,
S/o Late Balabhai Vadilal Kapadia

2. Smt. Daxa Pankaj Kumar Kapadia,
W/o Shri Pankaj Kumar Balabhai Kapadia

3. Shri Raj Ritesh Kapadia,
S/o Raj Ritesh Balabhai Kapadia

All residents of A-7, Prerna Vihar Tower,
Near Rose Wood Estate,
Opposite Gokul Awas,
Jodhpur Village Road,
Jodhpur, Satellite,
Ahmedabad,
Gujarat.

4. Shri Krishna Prasad Giri (Owner),
S/o Late Bhim Lall Giri,
Presently residing at Tintek Busty,
Near Block Development Office,
P.O. Rakdong, P.S. Gangtok,
East Sikkim.

Appearance

Mrs. Vidya Lama, Advocate for the Appellant.

Mr. Ajay Rathi, Ms. Phurba Diki Sherpa and Mr. Pramit Chhetri,
Advocates for the Respondents No.1 to 3.

Mr. Ashok Pradhan, Advocate for Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Contending that the Learned Motor Accidents Claims Tribunal, North Sikkim, at Mangan (for short "Learned Claims Tribunal"), was in error in granting compensation to the tune of Rs.40,05,500/- (Rupees forty lakhs five thousand and five hundred) only, in MACT Case No.13 of 2014, the instant Appeal assails the Award of the Learned Claims Tribunal on the following grounds;

- (i) That, there is no proof of rash and negligent driving on the part of the driver of the vehicle, as the Learned Magisterial Court in G. R. Case No.40 of 2014 discharged the driver of the vehicle in accident finding no *prima facie* case to make out rash and negligent driving.
- (ii) That, the multiplier adopted was based on the age of the deceased when it ought to have been that of the Claimants-Respondents No.1 and 2 (the father-in-law and mother-in-law of the deceased).
- (iii) That, the income of the deceased was calculated as $\frac{1}{3}^{\text{rd}}$ of the income of her deceased husband and future prospects @ 50% was added to the loss of dependency which is erroneous.

2. Resisting the grounds put forth by the Appellant, Learned Counsel for the Respondents No.1 to 3 argued that the income of the deceased was calculated at $\frac{1}{3}^{\text{rd}}$ of the income of her deceased husband as per Schedule 2 of the Motor Vehicles Act, 1988. Once loss of dependency is calculated, as a corollary, there would be loss of future prospects as well and therefore,

The Branch Manager, National Insurance Company Limited vs. Mr. Pankaj Kumar Balabhai Kapadia and Others

calculations made thereof does not tantamount to an error on the part of the Learned Claims Tribunal. It was next contended that the finding in a Criminal Court has no bearing before the Motor Accidents Claims Tribunal where it would suffice to prove that there is a preponderance of probability, while in a Criminal matter the standard of proof is to establish the case "beyond reasonable doubt". The multiplier adopted is based on the age of the deceased and cannot be said to be incorrect as the Hon'ble Apex Court in ***Amrit Bhanu Shali and Others* vs. *National Insurance Company Limited and Others***¹ has held as follows;

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation."

Hence, the Appeal be dismissed.

3. I have heard the submissions of Learned Counsel at length and given careful consideration to the same. I have also carefully perused the impugned Judgment and the records of the case.

4. Briefly narrated the facts are that, the victim along with her family comprising of her husband, daughter, son, sister-in-law, brother-in-law and few other family members had travelled to Yumthang, North Sikkim, on 27-05-2014 and were returning on 28-05-2014. On their return journey, it was raining despite which the driver of the vehicle was speeding. Although the victim's husband and brother-in-law implored upon the driver to be

1. (2012) 11 SCC 738

The Branch Manager, National Insurance Company Limited vs. Mr. Pankaj Kumar Balabhai Kapadia and Others

cautious, no heed was paid to their advice. Due to his recklessness, he lost control of the vehicle, causing it to go off the road into the river Teesta resulting in the death of the victim and her daughter on the spot, while her husband was washed away with the vehicle.

5. The question that arises for consideration before this Court is, whether the Learned Claims Tribunal was correct in awarding the compensation of Rs.40,05,500/- (Rupees forty lakhs five thousand and five hundred) only, to the Claimants duly including future prospects of 50% in view of the fact that the victim was a house wife and was not employed and had no income. It is also to be seen whether there is any error in the choice of multiplier.

6. While addressing the question of compensation, we may usefully refer to the decision of the Hon'ble Apex Court in ***Arun Kumar Agrawal and Another vs. National Insurance Company Limited and Others***² wherein the Hon'ble Apex Court while referring to the decision in ***Kemp and Kemp on Quantum of Damages, (Special Edn., 1986)***, discussed that the authors had identified various heads under which the husband can claim compensation on the death of his wife. These include loss of the wife's contribution to the household from her earnings, the additional expenses incurred or likely to be incurred by having the household run by a housekeeper or servant, instead of the wife, the expenses incurred in buying clothes for the children instead of having them made

2. (2010) 9 SCC 218

The Branch Manager, National Insurance Company Limited vs. **Mr. Pankaj Kumar Balabhai Kapadia and Others**

by the wife, and similarly having his own clothes mended or stitched elsewhere than by this wife, and the loss of that element of security provided to the husband where his employment was insecure or his health was bad and where the wife could go out and work for a living.

7. The decision of **Regan** vs. **Williamson**³ was also noted wherein the wife/mother had been killed in a road accident. The Court concerned took into account the value of other services previously rendered by the wife for which no substitute was available and accordingly increased the dependency to 20 pounds a week. The Court then applied a multiplier of 11 in reaching a total fatal accidents award of 12,298 pounds.

8. Apart from the above decisions, the Apex Court also looked into the Judgment in **Mehmet** vs. **Perry**⁴ where the pecuniary value of a wife's services were assessed and granted under the heads of (a) loss to the family of the wife's housekeeping services; (b) loss suffered by the children of the personal attention of their mother, apart from housekeeping services rendered by her; and (c) loss of the wife's personal care and attention, which the husband had suffered, in addition to the loss of her housekeeping services.

9. In consideration of all of the above, the Hon'ble Apex Court in **Arun Kumar Agrawal**² (*supra*) was pleased to hold as under;

3. (1976) 2 All ER 241

4. (1977) 2 All ER 529 (DC)

The Branch Manager, National Insurance Company Limited vs. Mr. Pankaj Kumar Balabhai Kapadia and Others

"26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

10. The Tribunal in *Arun Kumar Agrawal*² (*supra*) had assessed the total loss of dependency at Rs.6,00,000/- (Rupees six lakhs) only, after assessing the income of the deceased at 1/3rd of her spouse's income and applying the multiplier of 15, but thereafter, had reduced the same to a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand) only, *inter alia*, on ground that the deceased was actually not an earning member and the compensation so arrived at was on notional income. This decision of the Tribunal was set aside by the Hon'ble Apex Court after discussing a catena of decisions pertaining to the services of a house wife which have briefly been discussed hereinabove. Suffice

The Branch Manager, National Insurance Company Limited vs. Mr. Pankaj Kumar Balabhai Kapadia and Others

it to say that the decision of the Hon'ble Apex Court would hold good in the instant matter and, therefore, in view of Clause 6 of the Second Schedule of the Motor Vehicles Act, 1988, the income of the deceased can be assessed at 1/3rd of her spouse's income.

11. Coming to the question of future prospects, the decision in ***Arun Kumar Agrawal***² (*supra*) does not refer to any future prospects and this Court while referring to the above decision has held in ***Branch Manager, National Insurance Co. Ltd. and Another vs. Mr. Kharka Singh and Others***⁵ as follows;

"7. I have gone through the judgment of *Arun Kumar Agrawal*. Though, it talks about the income of the non-earning house-wife/mother to be calculated in the way the Tribunal has calculated, but it never talks about any loss of future prospects of a non-earning house-wife/mother to be calculated in terms of 50% of the actual income assessed. When the deceased was a non-earning member as she was a house-wife, there was no question of future prospects to be calculated in the above terms. The element of the future prospects shall appear for calculation when the deceased was an earning member but in case where deceased was not an earning member and was simply a house-wife/mother, such mode of calculation shall not be applied."

I am in respectful agreement with the same and, therefore, conclude that no future prospects can be calculated when the deceased was a non-earning member.

12. That, having been said, coming to the question of multiplier, the adoption of 16 does not appear to be erroneous in view of the table set out in the Judgment of ***Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another***⁶ and the decision in ***Amrit Bhanu Shali***¹ (*supra*) where it is categorical that the multiplier to be adopted shall be based on the age of the deceased and not on his/her dependents.

5. (2016) 2 TAC 866 (Sikkim)

6. (2009) 6 SCC 121

The Branch Manager, National Insurance Company Limited vs. Mr. Pankaj Kumar Balabhai Kapadia and Others

13. It may, however, be pointed out here that the Learned Claims Tribunal has considered that the income of the victim was Rs.2,48,005/- (Rupees two lakhs forty eight thousand and five) only, per annum, as the income of her deceased husband was assessed at Rs.7,44,014/- per annum (Rupees seven lakhs forty four thousand and fourteen) only. In this context, it would be appropriate to refer to the Judgment of this Court dated 06-03-2017 in MAC App. No.25 of 2015 wherein the monthly income of the deceased husband of the deceased victim herein was placed at Rs.61,406/- (Rupees sixty one thousand four hundred and six) only, per month, the reasons for differing with the Learned Claims Tribunal having been set forth therein. The deceased in MAC App. No.25 of 2015 was the husband of the victim herein and both had passed away in the tragic accident. Accordingly, the monthly income of the deceased wife would be $1/3^{\text{rd}}$ of the income of her deceased husband, i.e, Rs.20,468.6666, rounded off to Rs.20,469/- (Rupees twenty thousand, four hundred and sixty nine) only.

14. In the light of the above discussions and findings, the compensation stands re-calculated and modified as follows;

Monthly notional income of the deceased		Rs.	20,469.00
Annual notional income of the deceased (Rs.20,469/- x 12 months)		Rs.	2,45,628.00
Less $1/3^{\text{rd}}$ of Rs.2,45,628/-	(-)	Rs.	<u>81,876.00</u>
Net yearly notional income		Rs.	1,63,752.00
Multiplier to be adopted '16' (Rs.1,63,752/- x 16)		Rs.	26,20,032.00
Loss of estate	(+)	Rs.	2,500.00
Loss of love and affection	(+)	Rs.	<u>10,000.00</u>
Total	=	Rs.	<u>26,32,532.00</u>

(Rupees twenty six lakhs, thirty two thousand, five hundred and thirty two) only.

The Branch Manager, National Insurance Company Limited vs. Mr. Pankaj Kumar Balabhai Kapadia and Others

15. The Claimants-Respondents No.1 to 3 shall be entitled to simple interest @ 10% per annum on the above amount with effect from the date of filing of the Claim Petition before the Learned Claims Tribunal until its full realisation.

16. The Appellant is directed to pay the awarded amount to the Claimants-Respondents No.1 to 3 within one month from today, failing which he shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by the Appellant-Insurance Company to the Claimants-Respondents No.1 to 3.

17. The awarded amount of compensation shall be divided amongst the Claimants-Respondents No.1 to 3, as follows;

- (i) 12.5% of the total award to the Claimant-Respondent No. 1.
- (ii) 12.5% of the total award to the Claimant-Respondent No. 2.

The above amounts are awarded to the Claimants-Respondents No.1 and 2, considering the fact that they are the aged in-laws of the deceased and would obviously have been dependent on her.

- (iii) 75% of the total award to the Claimant-Respondent No. 3, out of which 60% shall be kept in a Fixed Deposit in a Nationalised Bank until he attains the age of majority. The remaining 15% shall be expended towards his education and upkeep.

18. The impugned Judgment of the Learned Claims Tribunal stands modified accordingly. Appeal is partly allowed.

The Branch Manager, National Insurance Company Limited vs. **Mr. Pankaj Kumar Balabhai Kapadia and Others**

19. No order as to costs.

20. Copy of this Judgment be sent to the Learned Claims Tribunal.

21. Records of the Learned Claims Tribunal be remitted forthwith.

(Meenakshi Madan Rai)
Judge
14-03-2017

Approved for reporting : **Yes**

Internet : **Yes**