

Smt.Neeta W/O Kallappa Kadolkar & Ors vs The Div.Manager, Msrtc, Kolhapur on 13 January, 2015

Author: V. Gopala Gowda

Bench: C.Nagappan, V.Gopala Gowda

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 348-349 OF 2015
(Arising out of SLP(C) Nos. 4897-4898 OF 2014)

SMT.NEETA W/O KALLAPPA
KADOLKAR & ORS.ETC.

...APPELLANTS

Vs.

THE DIV. MANAGER, MSRTC, KOLHAPUR ...RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

2. The appellants have filed these appeals against the impugned common judgment and order dated 05.06.2013 passed in M.F.A. No. 21286 of 2012 (MV) C/W M.F.A. No. 21290 of 2012 by the High Court of Karnataka, Circuit Bench at Dharwad, wherein the High Court has partly allowed the appeals filed by the appellants.

3. The necessary relevant facts are stated hereunder to appreciate the case with a view to ascertain whether the appellants are entitled to the relief of enhancement of compensation as prayed in these appeals.

On 22.03.2011, the deceased Kallappa Gunavant Kadolkar, and his cousin Vijay Kadolkar (both aged about 33 years) were returning from Shinnoli village towards their village Kangrali BK on their motor-bike bearing registration no.KA-22-W-9244, when the MSRTC bus, bearing registration no.MH-14-BT-1541, came from the opposite direction and collided with their motor cycle, resulting in the death of both the deceased.

4. On filing the M.V.C. Nos.1991/2011 and 1582/2011 by the claimants before the Fast Track Court-III & Additional M.A.C.T., Belgaum, the Tribunal, by its common judgment and order dated 06.02.2012, awarded compensation amounting to Rs.7,68,000/- and Rs.7,88,000/- respectively, with interest at the rate of 8% p.a. by taking the monthly income of both the deceased at Rs.4,500/- p.m. Aggrieved by the same, the appellants filed the appeals before the High Court. The High Court party allowed the appeals of the appellants by re-assessing the monthly income of both the deceased at Rs.6000/- p.m. and it deducted 1/4th of the income towards personal expenses (as per Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.[1]). The multiplier of 16 was taken to compute the compensation as both the deceased were aged about 33 years and awarded the compensation of Rs.9,09,000/- each, in both the cases to the claimants, with 8% interest p.a. Not satisfied with the quantum of compensation awarded by the High Court to them, these appeals are filed by the appellants before this Court.

5. Mr. Nitin S. Tambwekar, the learned counsel on behalf of the appellants contended that the appellants in M.F.A. No. 21286/2012, are the wife, minor child and parents of the deceased Kallappa Kadolkar and the appellants in M.F.A. No. 21290/2012 are the wife, 3 minor children and the mother of the deceased Vijay Kadolkar. Both the deceased were aged about 33 years and were skilled workers as they have been working as carpenters. It has been further contended that the deceased were the only earning members of their families and both were hale and healthy prior to the accident that occurred on 22.03.2011 and that both the Tribunal and the High Court have erred in assessing the income of the deceased as Rs.4,500/- p.m. and Rs.6000/- p.m. respectively, as against Rs.15,000/- p.m. as claimed by the appellants. It has been further contended by the learned counsel on behalf of the appellants that both the Tribunal and Appellate Court have not considered the age of both the deceased and also the fact that they were spending all their income in the welfare of their family members. Hence, it is contended by the learned counsel that the quantum of compensation awarded by the courts below is not just and reasonable and therefore the same is required to be enhanced on the basis of the legal evidence on record and the law laid down by this Court in a catena of cases laying down the guiding principles for taking the monthly income of the deceased for computation and award of just and reasonable compensation in the absence of documentary evidence on record.

6. On the other hand, it is the contention of Mr. R.S. Hegde, the learned counsel on behalf of the respondent-Corporation that the Tribunal and the High Court, after critically evaluating the evidence on record have awarded the just and reasonable compensation in favour of the appellants. Further, the amount awarded under the conventional heads is very much on the higher side and therefore required to be reduced by taking judicial note of the same.

7. On the basis of the aforesaid rival legal contentions, the evidence on record and the reasons assigned by the Tribunal and Appellate Court in the impugned judgments and awards in awarding the compensation in favour of the appellants, we are of the view that both the High Court and the Tribunal have erred in assessing the monthly income of both the deceased at Rs.6,000/- p.m. and Rs.4,500 p.m. respectively, for the purpose of awarding compensation under the head of loss of dependency of the appellants.

8. The Tribunal and the Appellate Court rightly came to the conclusion on the basis of the material evidence on record that the death of both the deceased occurred due to the rash and negligent driving of the bus by the driver of the respondent-Corporation. Hence, we have to consider the claim of the appellants to award the just and reasonable quantum of compensation in favour of the appellants by taking the guiding principles laid down by this Court. The learned counsel on behalf of the appellants has contended that both the Tribunal and the Appellate Court have erred in not awarding the just and reasonable compensation based on the legal evidence on record with regard to their monthly income as they have been doing the skilled job of carpentry. Added to this, it is the claim of the appellants that the deceased also had the other source of agricultural income from their agricultural land. The High Court in exercise of its appellate jurisdiction in the appeals filed by them has not considered that the deceased Kallappa had three employees working under him and the deceased Vijay had worked as an employee under Shri Prasad Constructions, Belgaum and he was also working as a carpenter under different contractors. The said evidence on record remained unchallenged by the respondent-Corporation and there is no rebuttal evidence adduced by the respondent disputing the claim of the appellants. Thus, the Tribunal and the High Court have committed an error, both on facts and in law in not taking the correct monthly income of both the deceased for computation of loss of dependency, keeping in view the fact that they were carpenters which is the skilled job. Therefore, the monthly income of the deceased taken by the Tribunal and the High Court for determination of loss of dependency is erroneous, as it is not in accordance with the guiding factors laid down by this Court in the catena of cases to arrive at the just monthly income earned by both the deceased in the absence of documentary evidence. Therefore, the same is liable to be set aside and it has to be properly determined by taking the gross income of both the deceased. The Tribunal and the High Court even in the absence of the salary slip/certificate ought to have taken the monthly salary of both the deceased at Rs.12,000/- p.m. keeping in view, the Minimum Wages Act, 1948 notification, wherein, the State of Karnataka on the basis of the said notification for the relevant period, had fixed the minimum wage of the carpenters in their report, which is a skilled job in the Zone-II and the deceased were working in the aforesaid Zone, at Belgaum District, during the relevant period of their death. Further, it should have been noted by both the Tribunal and the Appellate Court that the minimum wages fixed in the notification is not fair wage and therefore, they could have taken the monthly salary on the basis of real wages that were being paid in the absence of documentary proof on the basis of speculation. They should have taken the reasonable monthly income of the deceased for the purpose of computation of just and reasonable compensation in favour of the appellants. In addition to the above said income, it is stated by the learned counsel on behalf of the appellants that the deceased were also carrying on with the agricultural occupation in their agricultural land, which is the additional source of income which ought to have been taken into consideration by the courts below.

9. Further, in the case of Vimal Kanwar & Ors. v. Kishore Dan & Ors.[2], this Court has held as under:-

"31. In New India Assurance Co. Ltd. this Court noticed that the High Court determined the compensation by granting 100% increase in the income of the deceased. Taking into consideration the fact that in the normal course, the deceased would have served for 22 years and during that period his salary would have certainly

doubled, upheld the judgment of the High Court...."

Taking the principle laid down in the aforesaid case, the deceased would have served another 25 years, during that period their salary would have certainly doubled, which is the view taken by this Court in the case of *New India Assurance Co. Ltd. v. Gopali & Ors.*[3] Keeping in view the aforesaid statement of law laid down in the aforesaid cases and monthly income of the deceased who were doing the skilled job of carpentry and added to that income, the income that was derived from the agricultural occupation from their agricultural land and future prospects as held by this Court in the above case, it would be just and proper for this Court to assess their monthly income at Rs.12,000/- p.m. each for the purpose of computation of loss of dependency. Further, in view of the law laid down by this Court in the case of *Santosh Devi v. National Insurance Company Ltd. & Ors.*[4], this Court has ruled that even in the case of private employment, the future prospects can be taken into consideration to determine the loss of dependency. Having regard to the age of the deceased, the same shall be added to the annual income of the deceased to determine the just and reasonable compensation under the heading of the loss of dependency.

Therefore, it would be just and proper to take the aforesaid additional income from the agricultural occupation and future prospects as claimed by the appellants on the basis of speculation and presumption and apply the multiplier 16, as the same is applicable in view of the age of the deceased as 33 years as on the date of their death, which is sworn to by the witnesses who were examined before the Tribunal on behalf of the appellants, in respect of both the Claim Petitions before the Tribunal.

Thus, the annual income of both the deceased would be Rs.1,44,000/- each. Deducting 1/4th of this amount towards their personal expenses, in order to determine the loss of dependency and keeping in view the age of the minor children, their widowed wives and the aged parents, as their units will be 4 and 5 respectively, as provided in the *Sarla Verma (supra)* case, the balance amount comes to Rs.1,08,000/- [(1,44,000/- (-) Rs.36,000/- (1/4th of Rs.1,44,000/-)]. Therefore, the loss of dependency of the appellants by applying the appropriate multiplier of 16, comes to Rs.17,28,000/- (Rs. 1,08,000/- X 16).

10. Further, we award Rs.1,00,000/- to each of the appellant-children, i.e. Rs.1,00,000/- and Rs.3,00,000/- respectively, as per the principles laid down by this Court in the case of *Jiju Kuruvila & Ors. v. Kunjujamma Mohan & Ors.*[5] towards loss of love and affection of the deceased father. Further, an amount of Rs.50,000/- each is to be awarded to the parents of the deceased for the loss of love and affection of their deceased son as per the principles laid down by this Court in the case of *M. Mansoor & Anr. v. United India Insurance Co. Ltd.*[6]. We further award Rs.25,000/- each towards funeral expenses of both the deceased as held by this Court in the case of *Rajesh & Ors. v. Rajbir Singh & Ors.*[7]

11. The appellants are also entitled to the interest on the compensation awarded by this Court in these appeals at the rate of 9% p.a. along with the amount under the different heads as indicated above. The courts below have erred in awarding the interest at the rate of 8% p.a. on the compensation awarded by them to the appellants without following the decision of this Court in

Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors.[8]. Accordingly, we award the interest at the rate of 9% p.a. on the compensation determined in these appeals from the date of filing of the application till the date of payment.

12. In the result, the appellants shall be entitled to compensation under the following heads:

Sl.No.	Heads	Claimants of Kallappa	Claimants of Vijay
1.	Loss of dependency	Rs.17,28,000/-	Rs.17,28,000/-
2.	Funeral Expenses	Rs.25,000/-	Rs.25,000/-
3.	Loss of love and affection (children)	Rs.1,00,000/-	Rs.3,00,000/-
4.	Loss of love and affection (parents)	Rs.1,00,000/-	Rs.50,000/-
5.	Loss of estate	Rs.1,00,000/-	Rs.1,00,000/-
6.	Loss of consortium	Rs.1,00,000/-	Rs.1,00,000/-
	Total	Rs.21,53,000/-	Rs.23,03,000/-

13. Thus, the total compensation payable to the claimants of the deceased Kallappa and Vijay, by the respondent-Transport Corporation will be Rs.21,53,000/- and Rs.23,03,000/- respectively, with interest @ 9% p.a. from the date of filing of the application till the date of payment.

14. Accordingly, we allow these appeals in the above said terms. The compensation awarded shall be apportioned amongst the appellants on the enhanced compensation in terms of the award passed by the Tribunal. The respondent-Transport Corporation shall either pay the amount of compensation by way of demand draft/drafts in favour of the appellants or deposit the same with interest as awarded, even on the enhanced compensation before the Motor Accidents Claims Tribunal after deducting the amount already paid to the appellants within six weeks from the date of receipt of the copy of this judgment. No costs.

.....J. [V.GOPALA GOWDA]
J. [C.NAGAPPAN] New Delhi, January 13, 2015

- [1] (2009)6 SCC 121
- [2] (2013) 7 SCC 476
- [3] (2012) 12 SCC 198
- [4] (2012) 6 SCC 421
- [5] (2013) 9 SCC 166
- [6] (2103) 12 SCALE 324
- [7] (2013) 9 SCC 54
- [8] (2011) 14 SCC 481

