Fakeerappa And Anr vs Karnataka Cement Pipe Factory And Ors on 13 February, 2004

Equivalent citations: 2004 AIR SCW 7475, 2004 (2) SCC 473, (2004) 16 INDLD 13, (2004) 2 ALL WC 1837, (2004) 1 ACC 494, (2004) 2 TAC 8, (2004) 1 SUPREME 1059, (2004) 2 SCALE 428, (2004) 15 ALLINDCAS 11 (SC), (2004) 2 PUN LR 210, (2004) 3 CIVLJ 410, (2004) 2 CURCC 15, (2004) 4 MAD LW 20, (2004) 54 ALL LR 702, (2004) 2 RECCIVR 619, (2004) 1 WLC(SC)CVL 596, (2004) 1 ACJ 699, 2004 SCC (CRI) 577, (2004) 2 JT 432 (SC)

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  1009 of 2004

PETITIONER:
Fakeerappa and Anr.

RESPONDENT:
Karnataka Cement Pipe Factory and Ors.

DATE OF JUDGMENT: 13/02/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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JUDGMENT (Arising out of SLP (C) No. 22032/2002) ARIJIT PASAYAT,J Leave granted.

Appellants were the parents of one Yallappa Angadi (hereinafter referred to as 'deceased') who died in a vehicular accident. The appellant No.1 filed a claim petition under the Motor Vehicles Act, 1988 (in short the 'Act') in the Court of First Additional District Judge and M.A.C.T. Dharwad (in short the 'Tribunal') claiming compensation. In the Claim Petition the appellant No.2 herein, i.e. the mother of the deceased was added as a formal party-respondent No.5. The Tribunal noticed that the deceased was aged 27 years at the time of accident. It accepted that the deceased was getting Rs.2000/- p.m. On that basis to work out loss of dependency multiplier of 18 was adopted after deducting 50% of the income for personal expenses. A total sum of Rupees two lakhs with 6% interest per annum from the date of application was awarded as compensation.

An appeal was preferred by the claimants under Section 173 of the Act praying for an increase of the compensation. The High Court by the impugned judgment found no merit and dismissed the same.

In support of the appeal, learned counsel for the appellants submitted that two points fall for adjudication. Firstly, whether the deduction of half of the monthly income for personal expenditure is justified, and secondly whether the award of 6% interest per annum is justified.

Though the respondents have been served notice, only counter affidavit has been filed by respondent No.2- Oriental Insurance Co. Ltd. (hereinafter referred to as the 'insurer').

Learned counsel for respondent No.2, submitted that there cannot be any rigid formula as to what would be the percentage or quantum of deduction. The Tribunal and the High Court have taken note of the relevant aspects to hold that 50% deduction would be appropriate. There is no scope for any interference with the percentage of deduction as fixed. Further, before the High Court there was no challenge to the rate of interest awarded by the Tribunal. Therefore, for the first time before this Court such a grievance cannot be raised. It is also submitted that multiplier of 18 as adopted is on the higher side.

What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction.

It has to be noted that the ages of the parents as disclosed in the Claim Petition were totally unbelievable. If the deceased was aged about 27 years as found at the time of post mortem and about which there is no dispute, the father and mother could not have been aged 38 years and 35 years respectively as claimed by them in the Claim Petition. Be that as it may, taking into account special features of the case we feel it would be appropriate to restrict the deduction for personal expenses to one-third of the monthly income. Though the multiplier adopted appears to be slightly on the higher side, the plea taken by the insurer cannot be accepted as there was no challenge by the insurer to the fixation of the multiplier before the High Court and even in the appeal filed by the appellants before the High Court the plea was not taken.

Since there was no question raised about the correctness of the rate of interest before the High Court, we do not find any scope for interference with the rate of interest fixed by the Tribunal in the absence of any challenge to it before the High Court. The appeal is allowed to the extent indicated above, with no order as to costs.

Before we part with the case we think it necessary to point out a somewhat shocking state of affairs which came to our notice. In the Claim Petition filed before the Tribunal, this Court and the High Court of Karnataka, Bangalore were impleaded as respondents for no sensible reason, and in gross abuse of process of law, though by hindsight absurdity seems to have been set right by ordering deletion. Though these parties were given up during adjudication, it is clear that the Claim Petition was filed without any application of mind by the counsel concerned as to who would be proper or necessary party or even a formal party and great sense of responsibility is expected to be exhibited by those concerned. At least while impleading a party in Claim Petition, proper attention ought to be

devoted which sadly was not done.