Delhi High Court
United India Insurance Co. Ltd. vs Smt. Habijan And Ors. on 2 April, 2008
Author: K Gambhir
Bench: K Gambhir
JUDGMENT Kailash Gambhir, J.

1. This order shall dispose of two appeals being MAC APP Nos. 416/05 and 423/05 filed by the appellant insurance company arising out of the common award.

2. Brief summary of facts of the case are as under:

That on 21.9.2003, at about 3:30 p.m. deceased Shri Jamil and Smt. Bundo were going towards Surajpur, Bulandshahar from their residence at Sunder Nagri, along with their daughter Amrin on a scooter bearing registration No. DL-7S-AA-1127. Jamil was driving the scooter and Bundo was a pillion rider. She was carrying her four years daughter Amrin with her on the scooter. When deceased Jamil and Bundo reached at Village Will, a motorcycle bearing registration No. UP-13H-0639 driven by Shri Haqikat Khan at a very high speed, in a rash and negligent manner, violating all traffic rules and regulations came from opposite side and hit the scooter with a great force due to which both husband and wife fell down and received fatal injuries. They were immediately taken to Naveen Hospital from where they were referred to Sarvodaya Hospital, Gaziabad. Both the husband and wife died as a result of the said accident.

3. Mr. Pankaj Seth, Advocate appearing for the appellant contends that the Tribunal has not correctly assessed the income of the deceased Shri Jamil Ahmed as well as Smt. Bundo.

4. The contention of learned Counsel appearing for the appellant is that the decision of the Apex Court in Sarla Dixit's case has not been applied by the Tribunal. Counsel for the appellant further contends that even 1/3rd deduction towards personal expenses of the deceased has been wrongly allowed as both the husband and the wife had died in the said accident. Counsel further submits that because of death of husband and wife, the multiplier should have been taken on the lower side than the one as laid down under the IInd Schedule of the Motor Vehicles Act. Contention of learned Counsel for the appellant is that due to death of husband and wife, benefit of the major contribution of income could not have gone to the father of the children, which the deceased husband and wife would have spent during their lifetime.

5. Per contra, Mr. Vijay Kumar counsel appearing for the claimants respondents refutes the said submission made by the appellant. Counsel submits that no fault can be found with the findings of the Tribunal. Counsel further contends that the Tribunal has disbelieved the income as pleaded by the respondents and recourse was taken to the Minimum Wages Act for assessing the income of the deceased person. Counsel also contends that the Tribunal has correctly applied the multiplier as well as deducted the normal 1/3rd deductions on the earnings of the deceased persons.

6. I have heard learned Counsel for the parties and have perused the records.

7. The respondents claimants had stated in their petition that the deceased husband and wife used to sew clothes to make both ends meet and the deceased husband was earning Rs. 5,000/-pm and deceased wife was earning Rs. 6,000/-pm. The same was stated by the PW1, mother of the deceased Sh. Jamil but in her cross examination she stated that she had no documentary evidence to prove the same. It is no more res integra that mere bald assertions regarding the income of the deceased are of no help to the claimants in the absence of any reliable evidence being brought on record.

8. The thumb rule is that in the absence of clear and cogent evidence pertaining to income of the deceased the Tribunals are left with no option but to determine income of the deceased on the basis of the minimum wages notified under the Minimum Wages Act.

9. In view of the above discussion, I am of the view that the tribunal committed no error in assessing the income of the deceased in accordance with the Minimum Wages Act. Further since nothing has come on record to prove the exact income of both the deceased persons thus the tribunal committed no error in assessing their incomes in accordance with the rates of wages for unskilled workmen. I do not find any infirmity in the award on this count.

10. With regard to the contention of the counsel for the appellant that the decision in the Sarla Dixit's case has not been followed by the tribunal while assessing the income of the deceased person I am of the view that since the income of the deceased persons was assessed in accordance with the Minimum wages Act, therefore, the ratio in the Sarla Dixit's case would not apply, as the same is applied where the income of the deceased are duly proved. Thus, there is no infirmity in the award in this regard.

11. It has been the consistent view of this Court that whenever aid of Minimum Wages Act is taken while computing income, then increase in minimum wages should also be considered. It is well settled that future prospects are not akin to increase in minimum wages. To neutralize increase in cost of living and price index, the minimum wages are increased from time to time. A perusal of the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation and cost of living, minimum wages virtually double after every 10 years. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years. Although, the Tribunal has doubled the income after assessing it under the Minimum Wages Act & then has taken the mean of the same, while doing so the Tribunal considered it as future prospects, which is a misnomer, as while doing it the Tribunal has considered increase in Minimum Wages, which is not akin to the future prospects. Thus, the tribunal did not err in awarding increase in minimum wages to the claimants, although it erred in treating the same towards future prospects.

12. As regards the contention of the counsel for the appellant that the 1/3 deduction made by the tribunal are on the higher side as the deceased are survived by their three minor children and mother of the deceased husband, I feel that the tribunal committed no error. In catena of cases the Apex Court has in similar circumstances made 1/3rd deductions. Therefore, I am not inclined to interfere with the award on this ground.

13. As regards the contention of the counsel for the appellant that the tribunal has erred in applying the multiplier in accordance with the II Schedule to the MV Act, in the facts and circumstances of the case, I feel that the tribunal has committed no error. It is the settled legal position that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is higher. In this regard in New India Assurance Co. Ltd. v. Kalpana , the Honble Apex Court has observed as under:

7. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

14. The deceased husband and wife in the instant case were of 30 years and 25 years of age, respectively at the time of the accident. The deceased were survived by their three minor children and mother of the deceased husband. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased the multiplier of 17 in case of the husband and 18 in case of the wife should have been applied. Therefore, there is no infirmity in the award in this regard.

15. No merit in the appeals.

16. Dismissed.