Baldev Singh & Others ...Appellants vs National Insurance Company Limited And ... on 19 April, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL
Appeal from Order No.461 of 2013

Baldev Singh & others ...Appellants

Vs.

National Insurance Company Limited and another

.....Respondents

Mr. Hari Mohan Bhatia, Advocate, for the appellant.
Mr. Syed Nadim, Advocate, for the Owner.
Mr. Bindesh Kumar Gupta, Advocate, for the Insurance Company.

Hon'ble Sharad Kumar Sharma, J (Oral)

This is a claimants' Appeal from Order, where the dependents of the deceased employee, had put a challenge to the impugned award which has been rendered by the learned Motor Accident Claim Tribunal, on 25th June, 2013 in MACP Case No.60 of 2010, "Baldev Singh and others Vs. Shri Yashwant Singh & another".

2. The brief facts of the case are that the claimants', herein, by invoking the provisions contained under section 163A of the Motor Vehicle Act, had instituted a claim petition before the Motor Accident Claim Tribunal, Pauri Garhwal, on 5th September 2010, and as per the factual backdrop pleaded in the claim petition, it was contended, that the deceased-Deepak Singh, who was engaged as a driver of the offending vehicle bearing Registration No.UP06 3078 (hereinafter to be called as a "vehicle"). The deceased was an employee of the owner of the vehicle, who was impleaded as the opposite party no.1, to the claim petition.

3. The claimants in the claim petition had come up with a case that on the date of the accident i.e. 10th August 2010, the deceased, who was 26 years of age, according to his registered date of birth being 10th August 1984, and as per the date of birth depicted in other public documents, he was holding a valid driving licence, and thus they contended that on the date of the accident, the deceased since he was being paid a salary of Rs.6000/- per month, with the additional allowance of Rs.50/- per day. The total amount of income, which was allegedly accruing to the deceased was assessed by the claimants, in their claim petition, to be approximately Rs.7500/- per month.

4. The Motor Accident Claim Tribunal while taking cognizance to the proceedings had issued notices to the respondents, and the owner of the vehicle i.e. opposite party no.1-Yashwant Singh, who had filed his written statement being paper No.13 (kha) on 20th June 2011, wherein, in the written statement thus filed by him i.e. in paragraph No.11, the owner of the vehicle had taken a stand that the wages which was then being paid to the driver of the vehicle was Rs.3500/- per month, with an additional allowances of Rs.50/- per day in order to meet the daily expenses, of the driver. Apart from it, in paragraph No.13, of the written statement, it was pleaded by the opposite party no.1, i.e. the owner of the vehicle, that on the date of the accident i.e.10th August 2010, the vehicle was being driven under valid documents, and an insurance cover, as provided under the terms of the insurance policy which had been issued by the opposite party No.2, i.e. Insurance Policy No.462202/31/09/67000031200, which was valid for the period from 13th January 2010 to 12th January 2011.

5. The Insurance Company had filed its independent written statement, being paper No.16 kha. In the written statement, thus filed though the factum of accident had been accepted, but the pleading pertaining to the stand taken by the owner of the vehicle in the written statement, that the vehicle was being driven at the relevant date as per the terms of the policy, was specifically denied by the insurance company in their written statement, and particularly, in paragraph No.5, of their written statement, a specific stand was taken by the insurance company, that on the date of the accident, the driver of the vehicle was not having a valid driving licence, and hence the liability, if any, was required to be settled, it ought not to be borne by the insurance company, in view of the provisions contained under Section 170; to be read with Section 149 of the Motor Vehicle Act.

6. The owner of the vehicle appeared in the witness box, and has submitted his affidavit in examination-in-chief being paper No.23kha, wherein, in paragraph No.5, he has taken just the converse stand of what was pleaded by him in the written statement, and in the affidavit thus submitted by the owner of the vehicle, he has submitted that the driver was being paid wages of Rs.6000/- per month with an additional expenses of Rs.50/- per day in order to meet the daily expenses by way of additional allowances. This statement given by the owner of the vehicle in his affidavit in examination-in-chief, belies his principal statement which had been made by him in the written statement in paragraph No.11, where he has pleaded that the wages of the driver of the vehicle as of Rs.3500/- per month, was being paid to the deceased driver of the vehicle.

7. The owner of the vehicle appeared in the witness box, and had recorded his statement as DW1, which finds place on record as paper No.22 ka, in the records of the lower Court. In fact, if the part of the cross-examination of the owner of the vehicle is taken into consideration, he has rather reiterated and admitted the fact, which commensurates to the statement which was made by him in his affidavit in examination-in-chief, that the driver was being paid with the wages of Rs.6000/- per month with the additional allowances as pleaded, therein, to be at the rate of Rs.150/- per month. On the basis of the respective pleadings, which has been raised by the parties to the proceedings, the learned Motor Accident Claim Tribunal had framed the following issues:-

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8. Out of the total issues, which were framed by the tribunal, the issue which would be of much concern to be discussed by this Court, would be Issue No.2 and Issue No.4, which has been sought to be addressed upon by the learned counsel for the claimants based on the documentary evidences which were produced on record and the admitted case in accordance with the statement which has been recorded by the witnesses, who were produced before the tribunal, by the respective parties.

9. This Court is not required to venture into the findings recorded on issue No.1, which was pertaining to the mode and manner in which the accident had chanced on 10th August 2010, because it is a fact which has not been disputed by any of the parties to the proceeding.

10. As far as the issue No.2, is concerned the insurance company in the written statement, as already observed above, has taken a specific plea, that the driver of the vehicle was not having a valid driving licence, and in support thereto if the findings which had been recorded by the Motor Accident Claim Tribunal, are taken into consideration pertaining to the documentary evidences, which were adduced by the parties in support of their respective pleadings raised in the written statement, the insurance company had produced the documents which were issued by the competent licensing authority at Muradabad, by way of form no.54, which was a DL report, placed on record, as paper no.27 (ga), which established the fact that on the date of the accident, the driver of the vehicle was not having a valid driving licence. This fact that whether the driver of the vehicle was having a valid driving licence on the date of the accident or not, cannot be a disputed fact that could be agitated by the owner of the vehicle, at this stage, in an appeal which has been preferred by the claimants for the enhancement of the compensation, more particularly, when the findings recorded on Issue no.2, by the learned Motor Accident Claim Tribunal, has not been subjected to challenge by the owner of the vehicle by filing an independent appeal before this Court.

11. If the findings recorded by the Motor Accident Claim Tribunal are taken into consideration, which was a composite finding recorded on Issue nos.2 and 3, it was rather based upon the appreciation of form no.54, which was produced by the insurance company, as paper no.27(ga), the Court has arrived at a conclusion, that the driving licence of the deceased was not valid on the date of the accident, and hence, as per the findings recorded therein, which remained unrefuted by the owner of the vehicle, it was observed that the owner of the vehicle though he did had a valid permit, valid RC, valid insurance policy and fitness certificate, but the driver of the vehicle on the date of the

accident was not a holder of a valid driving licence. Hence, the inferences were drawn by the Court that on the death of the accident the vehicle was being driven in contravention to the provisions of the insurance policy itself, which provided that the driver of the vehicle has had to have a valid driving licence existing, which was prove to the contrary against the opposite party no.2.

12. In that eventuality, where it's a positive and a concrete finding which had been recorded which was based on an appreciation of evidence pertaining to the validity of the documents in relation to the driving licence of the deceased. Since it is based upon an appreciation of evidence and after considering the documents produced by the insurance company, no perversity could be found in the findings recorded pertaining to the validity of the documents and that to particularly in the light of the fact that when the owner of the vehicle has not put a challenge to this findings.

13. Learned counsel for the claimants had submitted that the impugned award, which has been rendered by the learned Motor Accident Claim Tribunal awarding an amount of Rs.1,90,000/- only, as a compensation payable to the claimants along with an interest, is bad in and too deficient in the eyes of law for the reason being that the determination of the compensation, which has been made by the Motor Accident Claim Tribunal, as per the findings recorded on issue no.4, the Motor Accident Claim Tribunal, has arrived at a conclusion, that on the basis of the birth certificate, which records the date of the birth of the deceased as to be 10th August 1984, there happens to be a certain contradiction in the family register being paper no.21ga/ 10, where the date of the birth has been shown to be recorded as to be 16th March 1988. This Court is of the view that the date of birth of the deceased has had to be assessed on the basis of the certificate of birth issued by the competent registering authority as to be a valid document to determine the date of birth of the deceased, as to be 10th May 1984. Hence, the assessment made by the learned Motor Accident Claim Tribunal, determining the age of the deceased to be falling between 25 to 30 years of age is plausibly based upon the appreciation of the documentary evidences, which includes the postmortem report, the birth certificate, as well as the family register, which was produced before the Motor Accident Claim Tribunal.

14. Learned counsel for the claimants had submitted that if the findings recorded by the learned Motor Accident Claim Tribunal, in paragraph No.1, of the impugned award, is taken into consideration, in fact, the findings for the purposes of determining the compensation has been exclusively based upon the pleadings raised by the owner of the vehicle in paragraph No.11, of the written statement, where he has submitted, that the deceased was receiving the wages of Rs.3500/- per month, along with an additional allowance. But unfortunately, to the detriment to the interest of claimant, the learned Motor Accident Claim Tribunal, had erred at law by not considering the pleadings which had been raised in the affidavit which had been submitted in the examination-in-chief, as well as to the statement recorded in the cross- examination by DW1, wherein, the owner of the vehicle had very candidly admitted the fact that the wages, which were paid by the owner of the vehicle, to the deceased employee was Rs.6000/- per month, along with an additional allowances of Rs.150/- per day in order to meet the daily expenses.

15. In that eventuality, and for the reasons where the factum of the payment of wages by the owner of the vehicle is in contradiction to the pleadings taken in the written statement, and is contradicted

by his own stand taken in the affidavit in examination-in- chief, as well as in the cross- examination itself, it would be deemed that according to the admitted stand of the owner of the vehicle, the driver on the date of the accident was being paid with the wages of Rs.6000/- per month, hence an inference to the contrary, could not have been drawn, while giving an interpretation to the contents of the affidavit of the examination-in-chief or to the admitted fact, admitted in the cross-examination of the DW1 i.e. owner of the vehicle, had the owner of the vehicle itself has put a challenge to the findings recorded in the impugned award, at the stage, when the determination of the income was being considered by the learned Motor Accident Claim Tribunal, while recording it's finding on issue No.4.

16. In that eventuality, the very basic foundation of the learned Motor Accident Claim Tribunal, exclusively based on the contents of the pleadings raised in paragraph No.11, of the written statement of the owner of the vehicle, would be bad in the eyes of law, because that itself exclusively cannot be a sound basis to infer that the income of Rs.3500/-, was not a fact which was proved on record, hence applying the principle of notional income of Rs.36,000/- per annum, would be bad, because the court had not recorded any finding, as to what bearing the statement of the owner of the vehicle would have, in determining the income accruing to the deceased employee, and its consequential dependency on the claimants, and hence the findings recorded for determining the compensation on the basis of the notional income is bad, as it has been determined due to the factum of non establishment of the actual payment of wages which was accruing to the deceased of Rs.3500/- per month, as pleaded in the written statement. This statement cannot be taken into consideration because the Motor Accident Claim Tribunal, was also simultaneously bound to consider and record its finding on the admitted case of the owner of the vehicle, where he has admitted that the wages paid to the deceased driver was Rs.6000/- per month.

17. In that eventuality, the assessment of income accruing to the deceased has to be assessed on the basis of Rs.6000/- per month, which was the case of the opposite party No.1, itself, before the court below, and hence the principles of notional income ought not to have been applied under the circumstances of the present case when there was no controversy, as such at the behest of the owner of the vehicle pertaining to the wages being paid to the driver of the vehicle.

18. Reverting back to the aspect of appropriate multiplier, which ought to have been made applicable, considering the age of the deceased, which was assessed by the learned Motor Accident Claim Tribunal, as to be falling between 25 to 30 years, which was a fact based on the appreciation of the documentary evidence, the findings of the Motor Accident Claim Tribunal, of applying the multiplier of 10, based upon the age of the claimants is bad in the eyes of law for the reason being that the Hon'ble Apex Court, in the catena of judgments and particularly that as rendered in Civil Appeal No.6600 of 2015, M/s Royal Sundaram Alliance Insurance Company Ltd. Vs. Mandala Yadagari Goud & Ors.", as decided on 09.04.2019, in paragraph No.1, it has been observed, that where the deceased on the date of death, is bachelor. In that eventuality, the multiplier which has to be applied has to be on the basis of the age of the deceased and not on the basis of the age of the claimants, and the findings recorded therein by the Hon'ble Apex Court, is that as contained in paragraph Nos.9 and 11, of the judgment, which is extracted hereunder:-

"9. The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

11. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari & Ors. Vs. Madan Mohan & Anr.7. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on : (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf."

19. There is yet another judgment which had been rendered by the Hon'ble Apex Court in Civil Appeal No.6291 of 2019, "Joginder Singh and Another Vs. ICICI Lombard General Insurance Company" on 14.08.2019, where too almost akin principles has been adopted for the purposes of levying a multiplier, based upon the age of the deceased and the reference, therein, has been arrived at by the Hon'ble Apex Court in paragraph No.4, of the said judgment, which is extracted hereunder:-

"4. We have perused the judgments of the Courts below, and find that the wrong Multiplier has been applied to the facts of the present case. The issue with respect to whether the Multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the parents, is no longer res integra. This issue has been recently settled by a three Judge bench of this Court in Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud & Ors.,3 wherein it has been held that the Multiplier has to be applied on the basis on the age of the deceased. The Court held that:

"10. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to

> be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari and Ors. v.

Madan Mohan and Anr. (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on: (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

11. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

12. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

20. In fact, this Court too had an occasion to deal with the aforesaid principles, based upon the aforesaid judgments of the Hon'ble Apex Court, including yet another judgment of the Hon'ble Apex Court, rendered in Civil Appeal No.7176 of 2015, "Sube Singh and another Vs. Shyam Singh (Dead) and others" wherein, the multiplier, which has been made to be applied, has been determined as to be based upon the age of the deceased, and not the age of the claimants, where the deceased is a bachelor and unmarried.

21. In view of the aforesaid principles, this Court is of the view, that the multiplier of 10, as applied by the Motor Accident Claim Tribunal, is on the face of the judgments in contravention to the principles laid down by the application of multiplier in the judgment of Sarla Verma case, which has laid down the parameters and the circumstances under which the multiplier has to be made applicable. The relevant paragraphs of Sarla Verma judgment as reported in 2009 Volume 6 SCC page 121, paragraph Nos.6 and 7, would be relevant for its consideration for applying the multiplier, which is extracted hereunder:-

> "6. The appellants contend that the High Court erred in holding that there was no evidence in regard to future prospects; and that though there is no error in the method adopted for calculations, the High Court ought to have taken a higher amount as the income of the deceased. They submit that two applications were filed before the High Court on 2.6.2000 and 5.5.2005 bringing to the notice of the High Court that having regard to the pay revisions, the pay of the deceased would have been Rs. 20,890/- per month as on 31.12.1999 and Rs. 32,678/- as on 1.10.2005, had he been alive. To establish the revisions in pay scales and consequential re-fixation, the appellants produced letters of confirmation dated 7.12.1998 and 28.10.2005

> issued by the employer (ICAR). Their grievance is that the High Court did not take note of those indisputable documents to calculate the income and the loss of dependency.
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> 7. The appellants contend that the monthly income of the deceased should be taken as Rs. 18341/- being the average of Rs. 32,678/- (income shown as on 1.10.2005) and Rs. 4,004/- (income at the time of death). They submit that only one-eighth should have been deducted towards personal and living expenses of the deceased. They point out that even if only one fourth (Rs. 4585/-) was deducted therefrom towards personal and living expenses of the deceased, the contribution to the family would have been Rs.

13,756/- per month or Rs. 1,65,072/- per annum."

22. In that eventuality, in the instant case, it would rather be the multiplier of 17. Accordingly, this Appeal from Order is allowed. The amount of compensation awarded by the learned Motor Accident Claim Tribunal, is hereby enhanced to be determined, on the basis of the admitted annual income accruing to the deceased, as it has been projected above on the basis of the pleadings adduced by the owner of the vehicle, whereby the income was admitted to be assessed on the basis of Rs.6000/- per month and the multiplier of 17 was to be applied, on the amount to be determined, after making the relevant deductions, for the purposes of arriving at an amount of dependency of the claimants. Hence, after making the deduction to the extent of 50%, the Motor Accident Claim Tribunal, would recompute the compensation to be awarded on the aforesaid principles after applying the multiplier of 17 and taking the wages as to be Rs.6000/- per month, and not on the basis of notional income. Accordingly, the appeal from order stands allowed, and the impugned award stands modified to the extent, as directed above.

23. Lastly, the learned counsel for the claimants had harped upon the provisions contained under Section 171 of the Motor Vehicle Act, where the Tribunal has been casted upon the responsibility to determine the interest which has to be made payable on the compensation, on the basis of the simple interest, which has to be paid on it. Section 171 of the Motor Vehicle Act, is extracted hereunder:-

> "17. Award of interest where any claim is allowed.--Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

24. While opposing the claim of the claimant, with regards to the entitlement of the interest under section 171 of the Motor Vehicle Act, the learned counsel for the owner of the vehicle, on whom the liability has been ultimately fastened, because of the recoverable rights having been given to the insurance company, had submitted that if the findings recorded in paragraph No.22, of the impugned award is taken into consideration, since the owner of the vehicle had diligently

participated in the proceedings, coupled with the fact, that no interest was claimed by the claimants in their claim petition, they would not be entitled for any interest to be paid on the award made by the Motor Accident Claim Tribunal, as per the provisions of Section 171 of Motor Vehicle Act.

25. There are two reasons for not accepting the argument of the learned counsel for the owner of the vehicle, as far as the determination of interest on compensation is concerned, on a simplicitor interpretation to Section 171 of the Motor Vehicle Act, it has been exclusively left at the prerogative of the Claim Tribunal to determine the interest payable on the compensation at a rate of simple interest from the date of making of the claim. In fact, Section 171 of the Motor Vehicle Act, and its legal implication is not clouded to be denied merely because of the fact that the parties to the claim petition had diligently participated in the proceedings, that fact in itself cannot deprive the claimant of the interest on the amount of compensation, which the claimant would be entitled to receive for the reason, being that the compensation itself would amount to be an accrual of the financial right in favour of the claimant, which they would be otherwise entitled to receive, on the date of the accident itself.

26. In that eventuality, this argument of the learned counsel for the respondent is not accepted, and the learned Motor Accident Claim Tribunal, is accordingly directed to re-determine the interest to be made payable on the revised compensation to be assessed on basis of wages drawn by the deceased at the rate of Rs.6,000/- per month and applying the multiplier of 17, as directed above, as per the provisions contained under Section 171 of the Motor Vehicle Act.

(Sharad Kumar Sharma, J.) 19.04.2022 NR/