

(2005) 04 CAL CK 0038
In the Calcutta High Court
Case No : F.M.A.T. No. 801 of 2004

Anima Roy and Others

APPELLANT

Vs

United India Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 07-04-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) ACJ 1599

Hon'ble Judges : P.K. Samanta, J; Joytosh Banerjee, J

Bench : Division Bench

Advocate : Sushil Kr. Das, for the Appellant; R.P. Banerjee, Soumendra Nath Ganguly, Shaktipada Banerjee and S.P. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

P.K. Samanta and Joytosh Banerjee, JJ.—The learned Counsel appearing on behalf of claimants-appellants submits that the deficit court-fees as pointed out by the stamp reporter have already been put in. Office is to check up and report immediately.

2. This is an application for amendment of the claimed amount in the claim petition that was filed by the claimants-appellants before Claims Tribunal. Having regard to the facts and circumstances of this case, we take up the above application for disposal along with the appeal itself by treating the same as on day's list.

3. The service of notice of this application and the appeal upon respondent No. 2 is dispensed with as the said respondent did not contest the proceeding before the Claims Tribunal. The present appeal has arisen out of the judgment and award dated 12.12.2003 passed by the Motor Accidents Claims Tribunal, First Court of Additional District Judge, Howrah in M.A.C. Case No. 250 of 2003. The said claim case arises out of an application u/s 166 of the Motor Vehicles Act, 1988 filed by the claimants-appellants.

4. The facts giving rise to the above claim case in brief are as under:

On 22.11.2002 at about 4.30 p.m. while the victim was riding his bicycle was dashed by a trailer having registration No. NL 05-A 2149. In the said accident the victim sustained multiple injuries and died on the spot. The claimants are the heirs and legal representatives of the said deceased victim, namely, wife and two sons of the said deceased. In claim petition, the claimants-appellants claimed compensation for a sum of Rs. 3,50,000 in total on the death of the said deceased victim who was their sole earning member.

5. Before the Claims Tribunal, the death of the victim in the said motor accident, rash and negligent driving of the offending vehicle by its driver and insurance cover of the said offending vehicle by the respondent insurance company were proved. Such findings have not been questioned by the respondent insurance company in this appeal before this Court.

6. Evidently, the said deceased victim was a railway employee having a gross monthly income of Rs. 13,971 at the relevant point of time. In proof of such gross salary of the deceased victim a salary certificate for the month of October 2002 was produced before Claims Tribunal. The age of the victim on the date of accident was found by learned Claims Tribunal as 59 years. Such finding is also not challenged by the respondent insurance company in this appeal before this Court.

7. The learned Claims Tribunal though on the basis of the aforesaid findings and the material on record observed that the claimants-appellants were entitled to a total compensation of Rs. 8,83,800 but had awarded compensation for a sum of Rs. 3,50,000 as the claimants-appellants in their claim petition claimed such amount and not more than that. The learned Claims Tribunal determined the said amount of Rs. 8,83,800 on the basis of the gross salary of the deceased victim minus 1/3rd of the same for his personal expenses and upon application of multiplier of 8 on the annual income of the said deceased as per his age as on the date of the said accident.

8. Although on such basis, the Claims Tribunal observed that the total amount of compensation would come to Rs. 8,83,800 but we are not in a position to accept the same because the gross salary of the deceased victim cannot be taken into account for the purpose of determination of compensation. The Apex Court in the decision in *Asha and Others Vs. United India Insurance Co. Ltd. and Another*, has held that the claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. In view of the aforesaid decision of the Apex Court the determination of compensation on the basis of the gross salary is not permissible and on the other hand the same should be determined by making deductions from the gross salary which are compulsory in nature. Mr. Das, learned Counsel appearing on behalf of the claimants-appellants has fairly conceded before this Court that the necessary deduction of Rs. 3,756

per month from the gross salary of the deceased victim should be made for the purpose of calculation. The calculation sheet produced by him, however, does not include the compulsory deduction made towards provident fund that is to say 6 per cent of the basic pay received by the deceased victim as per the rules in general. The basic pay of the deceased victim at the relevant point of time was Rs. 7,425. The compulsory contribution towards provident fund on such rate would be around Rs. 445. As per the said salary certificate of the deceased victim the gross salary was Rs. 13,971 per month. Upon necessary deduction as pointed out above including the compulsory provident fund contribution, the net salary of the deceased victim is calculated at Rs. 9,770 per month. Therefore, the annual income would stand at Rs. 1,17,240. On the basis of the aforesaid annual income and upon deduction of 1/3rd of the same on account of personal expenses of the victim had he been alive the loss of dependency per annum comes to Rs. 78,160. Deceased victim was aged 59 years on the date of the accident. Such annual loss of dependency therefore should be applied with multiplier of 8 as per the Second Schedule to the said Act which is a safer guidance for the purpose of determination of the amount of compensation. Upon such application of multiplier of 8 on the aforesaid amount of Rs. 78,160 the loss of dependency comes to Rs. 6,26,280. In addition the claimants-appellants would be entitled to a further sum of Rs. 9,500 on account of funeral expenses, loss of consortium and the loss to estate. Thus, total amount of compensation payable to the claimants-appellants would stand at Rs. 6,35,780.

9. The Supreme Court in the decision in Nagappa Vs. Gurudayal Singh and Others, , has specifically held that there is no bar under the law upon the Tribunal or the court to award compensation exceeding the claimed amount. Function of the Tribunal or the court is to award just compensation which is reasonable on the basis of evidence on record. If required in appropriate cases, the court may permit amendment of the claim petition. Following the aforesaid decision and considering the facts and circumstances as above, we allow the petition for amendment of the claimed amount as made in the claim petition originally by the claimants-appellants. In the said petition an amendment has been sought for by enhancing the claimed amount to Rs. 8,83,800 from Rs. 3,50,000 as originally claimed. However, since we have determined the total compensation payable to claimants-appellants at above we hold that the claim petition shall stand amended accordingly.

10. It is not in dispute that claimants-appellants have already been paid with the aforesaid sum of Rs. 3,50,000 as awarded by the Claims Tribunal. Therefore, as per the aforesaid calculation, the claimants-appellants shall be entitled to receive the balance sum of Rs. 2,85,780 which will carry an interest at the rate of 9 per cent per annum from the date of filing of the claim petition till payment. Such payment shall peremptorily be made within a period of six weeks from date by depositing three account payee cheques drawn in favour of each of the claimants-appellants in equal shares as far as practicable with the Claims Tribunal within the time aforementioned. Learned Claims Tribunal upon receipt of the same shall

handover the said cheques to each of the claimant-respondent immediately upon realisation of the additional court-fees on the enhanced amount of compensation and upon proper identification and receipt.

The appeal and the application are accordingly disposed of.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties, as expeditiously as possible.