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In the Madhya Pradesh High Court

Bhanwri Bai and Others — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2009) ACJ 1319

Hon'ble Judges : S.K. Seth, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Seth, J.—Death has an inexorable finality about it. Human life that has been lost was precious and in that sense priceless and invaluable. But the law can compensate the estate of a person whose life is lost by the wrongful act of another only in the way the law is equipped to compensate, i.e., monetary compensations calculated on certain well recognised principles. ''Loss to the estate'' which is the entitlement of the estate and the ''loss of dependency'' estimated on the basis of capitalised present value awardable to the dependants and heirs are the main components in the computation of compensation in fatal accident actions.

2. On 24.1.2003, Ashok Kumar, a cook employed in C.R.P.F., lost his life in a road accident in Baramula in Jammu & Kashmir. Claimants are his widow and children. They are in appeal u/s 173 of Motor Vehicles Act, 1988, against the award dated 30.1.2006 passed by the M.A.C.T., Manasa, District Neemuch in Claim Case No. 17 of 2005. By the impugned award, the learned M.A.C.T. has awarded a sum of Rs. 50,000 under ''no fault liability''; Rs. 5,000 towards loss of consortium and Rs. 2,000 towards the funeral expenses. Thus, in all, a total sum of Rs. 57,000 was awarded by the Tribunal as against the claim of Rs. 21,70,000. The reason why Tribunal declined to work out compensation in accordance with known principles was paid ex gratia payment of Rs. 5,00,000 under a scheme of Central Government and other terminal benefits like gratuity, provident fund, etc.

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According to the Tribunal for one wrong, damages could not be awarded twice.

3. After having heard rival submissions of learned Counsel for the parties and going through the record, we find that the entire approach of the Tribunal was erroneous and very strange. The question for our determination is whether ex gratia payment would disentitle the appellants (sic from claiming compensation u/s 166 of the Motor Vehicles Act, 1988, from the owner/driver of the offending vehicle. The learned Counsel for the appellants) submitted that impugned award is unsustainable in law and he placed reliance on decisions reported in State of A.P. and Another Vs. K. Pushpalatha and Others, ; Smt. A. Lakshmi Vs. Arjun Associated Pvt. Ltd. and Another, ; Arvind Singh Mann Vs. Himachal Road Trans. Corpn. and Others, . On the other hand learned Assistant Solicitor General while supporting the award placed reliance on a decision of the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., .

4. A careful reading of the decisions on which learned Counsel for the appellants has placed reliance would show that in all cases basically court was dealing with contractual payment like compassionate appointment, insurance money, provident fund, gratuity, etc. These decisions accept the proposition that the Tribunal has to adjudicate a claim petition filed under the provisions of Motor Vehicles Act, 1988, notwithstanding payment of amount supra or of like nature. The case of Patricia Jean Mahajan (supra) is all together on a different point and how it is attracted on its applicability to the facts of present case, we simply confess our inability to appreciate arguments of the learned Assistant Solicitor General. The case of payment of ex gratia amount by the employer came up for consideration before Court of Appeal in the matter of Cunnigham v. Harrison 1974 ACJ 218 (CA, England). Appellant in that case sustained serious personal injuries in a motor accident. As a result of injuries, there was complete tetraplegia and the claimant was forced to lead a vegetable life fully dependent on others. Appellant at the time of accident was 47 years of age and was working with British Petroleum Co. drawing annual salary of ? 1,500. The appellant''s employer agreed to pay ? 828 per annum for life as an ex gratia amount. The point was whether such payment of ex gratia amount was to be taken in account. Lord Denning, M.R. in his leading opinion said answer was No. He observed:

It is an established principle of our law that the damages awarded to an injured person is not to be reduced by reason of any insurance money received by the injured person; See Bradburn v. Great Western Railway Co. (1874) All ER 195; nor by reason of a pension to which he has contributed; See Parry v. Cleaver 1969 ACJ 363 (HL, England); nor by reason of gifts made to relieve his distress; See Redpath v. Belfast & Country Down Railway (1947) NI 167. Similarly, I think that the damages are not to be reduced by reason of ex gratia payments made by his employer.

In the same judgment he further observed as under:

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I can find no sound principle for saying what matters should or should not be taken into account in reduction of damages. As each new point comes up, it is decided by the courts according to what is considered the best policy to adopt; and thence forward it governs subsequent cases. In this present case I am clear that any voluntary . ex gratia. pension paid and payable by the employer is not to be taken into account. It is an uncovenanted benefit coming to the plaintiff over and above the compensation recoverable at law. In this case he receives from his employer virtually half-pay for the rest of his days. No one grudges him this money; but there it is. It is voluntary. He gets it and it is not to be taken into account.

(Emphasis added)

Other two Hon''ble Judges, viz. Orr, L.J. and Lawton, L.J. agreed with Lord Denning, M.R.

5. We are of the opinion that exposition of law propounded by Lord Denning reflects the correct position of law. Otherwise it would result in putting a premium on the tortious act of the tortfeasor. It would also result in hostile discrimination between the victims of deceased employee and the victims of a person who were not in employment. In the former case there are various post-retirement social welfare measures, whereas for the latter there are no such welfare measures. That is neither the object of the Act, nor can such an interpretation be given to the statutory provisions and the principles fundamental for the assessment of compensation payable to the victim or his dependants in motor accident cases. Thus, we do not approve the view taken by the Claims Tribunal that because claimants-appellants were paid ex gratia payment of Rs. 5,00,000, therefore, appellants are not entitled to compensation according to principles applied to determine the amount of compensation payable to heirs of deceased Ashok Kumar under the provisions of the Motor Vehicles Act, 1988.

6. On the basis of evidence adduced, Tribunal found that deceased was travelling on official duty in the vehicle No. HR 68-0867. It belonged to respondents. The Tribunal found that the driver of vehicle No. HR 68-0867 was responsible for the accident on account of his rash and negligent driving. From the evidence available on record, it is clear that at the time of accident deceased Ashok Kumar was only 36 years of age (see Exh. P3). It is also clear that he was getting monthly salary of Rs. 7,000. This fact stands admitted in absence of specific denial by the respondents in their written statement. That apart, court can take judicial notice of the fact that C.R.P.F. being a para-military force, members of the force are entitled to various allowances as admissible under the existing rules of the force. It is, therefore, not difficult to accept that the deceased was getting all total Rs. 7,000 per month. After deducting conventional 1/3rd amount on personal expenses, the annual dependency of the appellants works to Rs. 4,667 x 12 = Rs. 56,004. Considering the age of the deceased and claimants; in our opinion, multiplier of 16 would be suitable in the interest of justice. Thus, the future loss of dependency comes to Rs. 56,004 x 16 = Rs. 8,96,064. To this, we

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would like to add a sum of Rs. 28,936 towards conventional heads like loss of affection, loss to estate, future prospects, etc. Thus, appellants are entitled to recover jointly and severally a total sum of Rs. 9,25,000 (rupees nine lakh twenty-five thousand) in addition to what they have already got, including the ex gratia payment. Respondents are directed to deposit the amount of compensation within 3 months, failing which the amount shall carry simple interest at the rate of 6 per cent per annum on the said amount from the date of award of the Claims Tribunal. Once the amount is deposited by the respondents, Tribunal shall pass necessary orders regarding disbursement keeping in view the guidelines laid down by the Apex Court in the celebrated case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

7. In the result this appeal is allowed to the extent indicated above. Respondents shall bear the cost of litigation though counsel''s fee Rs. 1,500 if certified.

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