
(2000) 09 GAU CK 0032
In the Gauhati High Court
Case No : F.A. No. 68 of 1996

Bina Rani Saha and Others

APPELLANT

Vs

Sunil Das and Others

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Constitution of India, 1950 — Article 41
Motor Vehicles Act, 1988 — Section 168

Citation : (2001) 2 ACC 642 : (2000) 3 GLT 307

Hon'ble Judges : J.N. Sharma, J;H.K.K. Singh, J

Bench : Division Bench

Advocate : Mr. P.K. Biswas and Mr. H.K. Bhowmik, for the Appellant; Mr. S. Dutta Chowdhury, for the Respondent

Judgement

J.N. Sarma, J.—It is the mandate of Section 168 of the Motor Vehicles Act that the Motor Accident claims Tribunal (hereinafter called as the Tribunal) is to determine the compensation which appears it to be just. In N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, the Supreme Court pointed out as follows : -

"Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving, the heavy economic impact of culpable driving of public transport must bring owner and

driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parcimony practised by Tribunal. We must remember that judicial tribunals are State organs and Art. 41 of the Constitution lays the jurisprudential foundation for state relief against accidental dis-ablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded being postponed by several years. The States must appoint sufficient number of Tribunal and the High Court should insist upon quick disposal so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

2. The principle regarding determination of compensation also came up before the Supreme Court in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, where the Supreme Court pointed out how damages are to be assessed. The Supreme Court further pointed out that in determining the compensation some guess work is involved. The Supreme Court pointed out that in fixing the compensation some amount of sympathy linked with the nature of the case is also involved but all the aforesaid elements have to be viewed with objective standard. This case depicts a double standard on the part of the Tribunal in fixing the compensation. Out of the same accident concerning the same vehicle there was another case being Title Suit (MAC) No. 71 of 1994 before the learned Member of the Tribunal (S.R. Sinha) and in that case by judgment dated 23.9.1995 the learned Member directed that the compensation shall be payable by the Insurance Company but in the case which is subject of appeal the compensation has been awarded against the owner. The other case before the learned Member was a case of injury and in that case the learned Member awarded a sum of Rs. 90,000 and in this particular case though it is case of death, the learned Member awarded a sum of Rs. 75,000. We do not find any Justification or ground to uphold this judgment. The admitted position in this case is that the vehicle was insured with the respondent No. 3, the United India Insurance Company Ltd. and there was no defence by the Insurance Company that they are not liable for the compensation to be awarded and the law is that the Insurance Company is liable to pay the compensation. There is no question apportionment or casting the liability on the owner and the driver. If that principle is not adopted the very purpose of insuring vehicle shall stand frustrated. Accordingly we hold that the Insurance Company is liable to pay the amount of compensation and that the finding of the learned Tribunal shall stand quashed.

3. The next question is what should be the amount of compensation to be awarded to the claimants. It is a case of a death of a person and he was a day labourer. There is evidence that he was earning about Rs. 3000 per month. That claim may be on the higher side but that does not mean that there is no value of the life of a man in a country. For the ends of social justice it should be our

endeavour to give proper value to the life of a man whether he be a man in the street or with a man of affluents. No doubt in the case of affluent man the amount of compensation should be on the higher side but we must make an honest endeavour to properly value the life of a man i.e. what has not been done in the case. In view of the fact, an amount of Rs. 50,000 is available for no fault liability in the case of death of a person. Rs. 75,000 at the end of the trial is really an adequate compensation.

4. In that view, after hearing the learned counsel of both the sides and on perusal of the materials on records we enhance the amount of compensation to Rs. 1,25,000. The balance amount shall be paid by the Insurance Company with interest at the rate of 12% per annum from the date of the claim within a period of 3 months before the Tribunal. It is needless to say that as and when the amount shall be deposited, the Tribunal shall invest the share of the minor in accordance with the guidelines given by the Apex Court.

5. We have heard Mr. H. Bhowmik, the learned counsel for the appellant and Mr. S Dutta Chowdhury, the learned counsel for the respondent No. 3, the United India Insurance Company Ltd.