
(2008) 02 GAU CK 0099
In the Gauhati High Court

Bloshing Lamurong

APPELLANT

Vs

Megha Assam Coal Mines Ltd. and Another

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2009) ACJ 68 : (2009) 2 GLT 713

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H. Baruah, J.—Heard Mrs. Purabi Sharma, learned Counsel for and on behalf of the appellant, Oriental Insurance Co. Ltd. and also heard Mrs. A. Paul, learned Counsel for and on behalf of the respondents, New India Assurance Co. Ltd.

2. Feeling aggrieved by the judgment and order dated 8.11.2006, passed in the M.A.C. Case No. 1 of 2003, this present appeal has been preferred u/s 173 of the Motor Vehicles Act, 1988, challenging its legality and correctness.

3. The core issue involved in this present appeal is whether the learned Tribunal assessed compensation by applying the correct multiplier?

4. The appellant herein as claimant filed an application u/s 163-A of the Motor Vehicles Act, 1988, seeking grant of compensation on account of death of his minor son aged about 7 years, a student of class II in a vehicular accident on 2.2.2002 at about 12.45 p.m. as per provisions of the Second Schedule to the Motor Vehicles Act. The accident took place at Thadmuth-long NH 44. The number of the offending vehicle, which caused the accident, was AS 25-B 0441 and it belonged to respondent No. 1. The said offending vehicle was insured with respondent No. 2. On filing of this application, New India Assurance Co. Ltd. contested the claim by filing written statement. However, the owner of the offending truck, Megha Assam Coal Mines Ltd. and the driver failed to appear and contest the claim. The learned Tribunal after recording of the evidence of

both the claimants, the respondent at the conclusion of the inquiry awarded compensation at Rs. 1,04,500 with interest at the rate of 7 per cent per annum from the date of filing of the claim application.

5. Being dissatisfied with the award so assessed, this appeal has been filed for enhancement of compensation.

6. Learned Counsel appearing for the claimant-appellant while supporting her appeal submitted, *inter alia*, that the learned Tribunal committed error in assessing the compensation as per Second Schedule to the Motor Vehicles Act, 1988. The multiplier applied by the learned Tribunal was wrong and according to her, multiplier ought to have been applied either on the basis of the age of the deceased or on the basis of the age of the parents. It is found from the record that this application u/s 163-A of the Act was preferred by the father of the deceased and in para 19 of the said application, the age of the claimant and the mother of the deceased have been incorporated supported by a headman certificate. It is submitted by learned Counsel for the appellant that for assessment of the compensation in regard to death of a minor child, the age of the parents is required to be taken into consideration and the appropriate multiplier should be applied while assessing the compensation. In the application u/s 163-A of the Act, the age of the claimant father has been shown as 50 years while the age of the mother of the deceased has been stated as 32 years in column No. 19 of the application. Mrs. Purabi Sharma, therefore, submitted that the average age of both the father and the mother of the deceased is required to be taken into consideration and the appropriate multiplier should be applied.

7. According to her, the average age of the parents stands at 41 and the appropriate multiplier as per the Second Schedule to the Act is 15 but the learned Tribunal did only apply a multiplier of 8 taking into consideration the age of the claimant father alone. The learned Tribunal ought to have applied the multiplier 15 in view of the average age of the parents, which stands at 41 years of age. Mrs. Sharma in support of her contention in regard to the application of multiplier has relied on the decision of this Court in *New India Assurance Co. Ltd. Vs. Lalbiaktluanga and Another*, That apart, she has also relied on the decision in the case of *New India Assurance Co. Ltd. Vs. Satender and Others*, wherein the Supreme Court held that the age of the parents is a relevant factor when the parents are claimants. The Supreme Court while deciding as such had also taken assistance of the observation made by another Bench in the State of Haryana and Another *Vs. Jasbir Kaur and Others*, Mrs. P. Sharma, therefore, in view of the law laid down by the Supreme Court and the High Courts submitted that the appropriate multiplier would have been 15 and not 8 while assessing the compensation by the learned Tribunal.

8. Mrs. A. Paul, has strongly opposed the submission so advanced by Mrs. Purabi Sharma in the context of applying of multiplier at 15. She has submitted that the claim application is made only by the father of the deceased and, therefore, the learned Tribunal while assessing the compensation rightly applied multiplier at 8

taking into consideration the age of the father. Therefore, learned Tribunal did not commit any error in assessing the compensation.

9. Admittedly, the application was filed by the father of the deceased, which has been proved and marked as Exh. 4. But in column No. 19 of the application, the age of mother also finds place. The claimant, while in the witness-box has proved this claim petition, which has been marked as Exh. 4. When an application or a document is proved in trial or inquiry and marked as Exh., the whole contents of the said document or the application should be taken into consideration. Here we have found that the claim application was proved and marked as Exh. 4 and that the entire contents of the said application would come into operation while deciding this claim. The appellant insurance company having found opportunity of being cross-examined this claimant failed to put any question in regard to the age of the mother of the deceased. In other words, there is no denial on the part of the appellant in respect of the age of the mother of the victim. Though the mother of the deceased was not a signatory of the claim application, yet while assessing the compensation her age would come into play along with the age of the father of the deceased.

10. Mrs. A. Paul while submitting in this context also admits that this point was never challenged by the appellant insurance company. So, the objection raised by Mrs. A. Paul is apparently not acceptable that the age of the father should be counted only while assessing the compensation. The composite reading of the entire facts and evidence on the record both oral and documentary, this Court is of the view that the learned Tribunal ought to have taken into consideration the age of the mother of the victim along with the age of the father while calculating compensation.

11. Admittedly, deceased was a minor boy of 7 years of age. At the time of the occurrence, he was a student of class II and had no income. So, in the face of these facts appearing in the face of the record, the notional income provided in the Second Schedule to the Motor Vehicles Act come into play. For non-earning person, the notional income is fixed at Rs. 15,000 per annum as per the Schedule. Minus one-third of the notional income multiplied by 15 would stand at Rs. 1,50,000. Learned Tribunal also awarded compensation of Rs. 2,000 towards funeral expenses and Rs. 2,500 as loss to the estate. Thus, total compensation would stand at Rs. 1,54,000.

12. Mrs. A. Paul while arguing also submitted that the claimant is not entitled to any compensation under the head "loss of love and affection" since the Second Schedule to the Act does not provide so. The learned Tribunal while assessing the compensation also computed Rs. 20,000 under this head since the Second Schedule is meant for assessing compensation u/s 163-A of the Motor Vehicles Act and since the Schedule does not provide as such, this Court is of the view that the compensation so awarded under the head of "loss of love and affection" will not come into play. Therefore, this Court is not inclined to make an addition of Rs. 20,000 towards compensation.

13. Mrs. P. Sharma further submitted that in case of fatal accident in respect of a boy aged 10 years, in no case compensation should be less than Rs. 1,50,000. She in support of her contention relied in the decision in between the United India Insurance Co. Ltd. Vs. Nokhey Lal Singh and Another, wherein in paras 1 and 2 of the judgment the Hon"ble Allahabad High Court held as under:

(1) The Motor Accidents Claims Tribunal in M.A.C. Petition No. 501 of 1998, by an award dated 25.10.1999, awarded compensation of Rs. 1,50,000 to a minor of 10 years, who met with an accident with truck No. HR 13-G 0190. The accident had taken place on 7.7.1998 at about 3 p.m. on G.T. Road, when the deceased while crossing the road met with fatal accident. The factum of accident has been held to be proved by the Tribunal, on the basis of F.I.R., post-mortem report and the statements of the witnesses, namely, Ramchandra Vishwakarma and Nokhey Lal Singh. The Tribunal has also held that the vehicle was properly insured and there was a subsisting policy at the time of the accident. The Tribunal has further held that the driver possessed a valid driving licence and vehicle was having proper registration certificate and permit to ply the vehicle. The Tribunal has recorded the finding that vehicle was being rashly and negligently driven by the driver of the vehicle which is Dome out from material on record and the said finding does not call for any interference. Insofar as the question of compensation is concerned, the same also appears to be just and proper, inasmuch as, under the Second Schedule appended to the Act, a minimum compensation of Rs. 1,50,000 has been provided even if the claimant had no income.

(2) Learned Counsel for the appellant submitted that amount of Rs. 1,50,000 is on higher side, as the boy of 10 years had no earnings. In view of the amount of compensation being provided in the Schedule and the object of the Act being to be liberal while awarding compensation to the claimants of the deceased, we are of the opinion that the amount fixed by the Tribunal does not appear to be unreasonable and unjustified. We do not find any illegality and infirmity in the award, as concluded by the Tribunal. The appeal is accordingly dismissed.

14. Further she has also relied on the decision rendered by Hon"ble Himachal Pradesh High Court in the case of The New India Assurance Company Vs. Shanker Lal and Others, wherein in paras 2 and 4 of the judgment, Hon"ble Himachal Pradesh High Court laid as under:

(2) Briefly stated the facts of the case are that the petitioners are the parents of deceased Yash Pal, who died in a motor vehicle accident involving truck No. HP 11-B 5135 which was owned by Gulab Devi, driven by Satnam Singh and insured with appellant, New India Assurance Co. Ltd. Petitioners filed a petition claiming compensation u/s 163-A of the Motor Vehicles Act. The learned Tribunal rightly came to the conclusion that the notional income of the deceased, who was a non-earning person being only 6 years old, could be taken at Rs. 15,000 per annum and that the multiplier applicable in the case was 15. After observing this, the learned M.A.C.T. had come to the conclusion that Rs. 3,60,000 was the

assessable compensation out of which $\frac{1}{3}$ rd was to be deducted. How this calculation was arrived at is not clear from the award. It appears that the learned Tribunal just blindly followed the Table given in the Second Schedule to Motor Vehicles Act and against item No. 1 (age 0-15 years), he went to the income of Rs. 18,000 and took Rs. 3,60,000 as the total income and thereafter deducted $\frac{1}{3}$ rd as provided under the Schedule. He after awarding Rs. 2,000 towards funeral expenses and Rs. 2,500 for loss to the estate, awarded Rs. 2,44,500 in all.

(4) Mr. K.D. Sood, learned Counsel for the insurance company has urged that since the deceased was only 6 years old child and in course of time would have got married, the dependency of the parents cannot be taken more than $\frac{1}{3}$ rd. This argument may be attractive in cases arising u/s 166 of the Motor Vehicles Act. However, in cases u/s 163-A, the compensation has to be calculated and awarded strictly in terms of the Act and neither one paisa more nor one paisa less can be awarded by the court. Hence, this contention is rejected.

15. Thus, having considered all the facts and circumstances of the case in its entirety and the law laid down by Hon"ble Apex Court of India and the Hon"ble Allahabad High Court and Himachal Pradesh High Court, it is found that the learned Tribunal committed error and illegality in assessing the compensation at Rs. 1,04,500. Learned Tribunal ought to have applied multiplier 15 instead of 8 either taking into consideration the age of the deceased or the age of the parents. This Court, therefore, applying multiplier 15 together with compensation awarded under two different heads, assesses the compensation at Rs. 1,54,000.

16. This appeal is accordingly allowed. The compensation so awarded by the learned Tribunal is modified and assessed at Rs. 1,54,000 which shall carry 7 per cent interest per annum from the date of filing of the application. The amount of compensation shall be paid by the respondent company to the claimant within a period of two months with interest thereon and thereafter shall recover the same from the owner of the offending vehicle bearing No. AS 25-B 0441.