(2006) 07 CAL CK 0032

In the Calcutta High Court

Case No : F.M.A. No. 1334 of 2000

Chaya Rani Baidya and Others — APPELLANT

Vs

National Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 163A, 166, 168, 170

Citation : (2007) 1 ACC 862 : (2007) ACJ 245

Hon'ble Judges : Pratap Kumar Ray, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Saidur Rahaman, for the Appellant;K.K. Das, Gopa Das Mukherjee and P.K. Pahari, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray and Arunabha Basu, JJ.—Heard the learned advocates appearing for the parties. In this appeal challenging the judgment and order dated 12.3.1998 passed in M.A.C. Case No. 336 of 1991 by the learned Judge, Motor Accidents Claims Tribunal, Second Court, Jalpaiguri the appellants-claimants have taken two points, namely, the wrong and arbitrary fixation of income under the heading ''notional income'' irrespective of the oral evidence of income to the tune of Rs. 4,500 per month in terms of unchallenged deposition of the widow of the deceased and the non-payment of interest on the award of compensation with effect from the date of claim application. So far as the incidence of accident as well as the liability of the insurance company on the death of the victim, that is, the husband of the widow, claimant, there is no dispute as there is a clear finding of Tribunal below to that effect. Only with reference to the income, Tribunal disbelieved the income of the victim was Rs. 4,500 per month as the widow claimant who deposed, failed to produce any documentary evidence. The avocation of the victim who was a tailor also having been proved and there is a finding to that effect by learned Tribunal below. The victim was maintaining a family of six persons also is a positive finding of the learned Tribunal below. The accident happened in the year 1991. Since it is on evidence, may be oral that the deceased used to earn Rs. 4,500 per month and there is a corroboration of the avocation of the deceased as a tailor by another witness and in view of the special fact that the owner of the vehicle who got the opportunity to defend did not contest the matter and on the other hand the insurance company who has been made liable to pay compensation did not seek any leave u/s 170 of the Motor Vehicles Act, 1988 to take all the points as defence including the point in terms of Section 149, this court is of the view that the finding of the learned Tribunal below to fix the income notionally as Rs. 15,000 per annum which otherwise is Rs. 1,250 per month has no basis and such finding was reached without taking care of the oral evidence of the widow claimant. The finding to that effect accordingly stands set aside and quashed.

2. Now, this court has to identify the income for adjudication of this matter. As already discussed, there is evidence on record that the victim was earning Rs. 4,500 per month as a tailor having his own sewing machine. In view of absence of any contrary evidence, this court has no other alternative but to accept the same as the income of the deceased at the material time. This court is not unmindful of the fact that save and except salaried personnel working in any government, government undertakings and/or private organization, there is hardly any possibility to file any documentary evidence regarding proof of income and more particularly by the persons concerned who are running their own small tailoring shop and as a tailor used to earn the livelihood.

3. Considering that the income of the deceased for awarding compensation is being fixed at Rs. 4,500 per month the claim application was u/s 166 of Motor Vehicles Act. Having regard to the judgment of Apex Court by holding that even in the application u/s 166 of Motor Vehicles Act, 1988 the structured formula to identify the compensation could be applied in terms of Section 163-A of the Motor Vehicles Act passed in case Abanti Bejbaruah v. United India Insurance Co. Ltd. 2003 (2) WBLR 335 , as well as the judgment passed in the case Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , this court accordingly is applying the structured formula in terms of Section 163-A to identify the amount of compensation. Since income is Rs. 4,500, on multiplication by 12 the per annum income would be Rs. 54,000. The 1/3rd of the said income as per the note as appears in the Second Schedule u/s 163-A since requires to be excluded, total amount could be considered for family expenses as Rs. 36,000. This amount is required to be multiplied by the concerned multiplier in terms of the said Second Schedule on the basis of the age of the victim. The age determined by the learned Tribunal was of 30 years. Hence, as per the structured formula the multiplier would be 18. The compensation money as such would reach to the figure Rs. 3,600 x 18 = Rs. 6,48,000. There is no doubt that Chapter XII of the Motor Vehicles Act, 1988 so far as awarding of compensation amount, is within the domain of social justice concept having its root in the constitutional provision under Directive Principles of State Policy to provide protection of the deceased family who has suffered

from financial stringency due to the motor accident. The provision is a social welfare provision. As such, grant of interest on the awarded amount also has been specified in terms of Section 171 of the said Act. Since in the statutory provision there is a provision of interest, this court cannot be unmindful about applicability of the said provision even if there is no doubt that the imposition of interest is within the domain of the discretionary power of court due to prescription of word ''may''. But having regard to the impact of the statutory provision, this court is of the view that interest in the instant case is required to be allowed on the amount of compensation. The incident happened in the year 1991 when at the material time the interest under a fixed deposit scheme of a nationalised bank in terms of the regulation of Reserve Bank of India was fixed as 12 per cent per annum. The Apex Court also considered this aspect and allowed the interest of 12 per cent per annum in the case Amar Singh Vs. Ishwar and Others, . The awarding of interest now has got a deep root in view of such statutory provision and by application of same in the several judgments of Apex Court. Reliance may be made to the cases National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, and Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, . The effect of interest is from the date of filing of the claim petition, which is also settled now. In the instant case, the claim petition was filed on 5.10.1999. In that view of the matter, having regard to that statutory provision, this court is of the view that the simple interest at the rate of 12 per cent per annum should be added along with the compensation amount with effect from the date of claim petition till the date of payment. It has been submitted before this court that the amount in terms of the impugned judgment under appeal has already been paid, which surely to be deducted from the total amount in terms of our findings and directions to that effect.

4. In the original claim application the claimants, however, prayed for compensation to the tune of Rs. 2,50,000. Before us an amendment application has been filed being C.A.N. No. 4795 of 2006 which has been heard along with the main matter today. In that application claimants have prayed for compensation to the tune of Rs. 4,80,000. Whatever the compensation amount prayed for, award of compensation depends upon consideration of statutory provision under the said Act, namely, Section 168, which provides that ''just'' compensation should be allowed by the court. The word ''just'' as appearing in the said provision came up for adjudication before Supreme Court when the court held that considering said provision the appeal court has the power and jurisdiction not only to allow the amendment application praying for enhancement of the claim but also to allow the appropriate amount following Section 168 of the said Act. Reliance may be placed to the case Nagappa Vs. Gurudayal Singh and Others, . In the instant case, having regard to the structured formula, as this court has come to a finding that the just compensation should be Rs. 6,48,000 and accordingly leave granted to the claimants-appellants to amend the amendment application so far as the quantum of the compensation amount is concerned to that effect here and now. The

amendment application is accordingly allowed by modifying the original claim to the extent of Rs. 6,48,000 as has been awarded today.

5. The respondent insurance company is directed to deposit the balance amount on deduction of the amount as already paid by calculating the interest also by their own method before the learned Tribunal within three weeks from this date. The amount has to be deposited thereon, the mathematical calculation to be dealt with in terms of the judgment of this court by learned Tribunal below and if any balance is further required to be deposited, the learned Tribunal below will pass necessary direction for such deposit by specifying a limited period. Since this Act is a social welfare legislation to provide support to the dependants of family after the death of the bread-earner in an unfortunate motor accident, naturally this court must be mindful to the fact that the amount of compensation should reach in the hands of the claimants. Having regard to such, the Apex Court dealt with the matter initially in the Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., , wherein the court directed that to safeguard the interest of the dependants of the deceased''s family the amount to be deposited in a nationalised bank and/or post office under the names of the respective claimants having easy accessibility under a long term fixed deposit scheme so that from the interest as to be fetched the family could survive and maintain their livelihood. Besides such from the factual matrix of this case it appears that the victim left behind a daughter, a minor at the material time and after the death of the victim a male child was born. Considering the age factor of the minors as well as the education factor of them and marriage issue of the female child, this court is accordingly of the view that following the Union Carbide case (supra) which has been applied in the motor accident claim cases by the Apex Court also following the judgment in Nagappa Vs. Gurudayal Singh and Others, , for effective remedy and proper implementation of the social welfare legislation, total amount as per direction of the court as already referred to be deposited to the learned Tribunal below who in turn will take all steps for deposit of the said amount of the respective minors'' share as well as the shares of the other claimants amongst them including aged mother of the victim under respective fixed deposit scheme in the names of the respective claimants with a rider that this fixed deposit could not be encashed until and unless there would be a special ground for expenditure of huge money for medical purposes with a proof of documentary evidence to that effect and/or for other purposes like for marriage ceremony of the daughter with a specific proof thereof, of course and also for educational expenses of the son, if any, on proper proof. It is made clear that prayer for withdrawal of the amount should not be excessive and consideration of the issue should be done by the learned Tribunal below.

6. Having regard to that aforesaid findings and observations and dictum of the Apex Court as well the statute itself, it is ordered that 80 per cent of the amount as now to be deposited by the insurance company, namely, New India Assurance Co. Ltd., should be utilized proportionately by depositing the same in a long term fixed deposit with necessary instruction to the concerned bank or the post office

to pay the interest regularly per month to the claimants concerned under whose name such amount would be deposited under the said fixed deposit scheme. The balance amount of 20 per cent could be paid by cheque to the respective claimants proportionately. The distribution of the money to the respective claimants as per our findings and observations to be done by the learned Tribunal below. It is further made clear that to safeguard the interest of claimants as sometimes it may happen that being otherwise influenced on taking advantage of the illiteracy of claimants, the amount is mis-utilized by other advising them to encash the fixed deposit money at a time praying necessary application to the bank, this court accordingly is directing the learned Tribunal to keep the fixed deposit papers in the safe custody of the learned Tribunal, namely, at Court Nazarat, so that this amount could not be easily liquidable by cancelling the fixed deposit term save and except with proper application on the necessity as already observed by this court. Xerox copy of such term deposit papers to be supplied to the claimants.

7. With that findings and observations, the appeal and the application both are accordingly allowed.

8. The learned Tribunal below is also directed to submit a compliance report to the High Court Registry giving the details of the fixed deposit papers as well as the distribution of the money as per direction of the court within three months from this date.

9. It is needless to say that long back the court considered the evil aspect of the matter about the deprivation of the claimants to enjoy the awarded amount and had accordingly observed in the case (Sic.) that all the Tribunals and the Hon''ble courts should follow the views of the Supreme Court as reported in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., , so far as the deposit of the money in the fixed deposit scheme and enjoyment of the interest by the claimants for proper utilization of the money. Unfortunately, such views of the Supreme Court and the observations thereof have not been percolated to the different courts or the Tribunals in their proper angle. Accordingly, this court sitting in the appeal court is directing the High Court Registry to circulate the copy of this judgment to all the learned Tribunals under the jurisdiction of the High Court of Judicature, Calcutta so that the compensation amount is properly utilized in terms of the judgment, namely, directing necessary steps for depositing the amount in the fixed deposit scheme, payment of interest month by month to the claimants, restriction to withdraw the money at a time and not to cancel the fixed deposit scheme in the midway save and except to meet the huge medical expenditure, educational expenses or marriage expenses, etc. The Registrar General, High Court, Calcutta is directed to take steps in the matter.

10. It is further made clear that the minors on attaining majority, however, will be at liberty to utilize the money as per their own choice and the embargo as imposed in this judgment will not be effective upon them on such contingency.

11. The learned Tribunal below is also directed to take all steps for renewal of the amount as to be kept in the fixed deposit scheme under proper receipt after expiry of the long term period, if any, by a further long term period in the event such contingency arises.

12. It is further directed that the original receipt/document showing deposit of the money either in the fixed deposit or in the post office savings scheme shall be retained by Tribunal in the Nazarat Department by passing appropriate order and to cause entry of the same in the register maintained for the purpose and xerox copy of the deposit along with the copy of the order, if any, showing such deposit shall be supplied to the claimants free of cost.

13. It is further directed that as and when any application is filed before the learned Tribunal for release of the amount deposited under the fixed deposit scheme, the same shall be decided by the Tribunal within a week from the date of filing of the application and the order be passed accordingly.

14. It is further directed that in case of any prematured release as and when any application is filed before the Tribunal, the same shall be heard within a week from the date of filing of the application.

15. The appeal is allowed to that extent accordingly, by modifying the impugned judgment under appeal.

16. Let xerox certified copy of this order, if applied for, be given to the learned advocates appearing for the parties expeditiously.

