

(2015) 04 TP CK 0023
In the Tripura High Court
Case No : MAC App. No. 25 of 2002

Chaya Rani Debnath (Bhowmik) and Others	APPELLANT
Vs	
Barik Miah and Others	RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 173
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2015) 04 TP CK 0023

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : S.K. Datta, for the Appellant

Final Decision : Disposed off

Judgement

S.C. Das, J.—This is an appeal filed under Section 173 of the Motor Vehicle Act, 1988 challenging the judgment and award dated 19.12.2001 passed by the Motor Accident Claims Tribunal, Agartala, West Tripura, in Case No. T.S.(MAC) 253 of 1998.

2. Heard learned counsel, Mr. S.K. Datta for the appellants and learned counsel, Mr. P. Goutam and Mr. S. Datta Choudhury for the respondent No. 2—United India Insurance Co. Ltd. Respondent No. 1 has chosen to remain absent.

3. The only challenge made in this appeal is that the compensation awarded by the Tribunal is inadequate and the assessment made is contrary to the settled proposition of law.

4. The case of the claimants-appellants is that on 20.08.1997, Kamini Mohan Debnath was on a journey from Kumarghat to Kanchanpur with bus vehicle No. TR-02 1211 and because of rash and negligent driving of the vehicle, it met an accident at Brikhabari on Kumarghat-Kanchanpur road under Pecharthal police station and as a result, Kamini Mohan Debnath suffered severe injury and he was taken to Kumarghat hospital, wherefrom he was referred to Kailashahar hospital

and he succumbed to the injury at Kailashahar hospital.

5. Pecharthal P.S. Case No. 21/1997 under Sections 279/337/338/304A of IPC was registered against the driver of the offending vehicle No. TR-02 1211. Postmortem examination was done over the dead body of Kamini Mohan Debnath. At the time of death Kamini Mohan Debnath was aged 44 years and he was working as an Agri-Assistant under the Agriculture Department of the Government of Tripura. He was drawing a monthly salary of Rs. 5,459/-. The claimants were dependant on his income and, therefore, they claimed compensation of Rs. 27,50,000/-.

6. Respondent No. 1, the owner of the vehicle, submitted written statement in the claim case denying the involvement of the vehicle in the accident and further stated that the vehicle was insured with the United India Insurance Co. Ltd. covering the risk on the date of accident and so the liability, if any, should be borne by the Insurance Company. Respondent No. 2-United India Insurance Co. Ltd. also submitted written statement denying the averments made in the claim petition.

7. Considering the pleadings of the parties, learned Member, Motor Accident Claims Tribunal on 05.04.2000 framed the following issues:-

"(i) Whether Kamini Mohan Debnath, aged 44 years died due to a motor accident on 20.08.1997 at about 0845 - 0900 hours at Brikhabari near O.N.G.C. on Kumarghat-Kanchanpur road under Pecharthal P.S. due to rash and negligent driving of vehicle No. TR-02 1211(Bus)?

(ii) Are the claimant-petitioners entitled to get compensation under M.V. Act? If so, what should be the quantum of compensation and who is liable to pay it?"

8. Claimant-petitioner No. 1, Smti. Chaya Rani Debnath(Bhowmik), W/O. Late Kamini Mohan Debnath, examined herself as P.W. 1 and also proved copy of the FIR, Death Certificate and Salary Certificate in the name of her husband and those were marked as Exbt.-1 series. The respondents adduced no evidence. The Tribunal decided both the issues in favour of the claimants and awarded compensation of Rs. 3,17,000/-.

9. The decision on Issue No. 1 has not been challenged. It is held by the Tribunal that Bus Vehicle No. TR-02 1211 met an accident for rash and negligent driving on 20.08.1997 at Brikhabari on Kumarghat-Kanchanpur road and deceased Kamini Mohan Debnath was a passenger of that vehicle and he received severe injury in the accident and consequently died at Kailashahar hospital. It is also not in dispute that deceased Kamini Mohan Debnath at the time of accident was working as an Agri-Assistant under the Agriculture Department of the Government of Tripura and he was aged 44 years at that time and his monthly salary was Rs. 5,459/-.

10. The Tribunal while assessing compensation has held as follows:-

"ISSUE No. 2:- In view of decision of issue No. 1 it is held that the claimant-petitioners are entitled to get compensation.

What should be quantum of compensation?

Multiplier for the deceased whose age was 44 years is taken 15 which is meant for person between 40 to 45 years. From the Salary Certificate it is found that at the time of death said Kamini Mohan Debnath was having gross salary of Rs. 5,459/-. It is also stated by P.W. 1 that persons who used to work like her husband now get around Rs. 10,000/- as their salary. Government definitely paying pension to the family members of the deceased Kamini Mohan Debnath. Considering the aforesaid circumstances net monthly loss is taken at Rs. 1,750/-. So net loss of income comes to Rs. $1,750 \times 12 \times 15 =$ Rs. 3,15,000/-. The claimant-petitioners shall get Rs. 2,000/- as funeral charges. Thus total compensation comes to Rs. 3,17,000/-. Along with this amount 9% per annum interest is payable w.e.f. 7.8.98, the date of filing the claim petition."

11. The above calculation of compensation made by the Tribunal, as it appears, was absolutely wrong and it is contrary to the settled proposition of law. The Tribunal, as it appears, wrongly made deduction holding that the Government paying pension to the family members of the deceased Kamini Mohan Debnath and, therefore, the Tribunal assessed monthly loss of Rs. 1,750/- only.

12. Section 168 of the Motor Vehicles Act provides that the Tribunal should make an award determining the amount of compensation which appears to be just. Therefore, what has to be awarded as compensation under the Act is just compensation. The Supreme Court in the case of Syed Basir Ahamed and ors. V. Md. Jamel and ors., reported in 2009 AISCW 493 has held - the expression "which appears to be just" in S. 168 vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

13. It is not in dispute that the deceased Kamini Mohan Debnath was drawing an amount of Rs. 5,459/- per month at the time of his death and he was 44 years old at that time. The Tribunal most wrongly and illegally taken into account an amount of Rs. 1,750/- per month for determining compensation and deducted the rest amount from the salary of the deceased on the ground that the Government is paying pension to the family members of the deceased Kamini Mohan Debnath. This observation of the Tribunal is absolutely wrong and

contrary to the settled principles of the payment of compensation in a motor accident case.

14. While it is the rule of law that just compensation should be paid to a victim of motor accident, the Tribunal should not take an easy course of determining compensation deducting the income of the deceased on the ground that the claimants receiving some other pecuniary advantage admissible to them for the death of the deceased which the claimants would get if the deceased died otherwise than a motor vehicle accident.

15. Family pension is paid to the family members of a deceased Government employee as per the scheme of the Government and any such amount paid or payable to the family members of a victim of motor accident cannot be a subject of pecuniary advantage to be excluded while calculating the compensation in motor vehicle accident.

16. The High Court of Himachal Pradesh in *Mrs. Rita Arora and Others Vs. Salig Ram and Others*, (1975) ACJ 420 : AIR 1976 HP 24 : (1975) ILR HP 307 and *H.P. Road Transport Corporation Vs. Pt. Jai Ram and etc. etc.*, AIR 1980 HP 16 : (1979) ShimLC 273 has held that benefits received by the heirs towards gratuity, provident fund, family pension and insurance amount are not deductible while calculating the amount of compensation. Similar view has been taken by the Full Bench of the Madhya Pradesh High Court in *Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another*, AIR 1983 MP 24 : (1984) 56 CompCas 146 : (1983) ILR (MP) 1 : (1983) JLJ 113 : (1982) 27 MPLJ 803 . The Allahabad High Court in the case of *Smt. Krishna Sehgal and Others Vs. U.P. State Road Transport Corporation and Others* has also held the similar view.

17. The Supreme Court in the case of *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, (1998) 2 ACC 512 : (1999) ACJ 10 : (1998) 7 AD 269 : AIR 1998 SC 3191 : (1999) 95 CompCas 509 : (1998) 6 JT 418 : (1998) 5 SCALE 339 : (1999) 1 SCC 90 : (1998) 1 SCR 685 Supp : (1999) 1 UJ 174 : (1998) AIRSCW 3105 : (1998) 7 Supreme 404 has elaborately discussed on the point and referring to that decision, the Apex Court in the case of *Vimal Kanwar and Others Vs. Kishore Dan and Others*, (2013) 2 ACC 752 : (2013) ACJ 1441 : (2013) 6 AD 568 : AIR 2013 SC 3830 : (2013) 259 CTR 420 : (2013) 8 JT 234 : (2013) 171 PLR 776 : (2013) 2 RCR(Civil) 945 : (2013) 6 SCALE 705 : (2013) 7 SCC 476 : (2013) 7 SCC(L&S) 759 : (2013) 216 TAXMAN 300 in para 19 has held as follows:-

"19. The first issue is "whether provident fund, pension and insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction?"

The aforesaid issue fell for consideration before this Court in *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, (1998) 2 ACC 512 : (1999) ACJ 10 : (1998) 7 AD 269 : AIR 1998 SC 3191 : (1999) 95 CompCas 509 : (1998) 6 JT 418 : (1998) 5 SCALE 339 : (1999) 1 SCC

90 : (1998) 1 SCR 685 Supp : (1999) 1 UJ 174 : (1998) AIRSCW 3105 : (1998) 7 Supreme 404 . In the said case, this court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:

"(37) Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz, accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy amount is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc., though all are pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction? When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which, there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act? The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

18. In view of the law settled by the Apex Court, the deduction from the salary of the deceased on the ground of receiving family pension by the claimants-appellants was not at all justified and, therefore, the assessment of compensation was wrong and is liable to be interfered.

19. As per the law laid down by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487, the multiplier in the case of the claimants-appellants shall be 14 since the deceased was aged 44 years at the time of his death. The deceased left behind his wife, mother, two daughters and one son and in the meantime the mother has died, which is brought on record. So, there shall be 1/3rd (one third) deduction from the total salary of the deceased towards his personal and living expenses and the amount stands at Rs. 3,640/-.

20. The deceased since was in Government service and was 44 years old at that time, there shall be 30% addition towards future prospect. 30% of Rs. 5,459/- stands at say Rs. 1,638/- and so, the total loss of income for the death of the deceased, on the part of the claimants, stands at Rs. 3,640/- + Rs. 1,638/- = Rs. 5,278/-. This amount shall be taken as the monthly loss of income on the part of the claimants and it shall be multiplied by a multiplier of 14 and the amount stands at Rs. 5,278/- x 12 x 14 = Rs. 8,86,704/-.

21. Further the claimant-petitioner No. 1, being the wife of the deceased, was entitled to consortium of Rs. 10,000/- and further amount of Rs. 10,000/- towards loss of estate and Rs. 10,000/- towards funeral expenses. The amount of consortium of Rs. 10,000/- shall be the personal compensation of claimant-petitioner No. 1, Smti. Chaya Rani Debnath(Bhowmik). The total amount of compensation, therefore, stands at Rs. 8,86,704/- + Rs. 10,000/- + Rs. 10,000/- + Rs. 10,000/- = Rs. 9,16,704/- (Rupees nine lakh sixteen thousand seven hundred four) only.

22. Since claimant-petitioner No. 2, i.e., the mother of the deceased has died in the meantime, the wife and three children of the deceased, claimant-petitioner Nos. 1, 3, 4 and 5 are equally entitled to get the amount of compensation. It has already been decided by the Tribunal that respondent No. 2-United India Insurance Co. Ltd. is liable to make payment of the compensation and that decision of the Tribunal has not been challenged by the Insurance Company. Therefore, the liability of payment of compensation shall be of the Insurance Company-respondent No. 2.

23. Accordingly, the appeal is allowed. The amount of compensation is enhanced to Rs. 9,16,704/- from the Tribunal's awarded amount of Rs. 3,17,000/-. The enhanced amount of compensation shall be paid by the Insurance Company-respondent No. 2 with 6% interest thereon from the date of presentation of the petition, i.e. 06.08.1998.

24. Except that of Rs. 10,000/-, which is personal compensation of claimant-petitioner No. 1, the rest shall be payable equally to the claimant-petitioner Nos. 1, 3, 4 and 5 and 50% of the amount shall be kept in fixed deposit for a period of five years and should not be allowed to withdraw save and except the permission of the Tribunal for valid reason.

25. The appeal accordingly, stands disposed of.

Send a copy of this judgment to the concerned Tribunal.