
(2019) 02 OHC CK 0012

In the Orissa High Court

Case No : Motor Accident Appeal No. 570, 640 Of 2018

Divisional Manager And Others

APPELLANT

Vs

Manjushree Mohapatra And Another

RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Citation : (2019) 02 OHC CK 0012

Hon'ble Judges : Dr. A.K.Rath, J

Bench : Single Bench

Advocate : G.P. Dutta, K. Panigrahi

Final Decision : Dismissed/ Allowed

Judgement

Dr. A.K. Rath, J

1. Both the appeals arise out of a common award dated 27.2.2018 passed by the learned 5th M.A.C.T., Khurda in M.A.C.T. Case No.7 of 2017. They were heard together and are disposed of by this judgment.

2. Claimants-respondent nos.1 and 2 filed an application under Sec.166 of the Motor Vehicles Act, 1988 ("M.V. Act") for compensation on account of accidental death of their son, Choudhury Harihar Gajendra Mohapatra. The case of the claimants was that on 24.12.2016 while Choudhury Harihar Gajendra Mohapatra was proceeding on a motor cycle bearing regd. No.OD-02-F-4855 from Pipili to State Bank of India, Nayahata Branch, via-Nimapara on the left side of the road. At about 10 A.M. a truck bearing regd. No.OD-07-J-7545 came in a rash and negligent manner and dashed against the motor cycle, as a result of which, he sustained severe bodily injuries and succumbed to death on the spot. The deceased was 30 years of old at the time of accident. He was working as Manager in the State Bank of India, Nayahata Branch, Gop and getting salary of Rs.65,000/- per month. After his death, the family received a serious set back.

3. The owner of the vehicle, opposite party no.1, was set exparte. The insurer of

the offending vehicle, opposite party no.2, appellant herein, entered contest and filed written statement pleading inter alia that the deceased was negligent in driving inasmuch as he was not wearing protective headgear as mandatory under Sec.129 of the M.V. Act. He died due to his own negligence and as such the insurer is exempted from its liability.

4. Stemming on the pleadings of the parties, learned Tribunal struck four issues. To substantiate the case, the claimants had examined three witnesses and on their behalf fifteen documents had been exhibited. No evidence was adduced by the opposite parties. On an anatomy pleadings and evidence, learned Tribunal came to hold that the accident had occurred due to rash and negligent driving of the truck. The offending vehicle was insured with opposite party no.2-insurer. The driver of the offending vehicle had valid licence at the time of accident. The deceased was 30 years 10 months of age at the time of accident. He was working as Manager in the State Bank of India, Nayahat Branch, Gop. Learned Tribunal awarded an amount of Rs.80,31,168/- in the following manner.

Sl. No.

Heads

Calculation

(i)

Monthly income after deduction of professional tax and Income tax.

Rs.55,572/-

(ii)

Annual income of the deceased.

Rs.6,66,764/-

(iii)

50% of (ii) above to be added as future prospective.

Rs.6,66,764/- + Rs.3,33,382/- = Rs.10,00,146/-

(iv)

50% of (iii) deducted as personal expenses of the deceased per annum.

Rs.10,00,146.00 - Rs.5,00,073.00 = Rs.5,00,073/-

(v)

Annual contribution to family after 50% addition as future prospects and 50% deduction as personal expenses.

Rs.5,00,073/-

(vi)

Compensation after application of multiplier 16.

Rs.5,00,073/- X 16 = Rs.80,01,168/-

(vii)

Addition of Rs.15,000/- towards loss of estate.

Rs.80,01,168/- + Rs.15,000/- = Rs.80,16,168/-

(viii)

Addition of Rs.15,000/- towards funeral expenses of the deceased.

Rs.80,16,168/- + Rs.15,000/- = Rs.80,31,168/-

5. The insurer has assailed the award in MACA No.570 of 2018, whereas the claimants filed MACA No.640 of 2018 for enhancement of compensation amount.

6. Heard Mr. G.P. Dutta, learned Advocate for the appellant-Insurance Company and Mr. K. Panigrahi, learned Advocate for the claimants-respondent nos.1 and 2.

7. Mr. Dutta, learned Advocate for the insurer, submitted that the deceased was negligent in driving. He had not put headgear as mandatory under Sec.129 of the M.V. Act. The insurer is exempted from its liability. His alternative submission was that the deceased was a bachelor at the time of accident. Learned Tribunal fell into patent error of law in applying multiplier '16' taking into account the age of the deceased, instead of parents. To buttress his submission, he placed reliance on the decision of the apex Court in the cases of K.S.R.T.C. vs. Susama Thomas, 1994 (1) T.A.C. 323, U.P.S.R.T.C. and others vs. Trilok Chandra and others, 1996 (2) T.A.C. 286 (SC), State of Haryana vs. Jasbir Kaur and others, AIR 2003 SC 3696, Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another, AIR 2005 SC 752, Bijay Kumar Dugar vs. Bidyadhar Dutta and others, 2006 AIR SCW 1116, New India Assurance Company Ltd. vs. Smt. Shanti Pathak and others, 2007 (4) T.A.C. 17 (SC), Smt. Sarala Verma and others vs. Delhi Transport Corporation and another, 2009 (2) T.A.C. 677 (SC), Reshma Kumari and others vs. Madan Mohan and another, 2013 (2) T.A.C. 369 (SC), National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) T.A.C. 673 (SC) and Mina and others vs. Rani Ammal and another, SLP (C) No.34648 of 2015 disposed of on 15.02.2017.

8. Per contra, Mr. Panigrahi, learned Advocate for the respondent nos.1 and 2, submitted that the income of the deceased towards his perk from the month of April, 2016 to December, 2016 was Rs.74,117.31. Learned Tribunal ought to have added Rs.5,478/- towards perk from his monthly salary income. If the same is added, monthly income of the deceased comes to Rs.55,572/-. He further submitted that the age of the deceased shall be taken into account while calculating the multiplier. He placed reliance to the decision of the apex Court in the cases of National Insurance Co. Ltd. vs. Indira Srivastava and others, 2008

AIR SCW 143, P.S. Somanathan and others vs. District Insurance Officer and another, 2011 (1) T.A.C. 861 (SC), Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others, 2012 (4) T.A.C. 775 (SC) National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (II) ILR-CUT-998 (SC).

9. Neither the insurer nor the owner of the offending vehicle had adduced evidence. At a belated stage, an attempt was made by the insurer to defeat the claim on the ground that the deceased was not wearing the protective headgear. The same is not per se a ground to exonerate the insurer from its liability.

10. Next question arises for consideration is that when a bachelor died in a motor vehicle accident, whether his age or his parents age shall be taken into account while applying multiplier ?

11. An identical matter came up for consideration before this Court in the case of National Insurance Company Ltd. vs. Emerenciana Soy and others, (MACA No.955 of 2016 disposed of today). This Court held:

"8. There are divergent views of different High Courts as well as apex Court with regard to application of multiplier in a case where the deceased was a bachelor and died in a motor vehicle accident. The same has been set at rest by a Constitution Bench of the apex Court in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680. The apex Court held:

"59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with para 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

xxx

xxx

xxx

(Emphasis laid)

9. An identical matter came up for consideration before the apex Court in the case of Nagar Mal. In the said case, the deceased was a bachelor. A contention was raised by the counsel appearing on behalf of the appellants that the multiplier to be adopted should have been based on the age of the deceased and not on the age of the parents. The contention was repelled. Taking a cue from Pranay Sethi, the apex Court held:

"7. However, we find merit in the submission which has been urged on behalf of the appellants that the Tribunal failed to apply the correct multiplier and erred in not granting the benefit of future prospects in computing the income of the deceased and the loss of dependency. Having due regard to the judgment delivered by the Constitution Bench of this Court in National Insurance Company

Limited v Pranay Sethi, (2017) 13 Scale 12 : 2017 (4) TAC 673 and in Sarla Verma v Delhi Transport Corporation, (2009) 6 SCC 121 : 2009 (2) TAC 677, the correct multiplier should be 17 having regard to the age of the deceased.

xxx

xxx

xxx

(Emphasis laid)

xxx

xxx

xxx

13. In view of the authoritative pronouncement of the apex Court in the cases of Pranay Sethi & Nagar Mal, the irresistible conclusion is that when a bachelor died in a motor vehicle accident, his age shall be taken into account while applying multiplier."

12. The deceased was the Manager in the State Bank of India. His salary slips for the months of October, November and December, 2016 were exhibited as Ext.10. Learned Tribunal deducted the income tax and other taxes from the same and calculated the monthly salary for the purpose of computation of compensation. There is no material on record as to whether the deceased was getting perk every month. In view of the same, learned Tribunal is justified in not adding the same towards the monthly income.

13. But then, the learned Tribunal committed a patent error in not awarding any amount towards filial consortium. In Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram and others, 2018 (4) T.A.C. 345 (SC), the apex Court went in-depth into the matter and held that parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have cognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. In the said case, Rs.80,000/- was awarded towards filial consortium to the parents.

14. Thus the claimants are entitled to Rs.80,000/- towards filial consortium. So calculated, the compensation comes to Rs.81,11,168/-.

15. In *Jasbir Kaur and others* (supra), the apex Court held that it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. It further held that the expression "just" denotes equitability, fairness and reasonableness and non-arbitrary. There is no quarrel over the proposition of law.
16. In *K.S.R.T.C.* (supra), the apex Court held that the multiplier-method logically sound and legally well-established.
17. In *U.P.S.R.T.C. and others* (supra), the apex Court held that the calculation of compensation and the schedule appended thereto for calculation of compensation suffers from several defects. The multiplier cannot exceed 18 years purchase factor.
18. In *Bijay Kumar Dugar* (supra), the apex Court taken into account the age of the parents. The same view was taken in *Smt. Shanti Pathak and others* (supra).
19. In *Smt. Sarla Verma and others* (supra), the apex Court went in-depth into the matter and held that from the quantum of compensation specified in table, it is possible to infer that a clerical error has crept in the schedule and the 'multiplier' figures got wrongly typed. The same was rectified and succinctly stated in column no.4 of paragraph 20 with regard to the application of the multiplier.
20. In *Reshma Kumari and others* (supra), the age of the deceased was 15 years. The apex Court held that the learned Tribunal shall select the multiplier as indicated in column no.4 of the table as prescribed in *Sarala Verma*. It further held that the appropriate multiplier should be 15.
21. In *Meena and others* (SLP No.34648 of 2015), the apex Court held that age of the deceased should not have been taken for the purpose of determining the multiplier.
22. In *Amrit Bhanu Shali and others* (supra), the deceased was a bachelor. His age was taken into account.
23. In *P.S. Somanathan and others* (supra), the age of the deceased was taken into account.
24. As held above in paragraph 11, when a bachelor dies, his age shall be taken into account while applying multiplier.
25. For the foregoing reasons, MACA No.570 of 2018 is dismissed. MACA No.640 of 2018 is allowed to the extent indicated above. There shall be no order as to costs.