
(2010) 02 GAU CK 0020
In the Gauhati High Court
Case No : MAC No. 78 of 2005

Hira Gogoi @ Dihingia

APPELLANT

Vs

Mitali Patra and Others

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 168

Citation : (2010) 3 GLT 22

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : S. Senapati, Aslam, B. Sarma and J. Ahmed, for the Appellant; S.K. Medhi, R.K. Bhorali and N. Medhi, for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—This is an appeal filed by the claimant in Motor Accident Claim Tribunal Case for enhancement of the amount of compensation awarded by the learned Member of Motor Accident Claims Tribunal, Sibsagar. The impugned judgment and order dated 10.01.05 was passed by the learned Member, MACT, Sibsagar, in the said claim case No. 84/03, granting a lump sum compensation of Rs. 1,50,000/- with interest thereon at the rate of Rs. 6%. The said judgment and order is in challenge in this appeal.

2. I have heard Mr. B. Sarma, learned Counsel appearing for the Appellant and Mr. S.K. Medhi, learned Counsel appearing for the Respondent No. 3.

3. The present Appellant, who is the wife of the deceased, as heir and legal representative of her deceased husband late Sushil Dihingia filed a claim application before the Motor Accidents Claims Tribunal, Sibsagar, seeking compensation of Rs. 7,58,880/- for the death of her said husband in a motor accident that took place on 01.09.03 on the road near Hotel Brahmaputra at Sibsagar town.

4. In the said application, the present Respondents were arrayed as opposite

party. The Appellant/claimant, in her claim petition, disclosed that the age of her deceased husband, at the time of her death, was 36 years, that he was working as a constable drawing monthly salary of Rs. 5,710/- and that he left behind the Petitioner (36 years old) his minor son (10 years old), his father (63 years old) and his mother (55 years old), who were dependent on the deceased.

5. In the said application, the claimant categorically stated that the accident took place due to rush and negligent driving on the part of the driver of the offending vehicle i.e. the vehicle No. AS-01-G-4119 (truck), which suddenly knocked down the deceased from behind while the latter was riding his Motorcycle bearing No. AS-04-A-6221 (LML Vespa).

6. It is further mentioned that as a result of the said accident the husband of the claimant died on the spot and that the Motorcycle was also damaged.

7. The claimant furnished the names of the dependants of the deceased and the essential particulars including the name of the driver and the owner of the offending vehicle, the Registration number of the said vehicle. The driver and the owner of the offending were impleaded as opposite party Nos. 1 and 2 respectively. It was also disclosed, in the said application, that the offending vehicle, at the relevant time, was insured with the New India Assurance Company Limited, Garali, Jorhat. The Branch Manager of the said Company has been impleaded as Respondent No. 3.

8. In her application, the Appellant claimed a sum of Rs. 3000/- as loss of estate, Rs. 20,000/- as funeral expenses, Rs. 20,000/- a loss of consortium and Rs. 7,30,880/- as loss of income on dependency.

9. The learned Member of the Motor Accident Tribunal Claim, Sibsagar granted an amount of Rs. 50,000/- as no fault liability.

10. The claim was contested by the Respondents by filing separate written statements. The opposite party Nos. 1 and 2, while admitting the accident and death of the deceased denied the allegation of rush and negligent driving by the driver of the offending Vehicle. They clearly stated that the vehicle was covered by Insurance certificate, issued by the New India Assurance Company, Jorhat, i.e. Respondent No. 3, which was valid till 03.09.03. The Respondent No. 3 i.e. the Insurance Company, in its written statement stated that the scooter, driven by the deceased, also got involved in the said accident and that the owner, as well as the driver of the said scooter were liable to prove that the scooter was driven, having valid driving licence. It was also averred, in the written statement, that the claim made by the claimant was highly exorbitant and without any basis. The opposite party No. 3 denied the allegation of rush and negligent driving on the part of the offending vehicle. The contesting Respondents/opposite parties further pleaded that the claim was bad for non-joinder, of the parties i.e. the owner and the insurer of the scooter driven by the deceased, and pleaded that there was contributory negligence on the part of the deceased.

11. The Respondents prayed for rejecting the prayer for compensation made by the claimant.

Upon the pleadings of both the parties, the following issues were framed:

(1) Whether there was an accident dated on 01.09.03 at about 7:30 involving vehicle Nos. AS-01-G-4119 (truck) and AS-04-A-6221 (LML Vespa)?

(2) Whether the accident took place due to rush and negligent driving of the driver of the vehicle No. AS-01-G-4119 (truck)?

(3) Whether the deceased Sushil Dihingia died in the accident? and

(4) Whether the claimant is entitled to any compensation? If so, from whom and to what extent?

12. The claimant examined herself and an eyewitness in support of her claim. The opposite party failed to adduce any evidence. The claimant exhibited the age certificate, the certificate issued by the Superintendent of Police, Sibsagar regarding the salary of the deceased, the post mortem report, the certified copy of the FIR dtd. 02.09.2003 and the driving licence of the deceased as exhibits No. 1, 2, 3, 4 and 5 respectively. No evidence was adduced to negate the correctness or the authenticity of the said documents, which remained unchallenged. Hence the documents, being exhibited without any objection and not being controverted supported the claimant's plea. The claimant (P.W.1) denied the suggestion that the accident took place due to negligence of her deceased husband.

13. Considering the evidence on record the learned Member, MACT decided the issue Nos. 1 and 3 in favour of the claimant holding that the claimant's husband died in the vehicular accident on 01.09.03 and that the truck bearing No. AS-01-G-4119 was the offending vehicle.

14. While deciding the issue No. 2 also, in favour of the claimant, on the basis of the evidence of P.W.2. who was an eye witness to the occurrence, the learned Trial Judge came to finding that the offending vehicle moving in high speed and also in rush and negligent manner dashed the scooter from the back side causing injury to rider of the scooter, who died instantaneously. It was held that the scooter, which was also damaged, was on the left side of the road and that there was no fault on the part of the rider of the said scooter.

15. Considering the evidence on record, the learned trial judge came to the finding that the death of the deceased was caused due to fault on the part of the offending vehicle.

16. In deciding the issue No. 4, the learned Trial Judge took note that the deceased, at the time of his death, left the Petitioner, his minor son and parents as his Defendants, it was also observed, by the learned Trial Judge, that the victim was riding the scooter on his proper side, that the accident took place due to rush and negligent driving of the offending vehicle i.e. the truck and that the

plea of contributory negligence, taken by the Respondent against the victim could not be established.

17. In view of the above findings, the learned Trial Judge held that, as there was no negligence on the part of the rider of the scooter, the non-impleading of the owner and the insurer of the Motorcycle and the non-production of the driving licence of Scooterist was not very much material. It was also held that the accident took place during the validity period of the insurance coverage and that the offending vehicle, which was driven with valid permit and valid driving licence, was insured with the opposite party No. 3.

18. After deciding, as indicated, above, all the issues in favour of the claimant, the learned Trial Judge awarded an amount of Rs. 1,50,000/- as compensation in favour of the Petitioner to be paid by the Respondent No. 3 and directed that the said amount should be paid after deducting the amount of Rs. 50,000/-, which was paid as no-fault liability. It was further ordered that in the event of failure to pay the said amount within 60 days from the date of the order, the amount will carry interest at the rate of Rs. 6% per annum.

19. Being aggrieved by the quantum of compensation, which was much less than the claimed amount, the claimant Appellant has come up with this appeal seeking enhancement of the compensation.

20. The learned Counsel appearing for the Appellant, taking me through the claim petition, the impugned award and the evidence on record submitted that the accident having been caused due to fault on the part of the offending vehicle resulting in the death of the deceased, who had fixed income, the learned Trial Judge, committed illegality by not awarding the just compensation as per the provision of Section 168 of the Motor Vehicle Act and also not considering the age, annual income and dependency factor of the deceased in computing the amount of compensation. It is submitted that there was no reason to grant lump sum compensation of Rs. 1,50,000/- only, instead of deciding the amount by using appropriate multiplier.

21. Refuting the said arguments, advanced by the learned Counsel for the Appellant, the learned Counsel for the Insurance Company contended that the learned Member of the MACT committed no illegality by granting the lump sum compensation as at Rs. 1,50,000/-. The learned Counsel for the Insurer, further submitted that the claimant, having failed to implead the other legal representatives of the deceased, the owner and the insurer of the scooter and to produce the valid permit and driving licence in respect of the scooter, was not entitled to the amount claimed by her.

22. In reply to the said argument, the learned Counsel appearing for the Appellant referring to the decision held in the case of *National Insurance Co. Ltd. v. Jai Prakash Tripathi and Anr.* reported in 2004 ACS 1377, submitted that as the claimant, in column-11 of the claim petition disclosed the names and particulars of the Dependents, non-inclusion of the names of the said dependents/

heirs/legal representatives in the claim petition was not fatal.

23. In the above referred case, the claim petition was filed by the father of the deceased indicating the names of the other dependents as legal representative in column-(7) of the claim petition. The Tribunal awarded an amount of Rupees five lakh as compensation out of which Rupees one lakh each was apportioned to the minor brother and the sister and Rupees 1.5 lakh each to the father and the mother. In the appeal preferred by the Insurance Company, it was contended that the mother, the minor sister and the brother of the deceased were not shown as claimants and therefore, the compensation could not be awarded in their favour. In dismissing the said appeal the Division Bench held:

Contention of the Appellant Insurance Company can't be accepted for two reasons, firstly father of the deceased had filed the claim petition indicating the names of other dependents/legal representatives in column No. 7 as already indicated above and secondly the proviso, which requires such legal representatives, who has not joined as claimants to be impleaded as Respondents to the application is procedural. Added it in the facts and circumstances of the instant case, we find that no objection of any kind was taken by any of the opposite parties earlier.

It is well settled that the benefit of compensation, arising out of a vehicular accident is awarded under a Social Legislation therefore, in awarding just and fair compensation liberal approach should be taken. Unless prejudice or grave injustice is caused such technical or procedural irregularity can't be sufficient ground to defeat the claim for just compensation.

24. In the present case in hand the other legal heirs/representative were a minor son, the mother and the father of the deceased. The opposite party did not raise any objections in their written statements regarding the non-joinder of the legal representatives as Plaintiffs/Respondents. No plea was also taken denying their relationship with the deceased. Though the Appellant did not add the other legal representatives, who were dependents of the deceased, as claimant or Respondents. She clearly mentioned their names and particulars in column-(11) of the claim Petitioner. Therefore, the said legal representatives, having been brought on record there was no difficulty in ascertaining the particulars of the legal representative/Dependents of deceased and in granting just and reasonable compensation indicating their respective shares.

25. Therefore, considering the entire facts and circumstances of this case and keeping in mind the object of the Motor Vehicle Act, which is a Social Legislation, I am of the considered view that non inclusion of the other dependents/legal representatives, who have been mentioned at column-(11) of the claim petition, as claimants/Respondents, can not be a ground for not awarding compensation as per law. Section 168 of the Motor Vehicles Case provides the requirement of holding an enquiry into the claim and to determine the just Compensation specifying the person or persons to whom the compensation shall be paid.

26. It is also the requirement of the law that the claims tribunal should specify the amount which should be paid by the insurer or the owner or the driver of the vehicle involved in the accident or by all or any of them as the case may be. While determining the just Compensation the Tribunal is required to keep in mind the age, income and dependency factor of the deceased.

27. The Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, has been pleased to lay down the detailed procedure to be followed in computing the just compensation.

28. As held by the Hon''ble Supreme Court, the claimant in a death case is required to establish 3 (three) facts i.e.

(a) Age of the deceased.

(b) Income of the deceased, and

(c) The number of the dependants.

For the purpose of determining the loss of dependency the personal living expenses of the deceased is to be deducted from his total annual income and thereafter the remaining amount is to be multiplied by the appropriate multiplier. With regard to the Procedure for calculating the personal expenses of the deceased the Hon''ble Supreme Court held that the deduction, towards personnel and living expenses of the deceased, if necessary, should be one third ($\frac{1}{3}$ rd) where the number of dependent family members is 2 to 3, one fourth ($\frac{1}{4}$ th) if number of dependents is 4 to 6 and one fifth ($\frac{1}{5}$ th) if the number of dependents exceeds six (6). In the said case it was observed:

If these determinants are standardised there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

29. In the above cited case it was also observed that a conventional amount in the range of Rs. 5000/- to Rs. 10,000/- maybe added as loss of estate and where the widow survives the deceased, another conventional amount in the range of Rs. 5000/- to Rs. 10,000/- should be added under the head of loss of consortium, but no amount should be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased. The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

30. In the light of the above discussion I am of the considered view that, the learned Trial Judge by awarding a lump sum amount of Rs. 1.5 lakh only, failed to award just compensation as per the established principle of law and procedure. Therefore, the impugned judgment and award is liable to be modified by enhancing the award in the following manner.

31. In the case of Sarala Verma (supra), the Hon''ble Supreme Court, indicated the table of the multipliers to be used relating to the various age groups in a

case u/s 166 of the Motor Vehicle Act, 1988. The multipliers indicated in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and in the case of New India Assurance Co. Ltd. Vs. Charlie and Another, (for the claims u/s 166 of the M.V. Act) have been given by the Hon"ble Supreme Court in juxtaposition with the multiplier mentioned in the Second Scheduled for claims u/s 163A or the M.V. Act (with appropriate declaration after 50 years). In order to avoid the inconsistency regarding the multiplier, in the cases falling u/s 166 of the Act, the Hon"ble Supreme Court held that the method indicated in the case or Davis v. Powell Duffiyn Associated Collieries Ltd. 1942 AC 601 will be applicable. Accordingly the Hon"ble Supreme Court held that the multiplier should be as mentioned in Column (4) of the table, below:

Age of the deceased Multiplier scale as envisaged In Susamma Thomas Multiplier Chandra Multiplier scale in Trilok Chandra as clarified in Charlie Multiplier specified in second Col- umn in the Table in Second Schedule to the MV Act Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)

(1) (2) (3) (4) (5) (6)

Upto 15 yrs - - - 15 20

15 to 20 yrs 16 18 18 16 19

21 to 25 yrs 15 17 18 17 18

26 to 30 yrs 14 16 17 18 17

31 to 35 yrs 13 15 16 17 16

36 to 40 yrs 12 14 15 15 15

41 to 45 yrs 11 13 14 15 14

46 to 50 yrs 10 12 13 13 12

51 to 55 yrs 9 11 11 11 10

56 to 60 yrs 8 10 09 8 8

61 to 65 yrs 6 08 07 5 6

Above 65 yrs 5 05 05 5 5

32. Though the claimant, in the claim petition, mentioned her age and the age of the deceased as 36 years, she in her evidence given as P.W. No. 1 stated that her as well the age of her husband was 37 years. In the petition the monthly income of the deceased was mentioned as Rs. 5,710/-. As per the School Certificate (Ext. 1) the date of birth of the deceased being 01.09.68, his age on the date of death was about 35 years, which can be treated to be 36/37 years. Therefore, as

per the above table the appropriate multiplier would be 15. There is no challenge to the said evidence of the P.W. 1. The claimant (P.W. 1) exhibiting the Salary Certificate (Ext. No. 2) of the deceased, issued by the Superintendent of Police, Sibsagar, stated that the monthly salary of the deceased was Rs. 6010.00. Admittedly the deceased being a police considerable was a government employee and he used to draw monthly salary. The Exhibit No. 2 i.e. the salary certificate remained uncontroverted. Therefore, according to the said pay certificate, the correctness/authenticity of which has not been questioned, the monthly income of the deceased was Rs. 6010.00. There is nothing on record to show that the father of the deceased did not have any independent income or that he was dependant on the deceased. Therefore, apparently the claimant widow, the minor son and the mother of the deceased were the dependents. Hence the number of dependent family members being 3 (three) $\frac{1}{3}$ rd (one third) of the income i.e. about Rs. 2003.00 is required to be deducted as personal expenses of the deceased. In that case the monthly loss of dependency would come about to Rs. 4007.00 (Rs. 6010.00 - 2003.00). Multiplying the said amount by 12 (months) the annual loss of dependency would be Rs. 48084.00 (4007.00 x 12). Now using the multiplier 15 the total loss of dependency would come to Rs. 720260.00 (Rs. 48084.00x15).

Further, the claimant is also entitled to get an amount of Rs. 5000/- as loss of estate and Rs. 3000/- towards funeral expenses. As the deceased is survived by his widow, another amount of Rs. 10,000/- should be added as loss of consortium. Thus the total compensation comes to be Rs. 738260.00 (720260.00 + 5000.00 + 3000.00 + 10,000) payable by the Insurer of the offending vehicle i.e. the Respondent No. 3.

33. Considering age, of the widow (37 yrs) the minor (10yrs) and the mother (55yrs) of the deceased, I am of the considered view the said widow and the minor should get, higher amount than the mother of the deceased. Therefore, it is directed that out of total awarded amount each of the said widow (claimant) and the minor Sri Ashim Dihingia shall get @ Rs. 2,69,130.00 (Rupees two lakh sixty nine thousand one hundred and thirty) only while the remaining amount of Rs. 2,00,000.00 (Rupees two lakh) only, shall be given to Smt. Mekan Dihingia i.e. the mother of the deceased. The amount awarded in favour of the minor shall be kept in fixed deposit scheme in a Nationalised Bank for a period till the minor attains majority. If the claimant has already received Rs. 1,50,000/- i.e. the amount awarded by the Tribunal then the said amount shall be deducted from the total amount of Compensation awarded in her favour. In that case the widow will now get Rs. 1,19,130.00 (One lakh nineteen thousand one hundred thirty) only. With regard to the interest, the learned Member of the Tribunal granted interest @ Rs. 6% per annum. In the case of Sarala Verma (supra), decided on 15.04.2009, the Hon'ble Supreme Court granted interest @ Rs. 6% per annum from the date of the Petitioner till the date of realisation. As the order regarding interest has not been challenged this Court is not inclined to interfere with the order of the learned Tribunal in this regard. However, it is directed that the

enhanced amount shall carry interest @ Rs. 6% per annum from this date till realisation.

34. With the above direction the appeal is allowed and the judgment and order of the Tribunal is modified to the extant as above. No Costs.