

(1991) 08 DEL CK 0056

In the Delhi High Court

Case No : First Appeal No. 139 of 1981

Joginder Nath Maini and Others

APPELLANT

Vs

Manawar Khan and Others

RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A
Motor Vehicles Act, 1988 — Section 166

Citation : (1991) 2 ACC 566 : (1992) ACJ 561 : (1991) 45 DLT 444 : (1992) 22 DRJ 110 : (1991) RLR 479

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : M.S. Vohra, A.K. Oberoi and K.K. Jain, for the Appellant;

Judgement

Anin Kumar, J.

(1) This is an appeal against the award of the Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal) dated 8th November 1980 whereby a sum of Rs. 16,200.00 with costs was awarded in favor of the petitioners appellants besides interest at the rate of six per cent per annum from the date of award till realisation in the event of the respondents failing to make payment of the awarded amount within sixty days.

(2) In the appeal the appellants have "prayed that they should be awarded compensation in the sum to Rs. five lacs and the award of the Tribunal be modified to that extent.

(3) The facts giving rise to the present appeal are that one Mr. Harmohan Kumar Maini was driving a motorcycle on 29th April 1978 when at about 7.45 p.m. at the crossing of Anand Niketan and Shanti Niketan roads an accident took place involving the said Mr. Maini and truck No.DHL 1049 belonging to respondents 2 and 3 and driven by respondent No. 1. The accident resulted in the death of the said Harmohan Kumar Maini. The death took place on 3rd May 1978. The truck

was insured with respondent No.4. The deceased was unmarried and was 29 years of age at the time of the accident.

(4) The petition u/s IIO-A of the Motor Vehicles Act 1939 was Filed on 30th May 1978 by the petitioners appellants. Respondent No. 1 is the driver of the truck while respondents 2 and 3 are the owners thereof. Respondent No.4 is the insurer. The petition was contested by the respondents. Separate written statements were filed by the Insurance company on the one hand and by respondents 1 and 3 on the other.

(5) The Tribunal held that the deceased was getting a carry-home salary of Rs. 659.00 at the time of his death. Out of the said amount the Tribunal considered that a sum of Rs. 100.00 per month as the amount which was the deceased's contribution to his parents. Taking the normal life expectancy into account the Tribunal found that the deceased would have reached the age of at least 70 years, however, considering the age of the parents at the time of the accident, the multiplier of 15 years was adopted and accordingly a sum of Rs. 18,000.00 was assessed as the compensation payable to the petitioners. Out of the said amount a deduction of ten per cent was made on account of lump sum payment and thus the Tribunal arrived at the figure of Rs. 16,200.00 which was held to be payable to the petitioners. Besides this the Tribunal awarded costs and interest @ 6% per annum from the date of the award till realisation in the event of the failure of the respondents to make payment of the awarded amount within sixty days.

(6) In the present appeal the appellants, who were the petitioners before the Tribunal, have claimed a sum of Rs. five lacs as compensation besides costs and interest. This was the amount originally claimed by them in the petition u/s 110-A of the Act. In the appeal respondents 1 to 3, i.e. the driver and the owners of the vehicle have not appeared to contest the appeal. Only the Insurance Company is represented before me. It is not disputed that the liability of the Insurance Company is limited under the policy to Rs. 50,000.00 only besides costs and interests.

(7) At the outset an objection has been raised on behalf of the appellants that the Insurance Co. has no right to contest the appeal and, Therefore, the counsel appearing for the Insurance Co. cannot be heard. For this purpose reliance has been placed on Section 96, sub-section 2 of the Act which limits the defenses which are open to an Insurance Co. in such matters and which lays down as to in what circumstances and to what extent the Insurance Company can contest such petitions. No doubt Section 96, Sub-section (2) leaves a very limited scope for representation on behalf of the Insurance Company in a petition u/s 110-A, yet provisions of Section 110-C, Sub-section (2-A) are by way of an exception to the main provisions of section 96(2). It is provided in sub-section (2-A) as under:-

"(2-A)Where in the course of any inquiry, the Claims Tribunal is satisfied that - (i) there is collusion between the person making the claim and the person against

whom the Claim is made, or (ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be imp leaded as a party to the proceeding and the insurer so imp leaded shall thereupon have the right to contest the claim on all or any of the grounds that arc available to the person against whom the claim has been made."

(8) The foresaid provision empowers the court to permit or direct the insurer to be imp leaded as a party to the proceedings and there after the Insurer would have the right to contest the claim on any of the grounds that are available against the person by whom the claim has been made. The two situations in which the court is empowered to give such directions for reasons to be recorded in writing are

(I)Where there is a collusion between the person making the claim and against the person against whom the claim is made.

(II)The person against whom the claim has been made, has failed to contest the claim.

(9) In the present case before the Tribunal all the respondents were represented and, as noticed earlier, written statements were filed separately by the Insurance Co. as well as by respondents 1 and 3. No question of right of the Insurance Company to contest the claim was raised before the Tribunal. The Insurance Company had been permitted unfettered defense. However, in the present appeal, counsel for the appellant has raised this point for the first time. He wants me to hold that the Insurance Company is not entitled to be heard in the facts and circumstances of the case.

(10) As noticed earlier, respondents 1 to 3 have chosen not to appear or contest the appeal, Therefore, during the course of hearing keeping in mind the provisions of sub-section (2-A) of section 110-C, I had allowed the counsel appearing for the Insurance Company to make his submissions after the counsel for the appellants had concluded his arguments. The other reason which impelled me to adopt this course was that no such objection had been raised at the trial stage and as such the objection would be deemed to have, been given up. In view of the aforesaid reasons I want to place it on record that the permission was granted by me to counsel for the Insurance Company to make his submissions in the appeal. In this connection the counsel for the appellants also submitted that the provisions of sub-section (2-A) were only available before the Tribunal. I do not agree. An appeal is a continuation of the original proceedings and it is not possible to confine the provisions of sub-section (2-A) only to the stage of the proceedings before the Tribunal.

(11) The other strong reason to my mind to negative the argument of the counsel for the appellants in this behalf is that the Insurance Company was imp leaded by the appellants/petitioners themselves in the claim petition. The Insurance Company filed its written statement and was all through the trial

represented by counsel. No such objection was raised. How can I deny the right of hearing to the Insurance Company at this stage, specially when other respondents have chosen to absent themselves?

(12) Counsel for the Insurance Company has also submitted in this connection that he is not raising any defenses which he is debarred from raising u/s 96, sub-section (2) of the Act. In other words what he urged is that no new defenses as are barred u/s 96 of the Act are being raised and, Therefore, he cannot be denied the right to contest the petition. According to the counsel, he is only defending the judgment of the Tribunal.

(13) Counsel for the appellant cited certain judgments in support of his plea that the Insurance Company cannot be allowed to contest the appeal or raise any defenses. The said judgments are - Nachhan and Others Vs. New India Assurance Company Ltd., ; B.I.G. Insurance Co. vs. Itbar Singh 1959 S.C. 1331 ; Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, ; Vanguard Co. Ltd. Vs. Rabinder Kaur and Others, ; United Fire & General Ins. Co. Ltd. vs Lakshmi Shori, AIR 1982 J&K 105 ; The Vanguard Insurance Co. Ltd. Vs. Rohini Bhan and Others, ; and I.M.G. Ins. Society vs. Helen, Air 1971 Mys 207. In view of the peculiar facts of the present case those authorities are not attracted. In none of these authorities the claimants had allowed the Insurance Company to defend the proceedings before the Tribunal without demur. None of these cases appears to be a case of the objection being raised for the first time in appeal. In most of the cases the exception created by sub-section (2-A) of section 110-C has not been considered. Therefore, I do not consider it necessary to deal with these cases one by one.

(14) On the other hand counsel for the respondent No.4, Insurance Company has drawn my attention to New India Assurance Co. Ltd. vs Raju Markose, in which the court heavily relied on the fact that the Insurance Company was impleaded as a party to the proceedings by the claimants themselves and, Therefore, the Insurance Company was permitted to contest the claim and in fact the Insurance Company filed the appeal which was the subject matter of the said decision by the Division Bench of the Kerala High Court.

(15) This brings me to the merits of the main appeal. The points raised on behalf of the appellants in the present appeal can be conveniently classified into the following heads:-

- 1) What should be the multiplier?
- 2) What should be taken as the monthly contribution available to the petitioners from the deceased?
- 3) Future prospects of the deceased.
- 4) Whether deduction on account of lump sum payment is permissible?

5)Interest, including rate of interest as well as the date from which interest should be awarded.

(16) So far as the question of fixing the proper multiplier in the present case is concerned, the Tribunal has taken 15 as the multiplier. Basing himself on the present day expectancy of life, the Tribunal has held that the deceased would normally reach the age of 70 years. Likewise the parents of the deceased who are the appellants herein could be expected to attain that age. The age of the father at the relevant time was 56 years while the age of the mother was 50 years. For purpose of fixation multiplier it is not the age of the deceased which is material in the present case because the question is of awarding compensation to the claimants who happen to be the parents of the deceased. The parents could expect pecuniary benefit from the deceased maximum for their own life time. Therefore, I think the Tribunal was right in fixing the multiplier at 15. If the age of the father was 56 years, taking reasonable expectancy of life into consideration the multiplier of 15 years was fully justified. Though the age of the mother was a little less, yet a common multiplier as fixed by the Tribunal meets the ends of justice and I do not find anything wrong with the multiplier fixed by the Tribunal.

(17) Now coming to the question of what amount should be taken as the monthly contribution which would have been available to the parents of the deceased from the latter, the Tribunal has taken the figure at Rs. 100.00 . The Tribunal has held the carry home monthly salary as Rs. 659.00 per month whereas counsel for the appellants has shown to me that in view of the statement of Public Witness -4, from the office of the employer of the deceased, his carry home monthly salary should at least be Rs. 733.00 . This he has calculated as under-Basic Pay - Rs. 608.00 City Allowance - Rs. 75.00 House Rent Allowance - Rs. 50.00

(18) According to the appellants, besides the above, the deceased was entitled to receive leave encashment benefit, gratuity, bonus, provident fund and other bene in the course of his employment. So far as these benefits are concerned, they are not in the nature of cash which is available every month like the monthly salary to a person. Therefore, the question of any contribution out of these amounts to the claimants cannot arise and for this reason I am not inclined to take these into consideration. This leaves us with the carry home monthly salary of Rs.733.00 Now the question is how much amount should be taken the contribution of the deceased from the said monthly income to his parents. It is significant to note that neither of the petitioners/appellants have come in the witness box and, Therefore, from their side there is nothing on record to suggest as to what was the monthly contribution of the deceased to them. The burden of proof is on the claimants. (See Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others,). Therefore, the Court is left with the task of estimating as to what could be the reasonable amount which the deceased would have been contributing to his parents out of his monthly carry home salary. The deceased

was a young man having an employment in a five star hotel where it is important that one has to maintain a very smart appearance. The father of the deceased was himself a working hand at the relevant time. The deceased was aged 29 years and the prospect of his early marriage cannot be overlooked. For this there would be a great temptation for the deceased to make savings to have a decent marriage. Moreover in the event of the marriage of the deceased, his contribution to the parents would have considerably reduced. Taking into consideration all these aspects. I consider that the amount of contribution of the deceased to his parents ought to have been taken at least as Rs.300.00 per month.

(19) The next point for consideration is the argument of the counsel for the appellant based on future prospects of improvement in the career of the deceased. Relying on the statement of Public Witness -4, it is submitted that the deceased would have joined the management cadre and would have jumped to a higher bracket of emoluments and, Therefore, his contribution to the appellants would have increased. The judicial opinion on the question of taking future prospects into consideration seems to be divided. All the same it is more inclined towards future prospects not being taken into consideration particularly for the reason that life has so many imponderables. There could be adverse circumstances which may spoil the future of a person in a given case. In the present case since the claimants are the parents of the deceased, there is all the more reason to ignore the aspect of future prospects. The most important event which the future held out for the deceased, if he was alive, would have been his marriage and after marriage one can easily imagine that his contribution to his parents would have reduced considerably, Therefore, in the facts of the present case, I need not dilate on the legal aspect of future prospects being taken into consideration. I am not inclined to take future prospects into consideration at least in this case.

(20) This brings me to the next question as to whether deduction on account of lump sum payment or accelerated payments, as it has been described in some cases, ought to be allowed. The Tribunal has made a deduction @ 10% in the impugned award. Counsel for the appellants has drawn my attention to various decisions of this court as well as other courts where deduction has not been allowed on this ground. On the other hand counsel for the respondent Insurance Company has cited several cases where deductions on account of lump sum payment has been allowed. The judicial opinion seems to be divided on this question.

(21) There are two Division Bench decisions of this court on this point which are almost contemporaneous. They are reported as Mohinder Kaur and Others Vs. Manphool Singh and Others, and Amarjit Insurance Co. Ltd. and Others Vs. Vanguard insurance Co. Ltd. and Others, . In the later decision, i.e. one reported at page 495, there is no discussion as such on this issue, though a 15% deduction has been allowed on this score. However, in the deduction has been

allowed on this score. However, in the decision reported at page 231 no deduction was allowed, I find some reasoning for this which is to the following effect:-

" SOME decisions were brought to our notice which take this view of deduction on account of lump sum payment. However, there is another set of decisions which take the view that the rise in prices, the normal increments which person would have earned or chances of his further promotion cannot be ignored. We agree with the second view. A Division Bench of this Court in *Municipal Corporation of Delhi and others vs. Shanti Devi Dutt* and another has affirmed that the advantage of lump sum payment is neutralised by the rise in prices of the necessities of life. We agree and follow the Division Bench judgment. There is a phenomenal rise in prices since 1963. We, Therefore, hold that no deduction should be made from the lump sum due to the widow."

(22) The reasoning given above has become all the more relevant in the present context of phenomenal rise in prices. The rate of interest which one may be able to earn on a deposit in a Nationalized bank is not sufficient to keep pace with the inflation and, Therefore, to my mind the lump sum payment loses all its attraction or significance. The person is not able to earn enough even if the said amount is deposited and the earnings do not match the rise in prices and depicting value of money. Counsel for the respondent has placed reliance on a recent judgment of a single Judge of this Court reported in *New India Ass.Co. vs. Motor Rep. Co.* 1991 Rlr 246 . In the said judgment both the aforesaid Division Bench decisions of this court have been noticed. However, the learned Single Judge has followed the decision in *Amarjit Insurance Co. Ltd. and Others Vs. Vanguard insurance Co. Ltd. and Others*, on the ground that the said decision is later in point of time. It is important to note that the decision reported at page 495 was delivered about 5 months after the earlier decision. However, the earlier decision is not noticed in the later judgment. Further, as pointed out earlier, I find that there is some discussion and reasoning contained in the decision in *Mohinder Kaur's* case (supra) for disallowing deduction on account of lump sum payments. Whereas in the subsequent decision in *Amarjit Kaur's* case (supra), there is no discussion or reasoning on this point. Similarly in *Jyotsna Dey and Others Vs. State of Assam and Others*, , though deductions on account of lump sum payment has been allowed, with utmost respect, I find that there is no reasoning given for allowing deduction on this account. Apart from this there are a large number of authorities of this court subsequent to the aforesaid Division Bench judgments where deduction on account of lumpsum payment has been disallowed. Some of such decisions are :-

Madhya Pradesh State Road Transport Corpn., Bairagarh Vs. Sudhakar etc., ; Subash Rani etc. Vs. Delhi Transport Corporation etc., ; Pritam Kaur and Others Vs. Peara Singh and Others, ; Prabhati Vs. Lal Chand etc., ; Harbhajan Singh Bhalla (deceased) through L/Rs. Vs. Dhara Singh and Others, ; Delhi Transport Corporation and Others Vs. Kamlesh Arora and Others, and Mrs. Elizebeth

Mathew and others, Appellants Vs. Shri Yasdev and Delhi Transport Corporation, .

(23) The last judgment in this series is by the same learned Judge whose decision is reported in 1991 Rlr 246.

(24) Accordingly I am of the considered view that in the present day context no deduction on account of lumpsum payment ought to be allowed.

(25) Coming to the question of award of interest, I find that the Tribunal has awarded interest @ 6% per annum from the date of the award till realisation. This is, however, subject to the amount of the award not being paid to the claimants within 60 days of the award. I presume that the aforesaid amount must have been paid in accordance with the award.

(26) This leaves me with the question of interest on the amount now being awarded by me. As per. my finding that at least a sum of Rs.300.00 per month would have been available as the contribution of the deceased to his parents, yearly amount comes to Rs.3600.00 . This amount multiplied by the multiplier of 15 comes to Rs.54,000.00 . Since I have held that no deduction on account of lumpsum payment ought to be made, the award of the Tribunal would stand modified to this extent and would now be taken as Rs.54,000.00 . The rate of interest, I feel, ought to be at least 12% per annum. Therefore, after adjusting a sum of Rs.16,200.00 which already stands paid, the claimants would be entitled to interest on the balance amount at the rate of 12 percent per annum from the date of filing of the petition till realisation. As already noted, the liability of the Insurance Company is admittedly confined to Rs.50,000.00 with costs and interest. The appellants will be entitled to costs. Counsel fee fixed at Rs.2,200.00 .

(27) The appeal is allowed to the extent indicated above.