
(2001) 01 GAU CK 0032
In the Gauhati High Court
Case No : M.A. (First) No. 22 of 1998

Kanika Hazarika and Others

APPELLANT

Vs

Sreeam Barthakur and Others

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 110

Citation : (2002) ACJ 159 : (2001) 1 GLT 82

Hon'ble Judges : N.C. Jain, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : G.N. Sahewalla, for the Appellant; S. Dutta, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—This appeal is direct-id against the judgment and award dated 3.10.1997 passed by the Member, Motor Accidents Claims Tribunal at Kamrup, Guwahati in M.A.C. Case No. 104 (K) of 1991.

2. The facts in brief are that on the fateful day of 26.2.1991 at about 5.30 p.m. while Sukham Hazarika was travelling in an autorickshaw bearing registration No. AMY 1511, a truck bearing registration No. AMZ 7127 driven by one Upendra Sarma in rash and negligent manner dashed against the autorickshaw as a result of which the occupant Sukham Hazarika sustained fatal injuries. Thereafter the widow, daughter and mother of the deceased filed claim for compensation for the death of Sukham Hazarika in a vehicular accident. The owner, driver and insurance company of both the vehicles were impleaded as parties and they contested the proceeding. The Tribunal on consideration of the materials on record held that the above accident took place due to negligence of the truck driver and as such the insurer of the truck United India Insurance Co. Ltd. is liable to pay the compensation. The Tribunal also directed that the no fault liability paid by National Insurance Co. Ltd. is to be reimbursed by United India Insurance Co. Ltd. United India Insurance Co. Ltd. has not preferred any appeal against the order of the Tribunal and the claimants who have preferred the

present appeal have not disputed the above finding of the Tribunal that it was United India Insurance Co. Ltd. who is liable to pay the compensation.

3. The deceased was working in a bank and his last pay was Rs. 4,587.64. The Tribunal after deducting 1/3rd of the income of the deceased for personal expenses assessed the dependency at Rs. 3,058.43. At this stage it may be mentioned here that on the death of the deceased in the above accident the claimant wife was provided with a job in the bank on compassionate ground as per the scheme/policy decision of the bank and the wife was paid a salary of Rs. 2,000 per month. The Tribunal deducted this sum of Rs. 2,000 from the above amount of Rs. 3,058.43 holding the same as deductible on account of neutralising factor of income and, therefore, fixed the monthly dependency at Rs. 1,058.43 for the purpose of assessing the loss. A multiplier of 16 was adopted. The Tribunal also awarded a further sum of Rs. 35,000 towards loss of consortium, loss to estate, funeral expenses, etc. and a total compensation of Rs. 2,38,218 was awarded.

4. The claimants have filed the present appeal mainly on the ground that the deduction of Rs. 2,000 from the dependency was not in accordance with law and as such the total compensation awarded is on the lower side. The appellants have further submitted that the award of 9 per cent interest also needs modification in view of the settled proposition of law.

5. We have heard Mr. G.N. Sahewalla, learned Counsel for the appellants and Mr. S. Dutta, learned Counsel for United India Insurance Co. Ltd.

6. In this case, there is no dispute at the Bar that the monthly salary of the deceased was Rs. 4,587.64 at the time of the death of the deceased. The deduction of 1/3rd of the income of the deceased for personal expenses is also not in dispute. Thus, according to the appellants the dependency for the purpose of assessing the compensation should have been Rs. 3,058.43 to be rounded up to Rs. 3,060. The learned Counsel for the respondent insurance company, on the other hand, has submitted that the Tribunal rightly deducted the amount of salary paid to the widow/claimant on her employment by the bank. The respondents have placed reliance on a Full Bench decision of this Court in the case of Saminder Kaur v. Union of India 1987 ACJ 7. The Full Bench of this Court held as follows:

There still remains the question whether the salary received by the widow, who has been employed in the Central P.W.D. as a clerk on a monthly pay of Rs. 525 in the scale of pay of Rs. 260-400 on compassionate ground should be deducted from the amount of compensation. At the time of her appointment she was 32 years of age. A sum of Rs. 1,63,800.66 was deducted on the ground that she would earn a sum of Rs. 1,63,800.66 during her lifetime. She has got a minor daughter. She was not employed at the time of the death of her husband. Probably, she would not have gone out to work but for the death of her husband, she has now accepted the job. The young child is denied of parental care by the

employment of her mother as a clerk. No doubt, the employment she got from the wrongdoer on compassionate ground. It is undoubtedly a benefit to be taken into consideration. What is the percentage of the salary to be deducted from the amount of compensation. This has to be determined on an effective evaluation of the concomitant facts and circumstances of each case. As we are only answering the question referred to us, we leave it to the Judges disposing of the appeal to determine the question as to the quantum that would be proper to be deducted from the compensation.

7. The facts of the present case are altogether different from that of Saminder Kaur, 1987 ACJ 7 (Gauhati). In Saminder Kaur (supra), employment of the claimant was given by the wrongdoer whereas in the present case the employment has been given to the claimant/wife by the employer of the deceased husband, that is, the bank, which was in no way connected with the alleged incident. The employment was provided as per the scheme of the bank providing employment to the dependants of bank employee dying in harness.

8. The question before this Court was the subject-matter for consideration before the Hon'ble Supreme Court in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, The Supreme Court after considering all aspects of the matter including the English decisions and decisions of the Apex Court held as follows:

(34) So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant/s of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant/s occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant/s by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words "pecuniary advantage" from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant/s and would be contrary to the spirit of the law. If the "pecuniary advantage" resulting from

death means pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased, etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which has contributed to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accidents Claims Tribunal itself u/s 110 is, as the section states:

...for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to,....

(35) Thus, it would not include that which claimant receives on account of other forms of death, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency, through the proviso of Section 95. Under it, the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employment of an employee.

(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 the 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 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. 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.

9. The Supreme Court further held that the provisions of the Motor Vehicles Act concerning compensation to the victim or dependants of motor vehicle accident are beneficial legislation. The interpretation of such beneficial legislation is also well settled. "Whenever there be two possible interpretations in such statute, then the one which subserves the object of legislation, viz., benefit to the subject should be accepted".

10. In view of the law laid down by the Apex Court as stated above let us consider the facts of the present case. There is no dispute at the Bar that the claimant Kanika Hazarika was given an employment in the bank by the employer of the deceased and the said bank is not a wrongdoer and it was in no way connected with the accident. Now, the question is whether the employment of the claimant is in any way correlated to the accidental death for which the compensation is awarded. The claimant could have been provided with a job under the Die-in-harness Scheme irrespective of the fact that the deceased had died as a result of a vehicular accident or otherwise even natural death. That was the benefit provided, to the employee by the employer and thus, it is in no way related to the accidental death of the deceased. Respondents before us are in no way connected with the employment of the claimant. This is not a case where a wrongdoer in order to compensate the victim or the dependants of the deceased has done something out of compensation by providing them with a job so that the victim is compensated. Thus, the ratio of law laid down by the Full Bench of this Court in Saminder Kaur 1987 ACJ 7 (Gauhati), is distinguishable and not

applicable to the facts established in the present case. The decision in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, covers the matter in hand. Applying the above, we are of the opinion that the Tribunal, erred in law in deducting Rs. 2,000 from the amount of the dependency.

11. The claimants thus are entitled to the following compensation. The monthly dependency was assessed at Rs. 3,060 which comes to Rs. 36,720 annually. The Tribunal applied a multiplier of 16 which is proper in view of age of the deceased. Hence the total amount of compensation comes to Rs. 5,87,520. To this we add a sum of Rs. 5,000 towards loss of consortium and a sum of Rs. 2,000 towards the funeral expenses. The total compensation payable by respondent United India Insurance Co. Ltd. is, therefore, Rs. 5,94,520 only. The claimant is also entitled to interest on the awarded amount at the rate of 12 per cent per annum from the date of the application till payment thereof. It is needless to mention that if any amount has been paid by the insurance company that may be adjusted.

12. In the result, the appeal is allowed and the impugned order is set aside. The respondent United India Insurance Co. Ltd. is directed to pay the compensation of Rs. 5,94,520 together with interest at the rate of 12 per cent as stated above. The amount shall be paid within a period of 75 days.