

(2008) 05 OHC CK 0054

In the Orissa High Court

Case No : M.A.C.A. No's. 574 of 2004 and 269 of 2005

Kuntala Sethi and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Another
 New India
Assurance Co. Ltd. Vs Kuntala Sethi and Others

RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163

Citation : (2008) 40 OCR 792

Hon'ble Judges : B. N. Mahapatra, J

Bench : Single Bench

Advocate : S.K. Sanganerla, P.C. Pattnaik and S.K. Routray, in MACA No. 574/04 and A.K. Rath, A.K. Panda and A.K. Nath, in MACA No. 269/05, for the Appellant; A.K. Rath, A.K. Panda and R. Mishra (R-1), in MACA No. 574/04 and S.K. Sanganerla, R.C. Pattnaik and S.K. Routray, in MACA No. 269/05, for the Respondent

Final Decision : Dismissed

Judgement

B. N. Mahapatra, J.—Both the appeals arise out of a common award dated 15.5.2004 passed by the 1st Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal), Puri, in M.A.C.T. Misc. Case No. 225 of 2003.

2. M.A.C.A. No. 574 of 2004 has been filed by the claimants u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") for enhancement of the amount of compensation awarded by the Tribunal. M.A.C.A No. 269 of 2005 has been filed by the Insurance Company for setting aside the award passed by the learned Tribunal.

3. Since both the appeals arise out of the same accident, they were heard together and are disposed of by this common judgment.

4. In this case, one Sadhu Sethi met with a vehicular accident and died. According to the claimants, on 29.6.2003 at about 9.15 A.M., the deceased was

standing near Nirmala Chhak on Puri-Bhubaneswar road. At that time a Canter Bus bearing Registration No. OR02F-1697 coming from Puri side in a high speed dashed against the deceased as a result of which the deceased sustained severe bleeding injuries. Immediately after the accident, the deceased was taken to Mangalpur P.H.C. for treatment. As the condition of the deceased became serious he was referred to S.C.B. Medical College and Hospital, Cuttack, for better treatment where he succumbed to the injuries.

5. The case of the claimants before the learned Tribunal was that due to rash and negligent driving of the driver of the offending vehicle the accident took place resulting in the death of the deceased and that the offending vehicle having been insured with the Insurance Company, the compensation amount should be indemnified by the Insurance Company. Their further case was that at the time of the accident, the deceased was 41 years and was working as a mason. Besides he had a laundry business in Teisipur bazar. From both sources, the deceased was earning a sum of Rs. 3,500/- per month, out of which his contribution to the family was Rs. 3,000/-.

With these averments, the claimants filed a claim petition before the learned Tribunal claiming compensation of Rs. 3,50,000/- from both the Insurance Company as well as the owner of the offending vehicle.

6. The owner of the vehicle was set ex parte.

7. The Insurance Company filed its written statement refusing all the allegations made in their claim petition. It also denied the allegations of rash and negligent driving by the driver of the offending bus and challenged the monthly income of the deceased as claimed by claimants.

8. The claimants examined two witnesses on their behalf and filed six documents which were marked as Exts. 1 to 6.

The Insurance Company neither examined any witness nor filed any document on its behalf.

9. On the basis of the above pleadings of the parties, the Tribunal framed five issues.

10. After taking into consideration both oral and documentary evidence, the Tribunal came to the conclusion that the death of the deceased was caused due to rash and negligent driving of the driver of the offending vehicle. The Tribunal also held that the deceased was working as a mason and getting daily income of Rs. 100/-. Basing on such income, it estimated the monthly income at Rs. 2,500/- and after deducting 1/3rd towards his personal expenses, the Tribunal fixed the contribution towards his family at Rs. 1,700/- per month. Accordingly, his annual contribution was determined at Rs. 20,400/-. Relying on the post mortem report (Ext. 4), the age of the deceased was taken as 45 years at the time of accident. The learned Tribunal applied 15 multiplier and determined the compensation amount at Rs. 3,06,000/-. The learned Tribunal further held that

the Insurance Company would be liable to indemnify the entire compensation amount and directed the Insurance Company to pay a sum of Rs. 3,06,000/- to the claimants towards compensation along with interest at the rate of 6% per annum from the date of claim application, i.e., 24.7.2003 till realization within three months from the date of its order. It further directed that out of the total compensation amount, a sum of Rs. 3,00,00/- would be kept in the shape of a fixed deposit in the name of three claimants " Rs. 1,00,000/- each for a period of six years in any nationalized Bank subject to payment of quarterly interest accruing thereon and the balance compensation amount of Rs. 6,000/- along with interest would be paid to the claimants in cash. It also directed that the concerned Bank should be intimated not to grant any loan, mortgage or withdrawal in respect of the fixed deposit till its maturity.

11. Learned Counsel appearing on behalf of the claimants strenuously argued that the amount of compensation awarded by the Tribunal was unjust and improper. According to him, determination of monthly income of the deceased by the learned Tribunal at Rs. 2,500/- was too low and without any proper basis, which should have been taken at 08.3.500/- for determination of just compensation.

Learned Counsel appearing on behalf of the claimants submitted that the learned Tribunal taking note of the age of the deceased at 45 years at the time of accident, has rightly applied multiplier of 15 as provided in Second Schedule appended to the Act. He relied on the judgment of the Hon''ble Supreme Court, in the case of Chellammal and Ors. v. Kailasam and Anr. reported in 2006 (2) T.A.C. 517(SC), in support of his contention that multiplier should be applied according to the Second Schedule appended to the Act. Relying on the decision of the Hon''ble Supreme Court, in the case of A.P.S.R.T.C. rep. by its Chief Law Officer Vs. M. Pentaiah Chary, , he further submitted that the multiplier specified in Second Schedule of the Act should not be altered. But he submitted that the amount of compensation should be suitably enhanced by awarding compensation towards funeral expenses, loss of consortium, loss of estate and medical expenses. He further contended that since the offending vehicle at the relevant time was covered by a valid insurance policy and the driver had a valid and effective driving licence, the Insurance Company is liable pay the compensation amount with interest to the claimants.

12. Per contra, learned Counsel appearing on behalf of the Insurance Company submitted that the assessment of monthly income of the deceased at Rs. 2,500/- as made by the learned Tribunal is high and excessive. He further submitted that the multiplier of 15 applied by the learned Tribunal is at the higher side. He submitted that in the case of Managing Director TNSTC v. Srlpriya and Ors. reported in (2007) 37 OCR (SC) 163, the Hon''ble Supreme Court held that considering the age of the deceased as 37 years, the proper multiplier would be 12 and in that case the Hon''ble Supreme Court has reduced the rate of interest from 9% to 7.5%. He relied on Anr. decision of the Hon''ble Supreme Court in

the case of U.P. State Road Transport Corporation v. Krishna Bala and Ors. reported in (2006) 34 OCR (SC) 869, in support of his contention that in that case the deceased was about 36 years and the Hon''ble Supreme Court applied multiplier of 13. However, in the said case, the Hon''ble Supreme Court allowed interest " 9%.

The learned Counsel has also relied on the decision of the Hon''ble Supreme Court in the case of The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, in support of his contention that the Second Schedule of the Act is to serve as a guide, but it cannot be said to be an invariable ready reckoner. In that case, the victim was 34 years old and the Hon''ble Supreme Court held that the appropriate multiplier will be 13 and not 17. The Hon''ble Supreme Court also directed payment of interest on the sum awarded at 7.5% taking note of the prevailing rate of interest on bank deposits. He further submitted that since the driver of the offending vehicle did not possess a valid and effective driving licence at the time of accident, the owner of the vehicle in connivance with the Police authorities has substituted the driver for which the Insurance Company is not liable to pay any compensation.

13. After hearing the learned Counsel for the parties, and going through the judgment passed by the learned Tribunal, this Court is of the view that the deceased died due to the rash and negligent driving of the driver of the offending vehicle and the monthly income of the deceased as determined by the Tribunal at Rs. 2,5007- is based on sound reasons. Neither of the claimants nor the Insurance Company has adduced any evidence to establish that the monthly income of the deceased as assessed by the learned Tribunal is unreasonable. Apart from this, learned Counsel for the Insurance Company has not obtained any permission from the learned Tribunal u/s 170 of the Act and in absence of such a leave of the Tribunal, the Insurance Company is not supposed to challenge the quantum of compensation awarded by the Tribunal which is based on the monthly income of the deceased. The Hon''ble Supreme Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , held that unless the condition precedent u/s 170 of the Act is satisfied, the Insurance Company has no right of appeal to challenge the award on merit. In the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , the Hon''ble Supreme Court observed that though the Second Schedule was formulated for the purpose of Section 163-A of the Motor Vehicles Act, it is a safer guideline to arrive at the amount of compensation than any other method. The Hon''ble Supreme Court in the case of Supe Dei and Ors. v. National Insurance Co. Limited and Anr. reported in 2002 (3) T.A.C. 378 (SC), held that the Second Schedule u/s 163-A to the M.V. Act which gives amount of compensation to be determined for purpose of claim can be taken as a guideline while determining the amount of compensation u/s 166 of the M.V. Act. The Hon''ble Supreme Court in the case of Managing Director, TNSTC Ltd. (supra) also held that the Second Schedule of the Act is to serve as a guide. The Hon''ble Supreme Court in the case of United India Insurance Co. Ltd. and Ors. v. Patricia

Jean Mahajan and Ors. reported in 2002 (2) TAC 721 (SC) held that ordinarily in awarding compensation, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, which may fall in the category having special feature or facts calling for deviation from the multiplier usually applicable. The Hon''ble Supreme Court in the case of Abati Bezbaruah v. Deputy Director General Geological Survey of India and Anr. reported in 2003 (2) TAC 18 (SC), held that principle of structured formula as provided in Second Schedule should not normally be deviated from the guidelines for determination of the amount of compensation. Deviation may be resorted to in exceptional cases. The Hon''ble Apex Court further held that the amount of compensation should be just and fair in the facts and circumstances of the case. In this case, the quantum of multiplier was in dispute before the Hon''ble Apex Court. The deceased at the time of death was 40 years and the Hon''ble Apex Court upheld the multiplier of 15 applied by the learned Tribunal and High Court. Paragraphs 11 and 12 of the said judgment which are relevant for this purpose are quoted below:

11. It is now a well settled principle of law that payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from Section 168 of the Motor Vehicles Act lays down the guidelines for the determination of the amount of compensation in terms of Section 166 thereof. Deviation of structured formula, however, as has been held by this Court may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the fact and circumstances of each case.

12. The victim was at the relevant time was 40 years of age. The Tribunal and the High Court, therefore, cannot be said to have committed an error in applying the multiplier of 15....

This Court in the case of Sri Sunanda Nayak and Another Vs. Divisional Manager, Oriental Insurance Co. and Another, held that even though the Supreme Court has indicated some error/inaccuracy in the Schedule requiring correction, it has not declared Section 163-A as void.

In view of the aforesaid analysis, I am of the view that the appropriate multiplier in the present case should be 15 as has been applied by the learned Tribunal.

14. In the present case, even though learned Tribunal has followed the Second Schedule prescribed in terms of Section 163A of the Act for the purpose of determining the just compensation as provided u/s 168 of the Act, it should not have ignored Clause 3 of Second Schedule which provides payment towards general damages in addition 2003 (Supp.) OLR 595 to compensation outlined in Paragraph-1. According to Clause 3(i), (ii) (iii) of the Second Schedule, the claimants are entitled to get Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium (one of the claimants being the wife of the deceased) and Rs. 2,500/- towards loss of estate.

The Hon''ble Supreme Court, in the case of U.P. State Road Transport Corporation (supra), which was relied on by the Insurance Company, awarded Rs. 25,000/- for deprivation of love, affection and funeral expenses. Since in the present case, the multiplier as provided in the second schedule has been applied by the learned Tribunal, the amount of compensation mentioned in the said schedule towards funeral expenses, loss of consortium and loss of estate is adopted.

It is not disputed that after the accident took place, the deceased underwent treatment initially at Mangalpur P.H.C. and thereafter in S.C.B. Medical College Hospital, Cuttack and some expenses must have been incurred for his treatment. In absence of details, Rs. 5,000/- is estimated by this Court towards medical expenses which the claimants are entitled to get. Thus, in total the claimants are entitled to get Rs. 3,20,500/- towards compensation.

15. Though the learned Counsel for the Appellant(s) argued that interest of 6% per annum as directed by the Tribunal to be paid on awarded amount was low, no supporting material like bank account of relevant period has been produced by him to show that the rate of interest would be more than 6% per annum during the relevant period. Hence, this Court is not inclined to enhance the rate of interest.

16. The learned Tribunal has also come to a categorical finding that the offending vehicle was covered by a valid insurance policy and the driver of the offending vehicle had a valid and effective driving licence at the time of accident. The Insurance Company did not adduce any evidence before the learned Tribunal to the effect that the driver of the offending vehicle did not have a valid and effective driving licence at the time of accident. Before this Court, also no evidence is adduced by the Insurance Company to establish that during the relevant time, the driver of the offending vehicle did not have any valid and effective driving licence. Hence, the Insurance Company is liable to pay the compensation amount with interest to the claimants as indicated above.

17. In view of the above, the claimants are entitled to get a total amount of compensation of Rs. 3,20,500/- (Rupees three lakhs twenty thousand and five hundred) with 6% interest from the date of filing of the claim application before the learned Tribunal, i.e., 24.07.2003 till the date of deposit. The Insurance Company is directed to deposit the compensation amount along with interest, as indicated above, before the learned Tribunal within a period of six weeks from today. Soon after the deposit of the aforesaid amount, the learned Tribunal shall disburse the said enhanced amount in favour of the claimants in the manner as directed in Its order.

18. In the result, the appeal filed by the claimants is allowed in part and the appeal filed by the Insurance Company is dismissed.

There shall be no order as to costs.