
(2011) 08 OHC CK 0035
In the Orissa High Court
Case No : MACA No. 218 of 2003

Manjulata Sahoo and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 170(1)

Citation : (2011) 2 OLR 992 : (2012) 1 TAC 773

Hon'ble Judges : V. Gopala Gowda, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

V. Gopala Gowda, C.J.—This Miscellaneous Appeal against the order dated 25th November, 2002 passed by the Third Motor Accident Claims Tribunal, Puri in M.A.C.T. Misc. Case Nos.29/469 of 1996/1994, is filed by the widow, wife of the deceased and two children who were minor at the time of death of the deceased-father, died in a motor accident on 9.9.1994 at about 11.00 A.M. near Huri Uthani, on National Highway No.5, in between Khurda-Berhampur Road, are before this Court seeking for enhancement of compensation at Rs.14 lakhs with interest, urging various facts and legal grounds.

2. The brief facts are stated for the purpose of appreciating rival legal contentions. The necessary fact is that the Insurance Company has satisfied the awarded compensation amount at Rs.3,42,000/- with interest at the rate of nine percent from the date of claim, i.e., 7.10.1994, as indicated in the order impugned. Therefore, this Court is required to examine:

whether the appellants are entitled for enhanced compensation ?

3. The undisputed fact is that the husband of the first appellant died in a motor vehicle accident on 9.9.1994 and the Tribunal after conducting enquiry recorded finding of fact on contentious issue No.2 with regard to death of the deceased on account of motor accident involving the offending bus bearing number ORX 799.

The same was insured with the insurer herein and, therefore, on the basis of the evidence of P.W.1, and other witnesses examined on behalf of the claimants and the documentary evidence Exts.1 to 4 adduced on their behalf, the Tribunal assessing the loss of dependency of the deceased and other conventional heads, awarded compensation at Rs.3,42,000/- . It is the case of the claimants before the Tribunal that the deceased was maintaining sound health. He was a wholesale dealer of Exide Batteries and supplying the same to various agencies and was running an office. The claimants claimed that the income of the deceased was Rs.10,000/- per month. The Insurance Company has not disputed the vehicle being insured. Therefore, the finding and reasons recorded by the Tribunal on the contentious issue and quantifying the compensation, is challenged by the claimants contending that though there is legal evidence on record to show that the income of the deceased was Rs.10,000/- per month, the same is not accepted by Tribunal which fixed the monthly income at Rs.3,000/- deducting Rs.1,000/- towards his personal expense, taken the contribution to the family at Rs.2,000/- in absence of the calculation sheet for assessment of the profit earned per month and any documentary evidence produced on behalf of the claimants, the same is arrived at pursuant to the find Schedule u/s 163A of the Motor Vehicles Act, 1988. Therefore, the learned counsel for the appellant submits that the approach of the Tribunal is erroneous in absence of rebuttal evidence adduced on behalf of the owner. The defence available to the insured with regard to the quantum, is not available to the insurer as it has not availed the permission u/s 170(1)(b) of the Act. Therefore, the relevant consideration available to the Tribunal should have been to accept the evidence. If it is not Rs.10,000/- it should have taken the maximum annual income at Rs.60,000/- accepting the monthly income at Rs.5,000/- as the claimant has stated that the deceased was supplying Exide Batteries to the various agencies.

4. Mr. Rath, learned counsel for the Insurance Company placing reliance on the decision of the Apex Court in the case of Smt. Sarala Verma and others v. Delhi Transport Corporation and another, 2009 (II) TAC 677 (S. C.) submits that for the purpose of fixing the compensation, application of 16 multiplier would be just and proper, taking into consideration the age of the deceased at 35 years mentioned in the post-mortem report Ext-B-3. Therefore, he submitted that it is not the 17 multiplier as mentioned in the IIInd Schedule. Learned counsel for the Insurance Company sought to justify the compensation awarded by the Tribunal and submitted that the Tribunal is perfectly justified in not appreciating the legal evidence on record and awarded just compensation. Therefore, this Court should not interfere in the appeal for enhancement. The said contention is rejected. If the decision of the Apex Court in the case of Smt. Sarala Verma (supra) is applied to the facts and situation of the present case, the quantification of compensation should be not only he was earning at the time of death but taking into consideration his future earning as he would have lived for 70 years and his income could have gone up, if he would have been in public employment. Applying the same principle, it would be just and reasonable for this Court to

take the annual income at Rs.40,000/- deducting 1/3rd towards family contribution, in the absence of documentary evidence. However, the Tribunal has taken the monthly income at Rs.3,000/-, deducted Rs.1,000/- towards personal expenses and taken Rs.2,000/- towards family contribution and applied multiplier 13 taking the age of the deceased as 35 years, the Tribunal awarded compensation of Rs.3,42,000/- with 9% interest from the date of claim.

5. Learned Member of the Tribunal should have taken Rs.5000/- as monthly income in that case, the annual income would be Rs.60,000/-. After 1/3rd deduction towards personal expenses, the dependency comes to Rs.40,000/-. Application of 16 multiplier would be just and proper in view of the principle laid down by the Apex Court in the case of the Sarala Verma (supra). Criteria required to determine the compensation in case the deceased was in public employment is to keep in view the revision of scale of pay, future promotion etc. The same principle may also be extended to the deceased who was in private employment. Justice would be done to both parties to take the monthly income at Rs.5,000/- in the absence of rebuttal evidence produced either by the insured or the insurer. Therefore, taking Rs.40,000/-, as the dependency after deduction of 1/3rd amount out of Rs.60,000/- annual income and applying the multiplier 16, the compensation would be Rs.6,40,000/- and adding another Rs.50,000/- under conventional heads in view of the principle laid down by the apex Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, in total Rs.6,90,000/- (Rupees six lakhs ninety thousand), would be the actual compensation determined by the Tribunal which had not been done and only awarded inadequate compensation of Rs.3,42,000/-. Therefore, the enhanced compensation amount is Rs.3,48,000/- with interest. It may not be necessary to award 9% interest on the enhanced compensation from the date of application as the Insurance Company has already satisfied the award by depositing compensation with 9% interest. Having regard to the facts and circumstances, it would be just and proper for this Court to award interest on the enhanced compensation, at 6% from 1st January, 2000 till the date of deposit. Though the claimants are entitled to interest on enhanced compensation from the date of application i.e. 7.10.1994, till the date of payment of the same to them.

6. With the above said terms, the impugned award is modified and the appeal is allowed in part. The Insurance Company is directed either to deposit or to pay the enhanced compensation to the claimants. Out of the amount that will be deposited on the enhanced compensation including interest, 50% shall be equally apportioned among the three claimants and remaining 50% of the enhanced amount including interest shall be deposited in each one of the claimants in any one of the nationalised banks of the choice of the claimants for a period of five years. The interest that may be earned, on such deposited compensation amount can be utilised for the welfare of the children and also for development of the family. If for any other purpose, such as education of the children and developmental purpose of the family, the deposit is required to be withdrawn,

necessary permission may be obtained from the Tribunal by them.

The appeal is partly allowed in the above terms. Office is directed to draw up the award accordingly.