

(2010) 05 PAT CK 0004
In the Patna High Court
Case No : M.A. No. 7 of 2008

Manorma Devi and Others

APPELLANT

Vs

New India Assurance Company and Another

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0004

Judgement

Mungeshwar Sahoo, J.—Heard the learned Counsel for the Appellants and the learned Counsel for the Respondent, New India Assurance Company.

2. This appeal has been filed by the claimants Appellants for enhancement of the claim against the judgment dated 15.11.2007 passed by Sri Umesh Chandra Mishra, Additional District and Sessions Judge, Fast Track Court No. 5-cum-Motor Vehicle Accident Claim Tribunal, Rohtas at Sasaram, in Motor Vehicle Claim Case No. 25 of 2004.

3. It appears that the claimants Appellants filed the aforesaid claim case praying for compensation to the extent of Rs. 16,00,000/- because of death of Birendra Kumar Singh in motor accident. The widow and the children are the Appellants before this Court. Originally the mother Jamuni Devi was also claimant who died.

4. The claimants alleged that the deceased Birendra Kumar Singh was Hawaldar in Bihar Regiment Centre, Danapur and was drawing a sum of Rs. 9,200/- per month. He was aged about 40 years. It is further alleged that on the date of the occurrence when he was waiting near Thana more of Nasri Ganj Bye Pass at about 2 P.M. one L.P. Gas Tanker No. ASO-1-B 4657 which was being driven rashly and negligently dashed Birendra Kumar Singh, who died because of accident.

5. The Respondent No. 1, New India Assurance Company Ltd. filed the written statement and contested the case. In the W.S. the Assurance Company admitted that the tanker in question was insured with it.

6. After trial the learned Tribunal considering the evidence and materials

available on record passed impugned judgment and award awarding compensation to the extent of Rs. 3,39,500/-.

7. The learned Counsel for the Appellant submitted that the learned court below has wrongly taken into account the age of the mother claimant who was aged about 80 years on the date of accident and on the basis of her age multiplier of 5 has been applied. According to the learned Counsel the learned court below should have considered the age of the other claimants who are the Appellants being the widow and children of the deceased. The learned Counsel further submitted that had the mother been only the claimant then in such circumstance the Tribunal was right in considering her age.

8. According to the learned Counsel the deceased was not maintaining only his mother but the Appellants were also dependents on him and because of his death the Appellants were deprived of from their dependency. The learned Counsel for the Appellants further submitted that the learned Tribunal has wrongly applied Schedule-II in this case because of the fact that it is only a guideline and is applicable only in case of an application u/s 163A of the M.V. Act.

9. On the other hand, the learned Counsel for the Respondent Assurance Company submitted that no doubt Schedule-II is only a guideline but it is the best method for calculation of the compensation and by using that guideline although it is not compulsory the. Hon"ble Supreme Court and various Hon"ble High Courts had decided and are deciding the just compensation on the basis of Schedule-II of the M.V. Act and, therefore, the learned Tribunal has rightly used the guideline here. The learned Counsel further submitted that since the mother was 80 years old, therefore, the learned Tribunal has rightly taken into account her age and has rightly applied multiplier of 5.

10. From perusal of the impugned judgment it appears that the learned Tribunal after deducting 1/3rd for the deceased calculated the monthly dependency of Rs. 5,500/-. There is no grievance to this finding. However, it appears that the learned Tribunal while calculating the compensation has taken into account the age of the mother who was 80 years old and who died before filing of the appeal. Therefore, it cannot be said that the compensation claim was for the deceased only. It cannot be also said that the Appellants are not entitled for compensation. It is not disputed that the Appellants are the legal heirs of the deceased. It is also not disputed that they are being deprived of the monthly dependency because of the death of Hawaldar.

11. In view of the above facts and circumstances of the case, in my opinion the learned court below should have taken into account the age of the deceased while calculating the compensation. It is the case of the claimant that the deceased was aged about 40 years. There is no contrary evidence regarding the age of the deceased.

12. In a decision reported in *The Managing Director, TNSTC v. Sripriya and Ors.* 2007(2) PLR 101 the Hon"ble Supreme Court has held that the choice of the

multiplier is determined by the age of the deceased or of the claimant whichever is higher and by the calculation as to what capital sum invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. It appears that in that case also the Hon''ble Supreme Court used the multiplier to be 12. In a Division Bench decision of this Court reported in Mostt. Meena Devi and Others Vs. The United India Insurance Co. Ltd. and Others, this Court has held that multiplier depends upon the facts of the case and no hard and fixed formula can be laid down with regard to the application of the multiplier. However, the relevant considerations are the age of the deceased and income available to the family on the deposit of the amount of compensation. In that case also the deceased was aged about 31 years and the Tribunal applied a multiplier of 17. The Hon''ble Single Judge reduced the multiplier to be 10. The Hon''ble Division Bench found that the learned Single Judge has rightly come to the conclusion that multiplier of 10 is sufficient. The same view has been taken by the Hon''ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, The learned Counsel for the Respondent submitted that in both the decisions it is held by the Hon''ble Supreme Court that the age of the deceased or the claimants whichever is higher should be considered, and, therefore, there is no illegality in the impugned order. It appears that in all those cases either the parents were the only applicant or the widow or the children were the only applicants but in the instant case the widow and the children alongwith the old mother of the deceased who was aged about 80 years were applicants. In my view, therefore, in such circumstances it cannot be said that the tribunal should take into consideration the age of the oldest claimant particularly when the widow and the children are also claimants.

13. In another Division Bench decision of this Court reported in Sohaila Bano v. Oriental Insurance Co. 2009 (3) PLR 279 it has been held that if accident occurs after Schedule-I came into force compensation payable for such accident shall be calculated in the manner as specified in Schedule. Therefore, there are catena of decisions of this Court as well as various other High Courts and also of the Hon''ble Supreme Court holding that multiplier method is the best method for calculating a just compensation and now a days Schedule-II is being applied universally in each and every case.

14. In view of the above discussions I find that this is a fit case where the learned Tribunal should have taken into account the age of the deceased who was aged about 40 years. Therefore, in my opinion, considering the payment of lump sum amount and uncertainty of life if multiplier of 10 is used it will be sufficient and a just compensation will be arrived at. Now, therefore, on calculation it comes to $5500 \times 12 \times 10 = \text{Rs. } 6,60,000/-$. The learned Tribunal has added Rs. 2,000/- as cost of cremation, Rs. 2,500/- as loss because of the death and/ loss of consortium of Rs. 5000/-. Therefore, the total compensation comes to $\text{Rs. } 6,60,000 + 9,500 = \text{Rs. } 6,69,500/-$. In my opinion, this is just compensation in the present case and the claimants are entitled to the said

compensation from the Insurance Company Respondent No. 1 with interest as awarded by the learned Tribunal. The other direction of the learned Tribunal is upheld.

15. In the result, this Misc. Appeal is allowed in part and the compensation is enhanced as indicated above and, accordingly, the judgment and Award is modified to that extent.