
(2006) 07 GAU CK 0060
In the Gauhati High Court

Mira Boro

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2006) 3 GLR 856

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—This appeal, made u/s 173 of the Motor Vehicles Act, 1988 ("the MV Act"), is directed against the award, dated 12.3.2004, passed, in MAC Case No. 257/2002, whereby the learned Motor Accident Claims Tribunal, Kamrup, Guwahati, has held the claimant-appellant entitled, in all, to a sum of Rs. 5,22,000.00, as compensation with interest at the rate of 9 per cent per annum from the date of filing of the claim petition.

2. I have heard Mr. P.C. Dey, learned Counsel for the claimant-appellant, and Mr. A. Ahmed, learned Counsel, appearing on behalf of the insurer-respondent.

3. The case of the claimant-appellant is, in brief, thus : On 20.9.2001, while the claimant's son, Niranjana Boro alias Moon (since deceased), accompanied by Dipjyoti Mahanta and Horen Choudhury, was proceeding in a Maruti Gypsy, bearing registration No. AS-01-A-2900, driven by Dipjyoti Mahanta, from Gauhati Medical College compound to Jorabat, the said vehicle, due to rash and negligently driven by the said driver, hit, at 9th Mile, a loaded trailer, bearing registration No. NL-01-A-6570, which was lying parked by the side of the road. As a result of the said collision, both Niranjana Boro and Horen Choudhury sustained grievous injuries and died on the spot. At the time of his death, the claimant's son was aged about 29 years, he was a businessman, an Income Tax assessee and used to earn Rs. 8,000 per month.

4. It is in the backdrop of the above facts that the present appeal needs to be considered, for, the only grievance of the claimant-appellant, in the present appeal, is that the quantum of compensation determined by the learned Tribunal was incorrect, illegal and unjust.

5. Before I come to the merit of the present appeal, what needs to be noted is that Section 168 of the MV Act, 1988, mandates, the Claims Tribunals to determine the amount of compensation, which appears to the Tribunal to be "just". In other words, what a Claims Tribunal is required to determine is the amount, which appears to it to be "just" as compensation. An appeal is nothing, but an extension of original proceedings. While deciding the present appeal, this Court, sitting as an appellate court, is as much bound by the mandate of Section 168 as are the Claims Tribunals. It, therefore, becomes the bounden duty of this Court to determine, in the present case, as to what amount or amounts ought to have been determined as the just amount of compensation for the claimant appellant.

6. Coupled with the above, what also needs to be noted is that when an unmarried man dies and the claimants are parents, the multiplier, which is lower, will be adopted. That is to say, depending upon the age of the parents, multiplier will be determined and not on the basis of the age of the deceased unmarried son. Reference may be made, in this regard, to Swaranlata Das and Ors. reported in 1993 Supp (2) SCC 743.

7. Turning to the case at hand, it needs to be noted that since the age of the claimant, as the mother of the said deceased, was 50 years, the appropriate multiplier for persons aged 50 years, even in terms of the Second Schedule, would be 11. Since the learned Tribunal has used 8 as the multiplier, it is clear that the multiplier, so used by the learned Tribunal, was inadequate and needs to be corrected by adopting 11 as the multiplier.

8. It may also be noted that in the present case, the learned Tribunal has made standard deduction of one-third from the total income of the deceased. While considering this aspect of the matter, it needs to be noted that legally speaking, when the deceased is unmarried and the claimants are parents, the deduction shall be two-third from the total income of the deceased, the reason being that on his marriage, the deceased would have raised his own family and the quantum of his contribution to his parents would have automatically got reduced ; but when the deceased is married, then, the standard deduction, as personal expenses of the deceased, shall be one-third. See Donat Louis Machado and Others Vs. L. Ravindra and Others,

9. In the case at hand, the said deceased was, admittedly, unmarried at the time of the accident. If the deceased had married and had remained alive, he would have raised his own family and would require a part of his earning to raise and maintain his own family and he would also require some amount of money as personal expenses. The learned Tribunal ought to have, therefore, deducted two-

third of the total income of the deceased for the purpose of determining as to what amount of money would have come into the hands of the claimant-appellant as mother of the said deceased, had the deceased remained alive. The learned Tribunal, however, deducted merely one-third amount of the total income of the deceased for the purpose of determining the quantum of compensation. At the same time, the learned Tribunal did not take note of the fact that the deceased was a young man having business and even at the age of 29 years, his monthly income was above Rs. 8,000.00. The income of the deceased would have, therefore, increased and the learned Tribunal ought to have taken, at least, Rs. 10,000.00 as monthly income of the deceased for the purpose of determining the compensation.

10. What, thus, crystallizes from the above discussion is that the annual income of the deceased ought to have been treated at the rate of Rs. 1,20,000 per annum. Out of this amount of Rs. 1,20,000, two-third income ought to have been deducted as indicated hereinbefore. With the deduction, so made, the amount receivable by the claimant-appellant would have been Rs. 40,000.00 per annum. As the mother of the deceased was, at the relevant point of time, aged about 50 years, the learned Tribunal ought to have adopted 11 as the multiplier in place of 8. When 11 is adopted as the multiplier, loss of dependency of the mother comes to the tune of Rs. 4,40,000. As against this amount, which was payable to the claimant-appellant, as the loss of the dependency, the learned Tribunal has already awarded Rs. 5,11,968.

11. From what have been discussed and pointed out above, it is abundantly clear that the quantum of compensation awarded as loss of dependency of the claimant-appellant is far more than what ought to have been awarded. In such circumstances, the compensation of Rs. 5,11,968, which the learned Tribunal has determined as payable to the claimant-appellant is incorrect, illegal and unjust. Though the claimant-appellant already received, in terms of the impugned award, more, than what ought to have been determined as "just" compensation in terms of Section 168 of the MV Act, I do not interfere with the compensation so awarded to the claimant-appellant, for, the insurer-respondent has not preferred any appeal in this regard.

12. Because of what have been discussed and pointed out above, this appeal has no merit and the same shall accordingly stand dismissed.

13. No order as to costs.

14. Send back the LCRs.