
(2001) 01 JH CK 0044

In the Jharkhand High Court

Case No : M.A. No's. 200, 201 and 202 of 1999 (R)

Most. Suga Bibi and Others, Most. Sarifan Khatoon and
Others with Most. Jamila Khatoon and Others

APPELLANT

Vs

Nirmal Singh and Others

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173
Penal Code, 1860 (IPC) — Section 304

Citation : (2002) 0 ACJ 1275

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Mahesh Tiwari and Md. S. Akhtar, for the Appellant; Ananda Sen, for the Respondent

Judgement

Gurusharan Sharma, J.—Heard the parties. In a motor accident dated 18.2.1995 Asgar Ali, Riyazuddin Ansari and Kur-ban Ali lost their lives. Their dependents preferred three, different claim cases, being 69, 70 and 71 of 1995 u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), which were heard together and were disposed of by a common judgment dated 19.9.1998. However, three awards were prepared, and therefore, the present three appeals have been preferred, u/s 173 of the said Act. These three appeals have been heard together and are being disposed of by common order..

2. Admittedly the aforesaid three deceased-persons were passengers on a Maxi-Taxi (BR-20P 1045), which turned down, as a result of which, the aforesaid passengers were severally injured and ultimately died. In respect of the said accident, Nirsa P.S. Case No. 35 of 1995 u/s 304A of the Indian Penal Code was registered. It was established in the claim cases, in question that; accident took place on account of negligence of driver of Maxi-Taxi and the aforesaid three persons died therein. Driver was possessing valid driving licence and the vehicle being insured, the Insurance Company, hamely, M/s. United India Insurance Company Ltd., Dhanbad, was liable to indemnify the liability of the owner of the

vehicle in question. Claimants of Claim Case No. 69 of 1995 claimed compensation of Rs. 1,50,000/- whereas claimants of Claim Case No. 70 of 1995 claimed Rs. 2,50,000/- and claimants of Claim Case No. 71 of 1995 claimed Rs. 3,00,000/-- On the basis of materials on record. Tribunal came to conclusion that Asgar Ali was 55 years old and was employed in Eastern Coalfields Limited and was earning Rs. 3,475/- per month. Annual dependency was, therefore, assessed at Rs. 41,700/- and after deducting 1/3rd thereof towards personal expenses of the deceased and applying 11 multiplier, total amount of compensation was assessed at Rs. 3,05,800/-- Riyazud-din Ansari was 52 years old and he was also employed in Eastern Coalfields Limited and was earning Rs. 3,400/- per month. Annual dependency was, therefore, assessed at Rs. 40,800/- and after deducting 1/3rd towards his personal expenses and applying 11 multiplier, total amount of compensation was assessed at Rs. 2,99,200/-. In the case of Kurban Ali, it was found that he was 54 years old and was working in Government Block Development Office and was earning Rs. 5, 580/- per month. Hence, annual dependency was assessed at Rs-65,960/- and after deducting 1/3rd towards personal expenses of the deceased and applying 11 multiplier, total amount of compensation was assessed at Rs. 4,77,000/-. Since the claimants aforesaid, have made claim respectively of Rs. 1,50,000/-, 2,50,000/- and 3,00,000/- only as compensation, Tribunal awarded the aforesaid sum. Appellants' grievance in these appeals is that they should have been awarded adequate compensation according to the provisions of the Act, and it could not have been made limited to the amount of compensation asked for. So, the Tribunal committed error in law in not awarding the amount of compensation, as assessed by it, in accordance with law.

3. Mr. Akhtar, counsel for claimants-appellants submitted that power or jurisdiction of the Tribunal to award just compensation, includes the power to award amount of compensation higher than the amount claimed by the claimant in the claim petition. It was contended that it is duty of the Claims Tribunal, to pass an award for compensation which appears to be just and, therefore, claim advanced by the claimants, in their claim petitions would not preclude the Tribunal from passing an award of higher amount of compensation; though not claimed by the claimants. Mr. Ananda Sen, counsel for respondent No. 2, on the other hand, submitted that claims for their own reasons limited usually claim to particular amount. It was for them to estimate amount that they wanted to recover from the defendants. It is true that they could have only estimated the amount of compensation, but then it was open to them to amend the claim petition at any point of time, they sought to enlarge their claim.

4. In Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another, , the Apex Court on calculation of total amount of compensation, according to law, came to conclusion that claimants were entitled to 1.40 lakhs, but since the claim was limited to one lakh, it was held that claimants were entitled to got only one lakh as compensation. In this regard reference may also be made to a recent Full Bench decision of Gujarat High

Court in Dr. Urmila J. Sangani v. Pragibhai Mohartlal Luvana and Ors. AIR 2000. Guj 211, wherein it was held that decision of Tribunal must be confined to question raised by the parties and it can not travel beyond the pleadings. If power or jurisdiction to award higher amount of compensation, though not claimed by the claimants is read, it is likely to result into startling results. Therefore, it would not be correct to say that Tribunal has power or jurisdiction for granting higher amount of compensation, though not claimed by the claimants- When the claimant feels that he is entitled to more compensation, then what is claimed in the petition, it is always open to him/her to amend the claim petition and if the same is in consonance with equity, justice and good conscience, there is no reason why the Claims Tribunal should not grant amendment. Thus, it is always open to the claimant to move an amendment application claiming higher compensation and if it is granted, defendants can be permitted to adduce evidence in support of their case, after which higher compensation can always be awarded to the claimant. The Full Bench accordingly, held that u/s 166 read with Section 168 of the Motor Vehicles Act, 1988, it was not open to Claims Tribunal to award the amount of compensation higher than the amount claimed by the claimants in the claim petition on the ground that the Tribunal has jurisdiction to award just compensation.

5. In the aforesaid circumstance, I find no reason to interfere with the impugned judgment and award. On the total amount of compensation payable to claimants, Tribunal granted interest @ 12% per annum from the date of award till payment, which in my opinion, was not justified. Claimants are entitled to get interest at the said rate from the date of filing of the claim application till realisation of the total compensation amount.

6. These three appeals are, accordingly, disposed of with aforesaid modification of the period for which interest was payable to the claimants.

7. Appeals disposed of accordingly.