(2018) 01 GAU CK 0008

In the Gauhati High Court

Case No : 2827 of 2017

MST REHENA BEGUM and ORS — APPELLANT

Vs

M/S UNITED INDIA INSURANCE CO. LTD — RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:
Motor Vehicles Act, 1988, Section 166, Section 166 - Application for compensation

Citation : (2018) 01 GAU CK 0008

Hon'ble Judges : Kalyan Rai Surana

Bench : Single Bench

Advocate : D MONDAL, A AHMED, A MONDAL, AZAD AHMED, I U CHOWDHURYR

Final Decision : Allowed

Judgement

1. Heard Mr. A. Ahmed, learned counsel for the appellant as well as Mr. A. Mondol, the learned Counsel for the respondents No.1, 2 and

3/claimants and Mr. Azad Ahmed, learned counsel for the respondents No.4 & 5 (i.e. mother and father of the deceased/claimants No.4 & 5).

None appears on call for the respondents No.6 & 7 although notices have been duly served on them. With the consent of the learned counsel for

both the parties, the appeal has been heard on merit.

2. The brief facts of the case is that on 01.11.2010 while a Maruti Car bearing Registration No.AS-01-H/2771 was proceeding from Lanka to

Nagaon in a rash and negligent manner, late Abdus Subur @ Talukdar was hit from behind by the said car. He was taken to the hospital

immediately. However, he succumbed to his injuries on 03.11.2010. Claiming compensation of Rs.25 Lakh, an application under Section 166 of

Motor Vehicles Act, 1988 was filed which was registered as MAC Case

No.2215/2010.

3. Six PWs were examined by the respondents No.1, 2 and 3 i.e. the claimants'' side. The learned Tribunal accepted that the deceased was aged

about 42 years and his monthly salary was Rs.17,214/- and net salary was Rs.16,106/- and deducting 1/4 of his income on account of personal

expenses, the claimants No.1 to 4 were held entitled to loss of dependency of Rs.12,080/- and addition of 30% was made towards future

prospects and thus, the actual dependency was held to be Rs.16,911/-. The applicable multiplier of 14 was adopted and the compensation was

assessed as under:

i) Loss of dependency (Rs.2,02,932 x 14) :Rs.28,41,048/-

ii) Funeral expenses : Rs.25,000/-

iii)Loss of consortium : Rs.50,000/-

iv)Loss of love and affection : Rs.50,000/-

v) Loss of estate : Rs.3,000/-

vi)Misc. expenses : Rs.5,000/-

Total : Rs.29,74,048/-

The aforesaid sum was awarded inclusive of ""no fault liability"" with interest of 6% per annum from the date of filing of the claim case till payment.

4. The learned counsels appearing for both the parties are unison in their submissions that the judgment and award was vitiated on account of non-

deduction of 1/4 of such income on account of personal expenses from the sum quantified for future prospects. As per the learned counsels, the

deduction may be computed as follows:

Rs.4832 X 12 X 14 / 4 = Rs.2,02,944/-

Both the parties have submitted that the said sum is required to be deducted from the award passed by the learned Tribunal. It is submitted that

this was one of the ground for challenge of the impugned award in this appeal. The other ground of appeal is that there was no post-mortem of the

deceased. In this connection, the learned counsels for both sides have referred to the case of Ramathan and other Vs. Managing Director, Cheran

Transport Corporation, Coimbatore, (2003) 10 SCC 53, to project that it was the duty of the opposite parties in the claim petition to bring on record that there was no linkage between the accident and death. In the present case, as the accident had occurred on 01.11.2010 and the victim

expired on 03.11.2010, there is definitely gap in linkage between the accident and the death.

5. In that view of the matter, there is no other controversy to be decided in the connected appeal. In this appeal, the only point which survives for

decision is whether award was correctly computed by the learned Tribunal. In this connection, as already stated above, there is no dispute at the

Bar that the learned Tribunal did not deduct of the future prospect towards personal expenses of the deceased. Such deduction comes to

Rs.2,02,944/-, which is required to be deducted from the awarded sum.

6. Accordingly, this Court is of the considered opinion that the learned Tribunal had erred on facts and in law for not deducting the aforesaid

amount quantified at Rs.2,02,944/- on account of deduction for personal expenses as indicated above. The learned counsel appearing for the

respondents No.1 to 3 have no objection, rather, they both admit that the said deduction may be permitted and the appeal may be allowed to that

extent.

7. In view of the said concession of the learned counsels appearing for the respondents No.1 to 4 and the appellant, this Court is of the considered

opinion that in the present case in hand, as the deceased had left behind the dependents, a deduction of onefourth of his income was required to be

deducted on account of personal expenses, as such, the appeal stands allowed by ordering deduction of Rs.2,02,944/- from the amount of

Rs.28,41,048/- as awarded by the learned Tribunal.

8. In view of the decision of the Constitution Bench of the Hon''ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay

Sethi, 2017 SCC Online SC 127 0, the compensation on account of funeral expenses, loss of consortium, loss of love and affection and loss of

estate and miscellaneous expenses, which was awarded to the extent to Rs.1,33,000/- is scaled down to Rs.70,000/- as per the ratio laid down in

the case of Pranay Sethi (supra), being funeral expenses as Rs.15,000/-, loss of consortium as Rs.40,000/- and loss of estate as Rs.15,000/-.

Therefore, a further sum of Rs.70,000/- is deducted from the compensation amount. Therefore, the revised compensation is now stood as follows:

i) Loss of dependency

(a) Monthly income = Rs.16,106/-

(b) Add: 30% on account of further prospect = Rs.4,832/-

(c) Total (a+b): = Rs.20,936/-

(d) Less: 1/4 income for personal expenses = Rs.5,235/-

(e) Total (c-d) = Rs.15,703/-

(f) Loss of dependency:(monthly income X 12 months X multiplier)=(Rs.15,703

=Rs.26,38,104/-

X 12 X 14)

ii) Funeral expenses =Rs.15,000/-

iii) Loss of consortium =Rs.40,000/-

iv) Loss of estate =Rs.15,000/-

=Rs.27,08,104/-

v) Total (i + ii + iii + iv) (Rupees twenty seven lakh eight thousand one hundred and

four only).

9. The respondents No. 1, 2, 3 & 4 shall now be entitled to the aforesaid reassessed compensation of Rs.27,08,104/- inclusive of ""no fault

liability"" with interest of 6% per annum from the date of filing of the claim petition till payment. The appellant i.e. the United India Insurance

Company Limited is directed to deposit the aforesaid compensation amount in favour of the he respondents/ claimants before the Registry of this

Court within a period of 6 (six) weeks from today.

10. In terms of the direction issued by the learned Tribunal, the amount of compensation shall be paid equally to all the respondents No.1 to 4. Out

of the said entitlement, a sum of Rs.3 Lakh each may be kept in a Fixed Deposit scheme in a nationalized bank for a term of 3 years in respect of

respondents No.1 to 3 only. It is stated that the respondents No.4 & 5 i.e. the parents of the deceased are residing separately from the

respondents No.1, 2 and 3. The respondent No.5 is stated to be about 80 years. Hence, the term of Fixed Deposit for the respondent No.4 shall

be made for a period of 1 (one) year only at a bank where banking is convenient for the said respondent.

11. The Registry may permit the respondents No.1 to 4 to withdraw the balance amount in equal proposition on being duly identified by their

respective counsels. On satisfaction of the award, the statutory deposit deposited by the appellant, if any, shall be refunded to the appellant. The

part of the award, if any, deposited earlier by the appellant shall also be adjusted.

12. With the above terms, the appeal stands allowed. The award stands modified to the extent as indicated above.

13. Send back the LCR.

