

(2006) 03 GAU CK 0007

In the Gauhati High Court

Case No : F.A. No. 152 of 1998, F.A. (Cross-objection) No. 219 of 1998 and
Cross Objection No. 01 of 1999

National Insurance Co. Ltd. and Others

APPELLANT

Vs

Sita Debnath and Others

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(1), 149(2), 163A, 166, 170

Citation : (2006) 2 GLT 84

Hon'ble Judges : T. Vaiphei, J;A.B. Pal, J

Bench : Division Bench

Advocate : K. Bhattacharjee, for the Appellant; K.N. Bhattacharjee, R. Debnath,
S. Deb and B. Debnath, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—The correctness and legality of the judgment and award dated 26.6.1998 passed by learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S. (MAC) 213 of 1996 have been called in question in the above three appeals. We, therefore, propose to dispose of them by a common judgment. While the National Insurance Company Ltd. (for short "insurance company") being insurer of the offending vehicle has put under challenge the judgment and award, the wife and two children of the deceased Samir Debnath have sought enhancement of the award of Rs. 2,67,000/-. Similar prayer for enhancement has been preferred by legal heirs of the mother of the deceased. Thus, the three appeals have fallen for four consideration.

2. A short survey of the pleaded case would show that on 1.4.1996 at about 10.10.30 A.M. deceased Samir Debnath was proceeding towards Bishalgarh on foot when he was dashed down by a jeep bearing the registration No. TR-01-2111. With severe injuries sustained, he was at once shifted to the G.B. Hospital, Agartala where he breathed his last on the same day leaving behind his mother, widow and a daughter. A son was born during pendency of the

proceeding instituted by the legal heirs and dependants before the learned tribunal claiming Rs. 6,51,000/- as compensation.

3. The owner and driver of the said vehicle and its insurer as well pleaded that there was no negligence on the part of the driver of the jeep and on that ground alone they claimed that the claim of compensation made by the claimants dependants was not legally sustainable.

4. The learned tribunal after due consideration of the respective pleadings of the rival parties framed following four issues:

(1) Whether Samir Debnath died in a motor accident on 1.4.96 at about 10.30 a.m. near Sipahijala gate on Agartala Bisramganj Road?

(2) Whether said accident occurred due to rash and negligent driving of the driver of vehicle No. TR-01-2111 (Jeep)?

(3) If so what should be the amount of compensation?

(4) Who will be liable to pay compensation to the claimant Petitioners?

5. The claimant wife of the deceased before the learned tribunal examined herself as P.W. 1 in support of her claim that at the time of death in the said motor accident, her husband was aged 28 years and earning Rs. 2,000/- per month. She examined another witness Shri Manik Ch. Debnath (P.W. 2), who stated that the deceased was on his foot on Bishalgarh-Agartala Road. He witnessed a scooter moving along the said road and when it reached near the deceased in front of Sepoyjala Forest Gate, the offending vehicle TR-01-2111 suddenly and violently dashed against the said scooter and the deceased. According to him, the accident had taken place due to rash and negligent driving of the driver of the said jeep. That apart, copies of the final report, post mortem report and some other relevant documents were adduced from the claimants' side. The owner, driver or the insurer of the jeep, however, adduced no evidence. These being the materials, the learned tribunal after carefully analyzing the same came to hold that the accident had taken place due to negligent driving on the part of the driver of the jeep in which deceased Samir Debnath sustained fatal injuries causing his death on the same day.

6. The first two issues having decided thus, the learned tribunal proceeded to decide the quantum of compensation, which the claimants were entitled to get. The monthly income of the deceased was stated to be Rs. 2,000/- by his wife and the said claim was not under challenge. The learned tribunal deducted Rs. 800/- therefrom on account of personal expenditure of the deceased in order to work out the loss of estate arising from the death of the deceased. Multiplying Rs. 1200/- by 12, the annual loss of estate was determined to be the multiplicand with which 18 was chosen to be the multiplier to quantify the amount of compensation at Rs. 2,60,000/-. Another amount of Rs. 5,000/- on account of loss of consortium and Rs. 2,000/- as funeral expenses were added to make the final amount of compensation at Rs. 2,67,000/-. Learned Tribunal directed that

the amount would carry interest @12% per annum payable from 15.5.1996 when the claim petition was presented. From that amount, Rs. 50,000/-, which was paid in the interim was deducted and the rest amount of Rs. 2,17,000/- was apportioned among the legal heirs comprising the mother, wife, daughter and son of the deceased.

7. The insurance company has put under challenge the judgment and award on the ground that the learned Tribunal did not consider the statement contained in the final report submitted by the police after investigation of the case that in the said accident the offending vehicle had dashed the scooter in which deceased Samir Debnath was a pillion rider. The further contention in the memo of appeal of the insurer is that one Keshab Bhowmik, who had lodged the First Information Report (for short "FIR") was not examined by the claimants, whose deposition would have certainly brought out the factual position that the said jeep was not at fault for the accident. The learned Counsel for the Appellant insurer though made strenuous effort to show infirmities in the impugned judgment, he failed to convince this Court how the grounds taken in the memo of appeal fall within the permissible limits provided in Section 149(2) of the Motor Vehicles Act, 1988 (for short "Act"). It is no longer *res in*(sic) that in an appeal by the insurer the challenge to a judgment and award must be limited to the grounds enumerated in Section 149(2) of the Act, which provides as follows:

149(2) No sum shall be payable by an insurer under Sub-section (1) in respect of an judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court, or as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle:

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(I) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(III) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

8. Upon a careful perusal of the grounds taken in the memo of appeal of the insurer and considering the fact that there is nothing to show that the insurer had taken permission u/s 170 of the Act to contest the claim or file the appeal on grounds other than those available u/s 149(2) of the Act, we are of the considered view that the appeal of the insurer being not in terms of the aforesaid provision is not legally sustainable and, therefore, it deserves no consideration.

9. In the other two appeals, which are in the form of cross-objections, the Appellants being the legal heirs of the deceased made a claim for enhancement of the amount of compensation. Learned Counsel for the Appellants (cross-objectors) has pointed out that the learned Tribunal did not consider the prospect of advancement in the future career of the deceased while estimating the loss of dependency as it would be apparent from a plain reading of the impugned judgment that the untimely death of the deceased at the age of only 30 missed from consideration. A liberal and careful view should have been taken by the learned Tribunal for making a reasonable estimate that if the deceased could live the normal span of life, he would have certainly in a position to contribute more to his dependents. That apart, deduction of Rs. 800/- being more than one-third of the monthly income of Rs. 2,000/- made by the learned Tribunal is unreasonable as in no way one-third of that amount would come to more than Rs. 650/-. The other submission advanced in support of enhancement is that after the ratio laid down by the Supreme Court in *Lata Wadhwa v. State of Bihar*, reported in (2001) 2 SCC 176, the learned Tribunal should have awarded a conventional amount of Rs. 50,000/-.

10. Controverting the above submissions in support of enhancement of the amount of compensation, learned Counsel for the insurer asserted that unless it is proved that the deceased had stable income, the prospect of advancement in future career of the deceased cannot be a factor in determining the just amount of compensation. As the claimants before the learned Tribunal failed to show by adducing convincing materials that the deceased had stability in the source of his income, the claim now put forward for additional amount of compensation on the ground of prospect of advancement in future career is totally misplaced.

11. The question relating to additional amount of compensation on the ground of prospect of advancement in future career has been adverted to by the Apex Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, In that case, the deceased was 39 years of age and his income was Rs. 1032/- per month. As he had a stable job it was held that while determining the loss of dependency the prospect of advancement

in the future career should form a distinct head. The relevant observations and conclusions of the Apex Court in para 19 of the judgment are gainfully quoted below:

19. In the present case the deceased was 39 years of age. His Income was Rs. 1032 per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the change of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs. 1032 per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making higher a estimate of monthly income at Rs. 2000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was Spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of dependency should capitalize with the appropriate multiplier. In the present case we can take about Rs. 1400 per month or Rs. 17,000 per year as the loss of dependency and if capitalized on a multiplier of 12, which is appropriate to the age of the deceased, the compensation would work out to (Rs. 17,000x 12=Rs. 2,03,000) to which is added the usual award for loss of consortium and loss of the estate each in the conventional sum of Rs. 15,000.

12. The difficulty in applying the above ratio in the case on hand is that the claimants legal heirs of the deceased failed to produce any documentary evidence to prove the claim that the deceased had a stable income at the time of his death. Nowhere P.W.1 stated in her deposition what was the source of income of her husband, particularly whether he had a job of permanent nature under any Govt. or non Govt. organization. Considering uncertainties in life and career and in the absence of any materials of stable source of income, we are not in a position to take a view that the learned Tribunal committed any error by not granting an additional amount of compensation on a separate head such as prospect of advancement in future career. We are, therefore, unable to accept the submission of learned Counsel for the cross-objectors on this count.

13. The question of granting conventional amount has also prominently figured in the submission of the learned Counsel for the cross-objectors, particularly

deriving support from *Lata Wadhwa* (supra). It is true that the conventional amount cannot be a static one as the same is bound to vary depending on factual situations of each case. A perusal of the impugned judgment would go to show that the learned Tribunal awarded Rs. 5,000/- for loss of consortium and Rs. 2,000/- as funeral expenses as provided in the second schedule framed u/s 163-A of the Act. The fact that the present application was u/s 166 of Act, it was not a strict requirement of law for the learned Tribunal to stick to the amount provided in the second schedule. More so, the fall in the value of rupee has to be taken note of as otherwise even the amount fixed in that schedule would stand eroded.

14. As we have noticed above, the learned Tribunal has made a deduction of more than one-third of the monthly loss of dependency, which is not in terms of the ratio laid down in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, and has not taken into consideration the erosion of the money value in determining the loss of consortium. Without going into arithmetical details, we are of the considered view that an additional amount of Rs. 45,000/- (Rupees forty five thousand) only on all the above counts would meet the ends of justice. The said amount shall bear an interest @6% per annum if not paid within a period of three months from the date of this judgment and order.

15. In view of the decision taken above, we dismiss the appeal of the insurer and allow the cross-objections of the claimants cross-objectors to the above extent. In other words, the wife and two children of the deceased shall be entitled to the additional amount of Rs. 45,000/-, which shall be equally apportioned by them. As the mother of the deceased has already expired, it is made clear that her legal heirs other than the wife and children of the deceased Samir Debnath shall not be entitled to any share of the enhanced amount of compensation.

Having regard to the facts and circumstances of the case, there shall be no order as to cost.