

(2002) 09 CAL CK 0003
In the Calcutta High Court
Case No : F.M.A. No. 213 of 2001

National Insurance Co. Ltd.	Vs	APPELLANT
Dwijesh Kumar Dutta and Others		RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2003) 2 ACC 478 : (2003) ACJ 778

Hon'ble Judges : Rajendra Nath Sinha, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Kamal Krishna Das, for the Appellant; Krishanu Banik, for the Respondent

Final Decision : Allowed

Judgement

A. Chakrabarti and R.N. Sinha, JJ.—This appeal was filed against a judgment and decree passed by the Motor Accidents Claims Tribunal allowing an application u/s 166 of Motor Vehicles Act.

2. The claim application was filed for compensation as the victim being the son of the petitioner while driving a Maruti car was hit by a private taxi coming at a very high speed in a rash and negligent manner and as a consequence of such accident the victim sustained severe injury and, therefore, removed to the hospital where he expired soon after his admission.

3. The Tribunal came to a finding that the accident occurred due to rash and negligent driving of the offending vehicle and death occurred due to the said accident. Further finding of the Tribunal is that the victim was a businessman and used to earn from his own business and the yearly income of the deceased was Rs. 1,39,176 and after deducting 1/3rd towards personal expenses of the deceased, annual loss of dependency comes to Rs. 92,784. Multiplier of 11 was applied, considering the age of petitioner being the mother of the victim and compensation amount of Rs. 10,20,624 was assessed. Adding funeral expenses

and loss to estate, the total compensation was calculated which was to be deposited after adjustment of Rs. 50,000 already received by the claimants u/s 140 of the Act.

4. Mr. Kamal Krishna Das, the learned Counsel for the appellant contended that while assessing the income of the victim his income from the business as also his income from other sources were considered. The document disclosed before the income tax authorities were referred to for making a contention that the income of the victim included a sum of Rs. 37,991.54 which was the income from sources other than the business. The computation of income tax in respect of the victim showed that the said sum of Rs. 37,991.54 included Rs. 27,954 as income from fixed deposit, Rs. 612.50 as the interest from savings account and Rs. 9,425.04 interest from Unit Trust of India. The learned Counsel for the appellant contended that this income was not lost on account of death of the victim and so far as the claimants are concerned they are receiving such income. The next contention is that from the income of the victim the amount of income tax paid has to be deducted as it was a statutory expenditure of the victim and, therefore, the tax amount of Rs. 2,970 is liable to be deducted from the said figure of annual income. On such calculation the income of the deceased is assessed at Rs. 98,214.46.

5. Learned Counsel relied on the judgments in the cases of Swaraj Motors Private Ltd., Kottayam Vs. T.R. Raman Pillai and Another, , decided by the Division Bench of Kerala High Court, Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, , decided by the Apex Court; K. Sapana Vs. B. Appa Rao and Others , decided by United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others, .

6. Mr. Krishanu Banik, learned Counsel for the respondents apart from disputing the contentions of the appellant, advanced an argument that the multiplier has been wrongly applied on the basis of the parent's age although the victim's age was required to be taken for calculating the amount of compensation.

7. After considering the aforesaid contentions, we find that the contentions of the appellant have strength and we accept the same. Therefore, the compensation has to be calculated taking into consideration the sum of Rs. 98,214.46 as the income of the deceased and after deducting 1/3rd towards personal expenses of the deceased, the annual loss of dependency is Rs. 65,476.31.

8. On the question of applying the multiplier and considering the law in this connection, we find that this question was decided by us in United India Insurance Co. Ltd. Vs. Sri Sitanath Chowdhury and Others, , taking into consideration the judgments in the cases of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, and it was decided as follows:

We find thus from various observations in various judgments that structured

formula under the Second Schedule has been held to be a safe guide for assessing the compensation. But in applying the said formula the aspect which is required to be considered is the lifespan of the victim when the claimants are younger to him as the victim would have helped the dependants during his working period only and the life expectation of the dependants will not be a factor relevant. But when the victim is younger than the claimants-dependants, the age of the dependants becomes important as they would have been receiving the assistance from the victim during their lifetime and the working life of the victim has no relevance to such facts.

Therefore, following the law as aforesaid, we find that the multiplier may be applied according to the age of victim or the age of the claimants whichever is higher.

9. Applying the aforesaid law, the objection of the claimant in the present proceeding be upheld and we are of the opinion that the Tribunal rightly considered the multiplier on the basis of the age of the mother of the victim.

10. Therefore, applying the multiplier of 11, compensation amount would be Rs. 7,20,239.41 and adding Rs3. 2,000 for funeral expenses and Rs. 2,500 towards loss to estate, total compensation payable to the claimant is Rs. 7,24,739.41. Therefore, the impugned judgment is modified by substituting the compensation amount as Rs. 7,24,739.41 which National Insurance Co. Ltd. is directed to deposit with the Tribunal within a period of one month from today. In default of such deposit within a month, the petitioner will be entitled to execute the decree and recover the amount along with interest of 12 per cent per annum till the date of recovery.

The appeal is allowed to the aforesaid extent.