
(2014) 08 GAU CK 0019
In the Gauhati High Court
Case No : Mac Appeal No. 73 of 2014

National Insurance Co. Ltd.

APPELLANT

Vs

Keteki Baruah

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 73

Citation : (2014) 3 GLD 125 : (2014) 4 GLT 531

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : B.K. Purkayastha. Advocate, Advocate for the Appellant; D. Mondal, Advocate for the Respondent

Judgement

Arup Kumar Goswami, J.—This appeal under Section 73 of the Motor Vehicles Act, 1988, for short, MV Act, is directed against a Judgment and award dated 26.11.2013 passed by the learned Member, Motor Accident Claims Tribunal No. - 2, Kamrup, in MAC Case No. 2355/2011. On 12.10.2011, while Smti. Bimala Baruah, was proceeding in a motor cycle as a pillion rider, the vehicle met with an accident and she sustained injuries. While undergoing treatment in the Gauhati Medical College and Hospital, she succumbed to her injuries. The deceased was aged about 35 years and she was a Government Teacher by profession and her monthly income was Rs. 15,000/-. With the aforesaid broad facts, alleging that Bimala Baruah died on account of rash and negligent driving of the offending motor cycle in which she was travelling as a pillion rider, the mother of the deceased as Claimant No. 1 and brother of the deceased as Claimant No. 2 filed a claim petition under Section 166 of the MV Act, praying for compensation of Rs. 10,00,000/- in the Motor Accident and Claims Tribunal (for short, MACT), Kamrup, Guwahati and the same was registered as MAC Case No. 2355/11 in MACT No. - 2, Kamrup, Guwahati.

2. The learned Tribunal held that the deceased was in the age group of 41 to 45 years. The learned Tribunal granted a total of Rs. 15,44,700/- as compensation

and directed the present appellant to satisfy the award. It was further provided that the amount of compensation shall carry an interest at the rate of 6% per annum from the date of filing of the claim petition till its realisation. Out of the awarded amount, Rs. 5,00,000/- was directed to be deposited in the name of Claimant No. 1 in any Nationalised Bank in the own district of the Claimant No. 1 for a period of 5 years. The total amount of compensation was arrived at by the learned Tribunal as follows:--

3. The figure of Rs. 15,09,690/- relating to loss of dependency was arrived at by the learned Tribunal as follows:--

4. I have heard Mr. B.K. Purkayastha, learned counsel for the appellant and Mr. D. Mondal, learned counsel appearing for the respondent Nos. 1 and 2, i.e., the claimants. None appears for the respondent Nos. 3 and 4.

5. Mr. Purkayastha, learned counsel for the appellant submits that Claimant No. 2, who was aged about 42 years at the time of the accident, was not a dependant of the deceased. Evidence on record discloses that the mother, i.e., the Claimant No. 1, was aged about 58 years. The only argument advanced by Mr. Purakayastha, learned counsel for the appellant is that the choice of multiplier at 14, taking the age of the deceased, was wholly not correct and as the mother was aged about 58 years, the appropriate multiplier in the instant case, in terms of the judgment of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , should have been taken as 9. Learned counsel submits that in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Apex Court had held that choice of multiplier is determined by the age of the deceased or that of the Claimants, whichever is higher. He also submits that in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , it was held by the Apex Court that in a case where a bachelor dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of multiplier. He also relies on a decision of the Apex Court in the case of Ramesh Singh and Another Vs. Satbir Singh and Another, , wherein on the death of a young person of 22 years having aged parents, the Apex Court upheld adoption of multiplier of 8 on the basis of the age of the father who was 55 years.

6. Mr. Mondal, learned counsel for the claimants submits that the learned Tribunal applied multiplier of 14 based on the age of the deceased, relying on the judgment of the Apex Court in the case of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , wherein the Apex Court laid down that multiplier is based on the age of the deceased and not on the basis of the age of the dependant. In view of the above, learned counsel submits that no interference with the impugned award is called for.

7. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the materials on record.

8. In *Amrit Bhanu Shali* (supra), the Apex Court laid down as follows:--

"15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependant. There may be a number of dependants of the deceased whose age may be different and therefore, the age of the dependants has no nexus with the computation of compensation."

9. The Apex Court had noted *Susamma Thomas* (supra) and *Trilok Chandra* (supra) and *Sarla Verma (Smt)* (supra) while rendering *Amrit Bhanu Shali* (supra), in which the present appellant company was a respondent. In the said case, the deceased was 26 years at the time of accident and the Tribunal had applied multiplier of 17, which was brought down to 13 by the High Court. Before the Apex Court, the learned counsel for the insurance company had submitted that multiplier is to be applied as per the age of the deceased or as per the age of the claimant, whichever is higher. The contention was repelled as follows:

"11. The learned counsel appearing on behalf of the respondent Insurance Company submitted that the deceased *Ritesh Bhanu Shali* was an unmarried boy aged about 26 years and the High Court rightly applied the multiplier of 13 as per the age of the claimants i.e. parents. According to the respondents, the multiplier is to be applied as per the age of the deceased or as per the age of the claimant, whichever is higher but the aforesaid submission cannot be accepted in view of the finding of this Court in *Sarla Verma*."

10. In paragraph 16 of *Amrit Bhanu Shali* (supra), the Apex Court held as follows:

"16. In *Sarla Verma* this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13."

In view of the above, the learned Tribunal rightly applied the multiplier of 14 when it had held that the deceased was in the age group of 41 to 45 years. Accordingly, I find no merit in this appeal. Resultantly, the appeal is dismissed.