
(2007) 03 AHC CK 0203
In the Allahabad High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Pitam Singh and Another		RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2007) 4 ADJ 648 : (2007) 2 AWC 2107

Hon'ble Judges : Pankaj Mithal, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—The appeal has been made for admission before this Court on the ground that the learned Judge in deciding the matter committed two errors firstly reduction was made only to the extent 1/3rd of the income of the deceased towards the personal expenses and secondly, the multiplier has not been properly applied. We are of the view that the points are so short that even at this stage particularly when the caveator is present, the same can be heard and disposed of on the informal papers on the parties agreement of hearing the appeal in such a way, to which they are agreeable. These two law points are totally covered by various judgments of the Supreme Court and High Courts. Therefore, we do not find any need and necessity of calling for the records of the court below. Apart from that the bulk of the litigation cannot be kept pending indefinitely when the applicability of the principle of law laid down by the Supreme Court and High Courts are available.

2. So far as the personal expenses are concerned, the learned Counsel appearing for the appellant cited Judgment in Donat Louis Machado and Ors. v. L. Ravindra and Ors. 2000 (1) TAC 208 (SC). whereunder it was held that claimants who are the parents and unmarried sister and who are dependent on him would have got at least 1 /3rd amount as he would have spent the rest of 2/3rd amount of his earnings on his own family which he would have raised and on himself. Upon going through such part as pointed out, we find that the inference has been laid

down by the Court on the basis of the factual circumstances therein. However, we have to go by the judgment to judgment of the Supreme Court and High Courts to come to the appropriate conclusion. Learned Counsel appearing for the respondents claimant cited judgment in Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, . by showing paragraph 8 therein where the Court held that it is appropriate to restrict the deduction of personal expenses of 1/3rd of the monthly income. However, all the judgments on this point has been thoroughly considered by the Division Bench of the M.P. High Court in Dr. Deo Patodi and Anr. v. Devendra Arora and Anr. 2007 (1) TAC 443 (MP). Paragraph 9 of such Judgment is as follows:

The Claims Tribunal has deducted 2/3rd amount of personal expenses relying on the basis of the judgment passed by the High Court of M.P., Bench Gwalior in Halkibai and Another Vs. Managing Director, Rajasthan State Road Trans. Corpn. and Another, wherein this Court had held that in case of death of unmarried person looking to the fact that he would have married in near future 2/3rd amount should be deducted towards his own expenses. A similar view is taken by the Apex Court in the case of Donat Louis Machado and Others Vs. L. Ravindra and Others, But, from perusal of both these judgments it appears that this judgment did not lay down any hard and fast rule, on the other hand the Apex Court in the case of Vijay Kumar Dugar v. Vidyadhar Datta 2006 (2) SCC 242 : 2006 (1) TAC 969 , has assessed the compensation after deduction of 1/3rd amount for the death of an unmarried. In case of Avantibai and Others Vs. Mohanlal and Others, the Apex Court deducted 1/3rd amount towards the own expenses and awarded compensation to the appellants/ parents at 2/3rd.

3. Therefore, we have to go by the latest position as it has been held by the Supreme Court as well as the High Court that with rigid principle of 2/3rd of the personal expenses cannot be applicable everywhere. Therefore, when factually the learned court below held that the personal expenses can be 1 /3rd of the income, we do not find any necessity of interference.

4. The second point is about the applicability of the multiplier. So far as this point is concerned, the learned Counsel appearing of the appellant has relied upon the judgment in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, for the use of appropriate multiplier. However, such judgment is factually distinguishable for the reason that in the above referred case the age of the deceased was considered but in the present case the multiplier has to be determined according to the age of the parents. To that extent the ratio of multiplier is very much clear in Gyan Chandra Jain and Anr. v. Premanand and Ors. 2003 (1) TAC 490 (SC), which is applicable herein. There it was held that since the deceased was unmarried and the age of the mother was 49 years and that of the father was 55 years, the total loss of dependency has to be determined keeping in view of the age of the parents. It is also implied in Municipal Corporation of Greater Bombay v. Shri Laxman Iyer and Anr. 2004 (1) TAC 3 (SC) : 2004 (1) AWC 176 (SC). From the fact, it appears that the age of

father is 38 years, therefore, appropriate multiplier above 35 years not exceeding 40 years is being 16 as per the Second Schedule u/s 163A has been rightly applied in this case.

5. Under such circumstance, we do not find any genuine cause for interference in this case.

6. Hence, we dismiss the appeal on contest. However, no order is passed as to costs.

Pankaj Mithal, J.

7. I agree.