

(2003) 12 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : F.A.O. No's. 320 and 321 of 2002

National Insurance Co. Ltd.

APPELLANT

Vs

Raj Kumari and Others

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1), 149(1), 170, 171

Citation : (2004) ACJ 1100 : (2004) 1 ShimLC 287

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Lalit Sharma, for the Appellant; C.B. Singh, Vikas Rathore and Jyotika, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—Since these appeals have arisen out of a common award passed by the Motor Accidents Claims Tribunal (II), Solan as such these are being disposed of by this common judgment.

2. Vehicle, i.e., bus No. DL 1-P 6566 being insured with appellant and owned by Sachitra Bhalla at the time of accident under a legal and valid policy was not disputed at the time of hearing of this appeal. Dharam Paul driver of the tractor in question and Dheru alias Gian Chand owner of maize crop, having died as a result of this accident, was also not disputed at the time of hearing on behalf of the appellant.

3. Dr. Lalit Sharma, learned counsel for the appellant submitted that when both these cases were pending before the learned Tribunal below his client was permitted to contest the claim of the respondents-claimants u/s 170 of the Motor Vehicles Act. Record of case of Geeta Devi and others, shows that application had been filed, and also a statement of learned counsel for the respondents-claimants was recorded that he has no objection to the same being allowed. But there is no order to that effect, whereas order allowing the application u/s 170 of

the Motor Vehicles Act, is there in the case of Raj Kumari and others. Both cases were consolidated as is evident from the record of the Tribunal.

4. At the time of hearing of the appeals Dr. Lalit Sharma submitted that the compensation awarded is excessive and interest ought to have been allowed at the rate of 9 per cent per annum, if not less. He also made an attempt to persuade the court that multiplier applied is on the higher side, therefore, the compensation needs to be reduced.

5. I will take up the contention based on quantum raised first. Keeping in view the ages of deceased Dharam Paul, as well as Dheru alias Gian Chand, it can safely be held that multiplier of 16 applied in both these cases needs to be upheld. In fact in the case of Geeta Devi, age of whose husband has been proved to be 27 years, multiplier of 18 ought to have been applied by the learned Tribunal below. It is a different matter that no cross-appeal has been filed in this case for reasons best known to them. So far the matter relating to applying of multiplier is concerned, it is no more *res integra* in view of the decision of Apex Court in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, . Extract from this decision, relevant in these two appeals is to the following effect:

"(17) The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by the Amendment Act, 54 of 1994. The most important change introduced by the amendment insofar as it relates to the determination of compensation is the insertion of Sections 163-A and 163-B in Chapter XI entitled "Insurance of Motor Vehicles Against Third Party Risks". Section 163-A begins with a non obstante clause and provides for payment of compensation as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a Table fixing the mode of calculation of compensation for third party fatal accident injury claims arising out of accidents. The first column gives the age group of victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this Table multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*,

(18) We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in item No. 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs. 3,000/-. The total should be Rs. 3,000/- x 15 = Rs. 45,000/- but the same is worked out at Rs. 60,000/-. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9,000/-; the total should have been Rs. 1,44,000/- but is shown to be Rs. 1,71,000/-. To put it briefly, the Table abounds in such mistakes. Neither the Claims Tribunals nor the

courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 years and his dependants are his parents, age of parents would also be relevant in the choice of multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years" purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies" case (supra)."

6. In *Jyoti Kaul and Others Vs. State of M.P. and Another*, the Supreme Court has allowed the multiplier of 15. In this case the age of the deceased was 50 years. The Tribunal allowed the multiplier of 15 and in appeal the High Court reduced it to 10. While allowing the appeal of the claimant the Supreme Court upheld the multiplier of 15 as granted by the Tribunal.

7. In this view of the matter no exception can be taken that the multiplier applied by the learned Tribunal below is not just.

8. Now coming to the interest part. No doubt Apex Court in *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, allowed interest at the rate of 9 per cent on the awarded compensation, however, in its subsequent decision it was held that it is not a rule of thumb to allow interest only at 9 per cent per annum and no more. Discretion is vested with the Tribunal to allow interest at a rate the court may consider just and proper.

9. Faced with the above situation Dr. Lalit Sharma submitted that looking to the peculiar facts of these cases particularly when neither the owner nor the driver came forward to contest and resist the claim of the claimants as also leave to contest u/s 170 of the Motor Vehicles Act having been granted in favour of the appellant, compensation should have been payable by owner and driver of the bus and not by the appellant insurer. This plea cannot be accepted keeping in view the decision in *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, This view was reiterated by the Supreme Court in *United India Insurance Company Ltd. Vs. Leheru and Others*, Even otherwise, I am of the view that on this aspect of the case the appellant has no cause to make any grievance, as the impugned award itself enables the appellant to recover the awarded amount from the insured, i.e., owner of the vehicle as per provisions of law. Reliance placed on behalf of the appellant on an earlier decision in the case of *United India Insurance Co. Ltd. Vs. Gian Chand and others*, This is a judgment earlier in point of time, whereas the subsequent judgment in *New India Assurance Co. Ltd. v. Kamla (supra)*, adequately protects the interest of appellant and in any case the respondents-claimants being cthird party qua the appellant, former is bound to indemnify them.

10. No other point is urged.

11. In view of the aforesaid discussion both these appeals are devoid of any merit and the same are dismissed with no order as to costs and consequently the impugned award is upheld. All interim orders passed from time to time shall stand vacated and the application(s), if any, is also disposed of.