
(2008) 11 MP CK 0001
In the Madhya Pradesh High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Ranjana Bhatnagar and Others		RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 2641

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Judgement

S.K. Gangele, J.—Both these appeals have been filed u/s 173 of the Motor Vehicles Act, 1988, against the award dated 24.7.2002, passed by the Third Additional Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 67 of 2001. M.A. No. 720 of 2002 has been filed by the insurance company and M.A. No. 739 of 2002 has been filed by the claimants. Because both the appeals have been filed against the same award, hence, both the appeals have been taken together and heard finally and disposed of by this common order.

2. On 5.2.2001, Vijay Bhatnagar had been going to Shivpuri from Gwalior in a bus of Madhya Pradesh State Road Transport Corporation. It was dashed near Simariya Tiraha, Ghatigaon by a truck bearing registration No. MP 07-G 3742. Due to the aforesaid accident, the driver and other passengers died. Vijay Kumar Bhatnagar received serious injuries and fracture in his spinal cord, a fracture in tibia and fibula of left leg, fracture in collar bone, he also received injuries on his head. He was admitted at Indian Spinal Injuries Centre, Delhi and died on 22.5.2001. After death the claimants, who are wife, daughter and son of the deceased, filed a claim application before the Claims Tribunal claiming total compensation of Rs. 30,00,000.

3. The claimants pleaded that deceased had been working at the relevant time as Manager of Shivpuri-Guna Gramin Bank. His pay was Rs. 16,111. He was aged about 44 years. Due to the injuries suffered by him in the accident, he had died. It is further stated that he was operated at Indian Spinal Injuries Centre, Delhi

for injuries on his spinal cord, however, he could not recover from the said injuries. It has been admitted by the insurance company that the offending vehicle was insured by the insurance company at the relevant time.

4. The learned Claims Tribunal has held that the incident occurred due to rash and negligent driving by the driver of the truck and the truck was insured by the insurance company. The Tribunal further held that the deceased did not die due to injuries sustained by him in the accident. The F.I.R. of the accident was lodged on 5.2.2001 at the police station. On the basis of F.I.R. an offence was registered under Sections 279, 337 and 304-A of Indian Penal Code against the driver of the offending vehicle. Learned Claims Tribunal further held that the claimants are entitled to a compensation of Rs. 7,92,000 on account of death of the deceased.

5. Learned Counsel for the insurance company submitted that the claimants are entitled only for the loss to estate of the deceased. Hence, the Claims Tribunal has committed an error of law in awarding compensation.

6. Contrary to this, learned Counsel for the appellants-claimants submitted that the claimants are entitled for compensation. The findings of the Tribunal that deceased did not die due to injuries suffered by him in accident, are perverse. In support of his contention, learned Counsel for the appellants relied on the following judgments:

- (1) National Insurance Company Ltd. Vs. Indira Srivastava and Others, ;
- (2) United India Insurance Co. Ltd. Vs. Sushila Bai and Others, ;
- (3) Chandrika Bai Sahu and Others Vs. Mohd. Ashique and Others, ;
- (4) Smt. Supe Dei and Others Vs. National Insurance Co. Ltd. and Another, ;
- (5) Kanhaiyalal Kataria v. Mukul Chaturvedi 2007 ACJ 1972 (SC);
- (6) Kishan v. M.P. State Road Trans. Corporation 1981 ACJ 395 (MP);
- (7) Gujarat State Road Transport Corporation Vs. Mariambai A. Adamji (Since Decd.) through his Heirs and LRs. Zubeda Abdulhabib and Another, ;
- (8) New India Assurance Co. Ltd. v. Shakuntla Bai 1987 ACJ 224 (MP);
- (9) Baburao Venkatrao Kotgire v. Venkati Jaiwanta Thote I (1993) ACC 308 (Bom); and
- (10) Rajesh alias Rajeswari and Others Vs. Lakhan Singh and Others, .

7. It is undisputed that the accident had occurred when the deceased was travelling in the bus. He received serious injuries. In the report lodged at the police station, it has been mentioned that in the accident driver and other passengers had died. From the nature of the accident, it is clear that the accident was quite severe. Deceased Vijay Bhatnagar was admitted at J.A. Group of Hospitals, Gwalior immediately after the accident. Thereafter, Bhatnagar was got

admitted in hospital of Dr. Anupam Gupta (Nursing Home) and because there was a fracture in spinal cord he was referred to Indian Spinal Injuries Centre, Delhi on 7.2.2001.

8. Immediately after admission, the doctor referred for X-ray of Bhatnagar. X-ray report of J.A. Group of Hospitals, Gwalior has been filed as Exh. P5. In the aforesaid report it is mentioned that there were several fractures in the body of the deceased including multiple fractures of tibia and fibula, compound fracture in vertebra and head and MRI was also done at Cancer Hospital & Research Institute, Gwalior. Copy of the MRI report dated 6.2.2001, has been filed as Exh. P11. In the aforesaid report, the Radiologist has opined that there was traumatic burst fracture in D4 vertebra with mild posterior sub luxation and intra spinal mild retropulsion of fractured bony fragmeni from D4 vertebra causing thecal sac and dorsal spinal cord compression at D4 vertebrae level associated with traumatic cord oedema extending from D3 to D5 vertebrae level. Thereafter, the deceased was admitted at the Indian Spinal Injuries Centre, Delhi, where he was operated for spinal cord ailment and also for fracture in left leg. The centre charged a total bill of Rs. 1,75,000, copy of which has been filed as Exh. P17. It has been mentioned in the discharge certificate, copy of which has been filed as Exh. P15, that on admission, the deceased had fracture dislocation of D3-D4 with complete paraplegia, B/L hemothorax R.L. Fracture ribs 5th, 6th (left), Fracture clavicle left, Fracture B.B. Left leg M/3-grade 1 compound and multiple lacerations forehead, leg and the patient was diabetic. Thereafter he was operated and discharged from Indian Spinal Injuries Centre, Delhi. X-ray of chest of deceased and the ultrasound of abdomen and other investigations had been done. Reports of the same have been filed.

9. Wife of deceased, appellant Ranjana Bhatnagar in her evidence deposed that she received information about the accident of her husband on phone and thereafter she rushed to Madhav Dispensary, at that time her husband had been bleeding and his lower portion of the body was completely paralysed. Subsequently, he was admitted to Dr. Anupam Gupta Hospital (Nursing Home) and finally to Indian Spinal Injuries Centre, Delhi. He was operated for fracture of spinal cord and a plate was also fitted in the vertebra. Thereafter, her husband was operated for fracture of leg and a rod was inserted. There was also a fracture of collar bone. Subsequently, after a period of one month, he was discharged because treatment was quite expensive. After discharge, the condition of her husband had deteriorated gradually. His lower portion of body was paralysed and thereafter he died.

10. Another person Ram Ashram Jalaj was examined on behalf of the appellants claimants. He was travelling at the relevant time. He also lodged F.I.R. at the police station. He stated that Vijay Bhatnagar had received serious injuries in the accident and lower part of his body was paralysed. Dr. Yogendra Pradhan, has been examined as the claimant-witness No. 2, who was the Assistant Superintendent of Neurology Department of J.A. Group of Hospitals, Gwalior at

the relevant time. He stated that he examined Bhatnagar on 25.3.2001 and 21.5.2001. His both legs were paralysed. There were bedsores on the backside of his body and the condition of the deceased was serious. A catheter was inserted. Another doctor, Dr. Anupam Gupta has been examined as witness No. 3. He stated that he admitted the patient. There was paralysis of both the legs and he referred the deceased to Delhi. He also stated that the patient had diabetes. Another witness S.K. Kocheda has been examined who stated that at the relevant time Bhatnagar had been getting salary of Rs. 15,934. Salary certificate of the deceased has also been filed. It has further been stated that bank had given advance of Rs. 1,25,000 for the purpose of treatment of the deceased. He further stated that when he went to J.A. Group of Hospitals, Gwalior, the body of Bhatnagar below waist was paralysed and, subsequently, he died. The accountant of the bank B.D. Shrivastava has been examined as witness No. 6. He also deposed that the salary of the deceased was Rs. 15,934 and he was given an advance of Rs. 1,25,000 as medical advance.

11. From the aforesaid oral and documentary evidence, it is clear that there was a complete paralysis of both legs of Bhatnagar after the accident. It has clearly been mentioned in the discharge certificate, Exh. P15, issued by Dr. Ritabh Kumar, Senior Resident, Orthopaedics, Indian Spinal Injuries Centre, Delhi that there was fracture dislocation of D3-D4 with complete paraplegia and the aforesaid ailment has not been cured at all. There was also a fracture in ribs 5th and 6th (left) and fracture clavicle left, fracture B.B. Left leg M/3-grade 1 compound. Even though the deceased had been treated at Indian Spinal Injuries Centre, Delhi and operated but his paralysis, paraplegia has not been cured and due to the aforesaid ailment, he could not move from the bed and subsequently, he died. The findings of the Tribunal that the deceased was a patient of diabetes, hence, the deceased did not die to the injuries received by him in the accident are not correct. In my opinion, the Tribunal has completely lost sight of the nature of the injuries suffered by the deceased and the fact that his both legs and body below the waist was completely paralysed after the accident. He was operated but there was a paraplegia and due to the aforesaid injuries, the deceased could not recover. All the doctors and medical evidence is indicating the fact that the deceased died due to injuries suffered in the accident. In the present case the evidence has been given by the specialist doctors of Government Department.

12. Hence, looking to the facts and circumstances of the case, in my opinion, the deceased died due to injuries suffered by him in the accident and the claimants are entitled to get compensation.

13. The deceased was aged about 44 years. The relevant record has been filed by the claimants for the aforesaid purpose. In such circumstances, on the basis of the Second Schedule to the Motor Vehicles Act, the multiplier of 15 will be applicable, looking to the age of the deceased. The monthly income of the deceased has been mentioned as Rs. 15,934 by the accountant and Branch

Manager of the Bank and the certificate to this effect has also been filed as Exh. P1.

14. The wife of the deceased submitted that after the death of her husband she has been given compassionate appointment in the bank on the post of lower division clerk. Her salary has not been mentioned. The Hon"ble Supreme Court in the case of Bhakra Beas Management Board Vs. Smt. Kanta Aggarwal and Others, , has held as under:

(9). ...(36) This is based on the principle that claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one"s labour or contribution towards one"s wealth, savings, etc., either for himself or for his family, which such person knows under the law, has to go to his heirs after his death either by succession or under a will could be said to be the "pecuniary gain" only on account of one"s accidental death. This of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no correlation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any correlation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or, any provision of law."

(10) It is pointed out that the award as made is extremely high and the concept of just compensation has been lost sight of.

(11) Learned Counsel for the respondent supported the judgment and additionally submitted that the appeal of respondent No. 1 is pending. In the normal course, when two appeals are directed against the common judgment, both the appeals should be heard by the same Bench of the High Court.

(12) But we find that the High Court lost sight of the fact that the benefits which the claimant receives on account of the death or injury have to be duly considered while fixing the compensation. It is pointed out that respondent No. 1 was getting Rs. 4,700 per month and a residence has been provided to her and actually the compassionate appointment was given immediately after the accident.

15. The Hon"ble Supreme Court in the case of U.P. State Road Transport Corporation Vs. Krishna Bala and Others, , with regard to application of multiplier

has held as under:

(6). ...In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death.

(8) The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

(11) ...the multiplier appears to have been adopted taking note of the prevalent banking rate of interest.

(12) ...As the interest rate is on the decline, the multiplier has to consequentially be raised.... The Second Schedule to the Motor Vehicles Act, 1988, it was noticed that the same suffers from many defects...the same is to serve as a guide, but cannot be said to be an invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70 years, which is the normal retirement age....

16. Looking to the fact that the wife of the deceased has been given compassionate appointment on account of death of her husband, hence, in my opinion, it would be just and proper to apply multiplier of 10 in this case.

17. Because the claimants are wife and two children of the deceased, hence, the dependency will come to 2/3rd. After computing the monthly income of the deceased in round figures is near-about Rs. 16,000 per month, the annual income will come to Rs. 1,92,000 (Rs. 16,000 x 12). On the basis of 2/3rd dependency, the loss of income to the appellants annually comes to Rs. 1,28,000. After using multiplier of 10, in my opinion, claimants are entitled to receive total compensation of (Rs. 1,28,000 x 10) = Rs. 12,80,000 (rupees twelve lakh eighty thousand) on account of loss of income.

18. The appellants have filed a certificate from Indian Spinal Injuries Centre, Delhi of Rs. 1,75,000. A total amount of advance of Rs. 1,25,000 has been paid to the claimants and it is not clear from the evidence that appellants have not received any other amount on account of medical treatment and wife has got compassionate appointment. In such circumstances, in my opinion, it would not be just and proper to grant further amount to the claimants on the other heads including the medical expenses, pain and suffering.

19. Consequently, the appeal filed by the insurance company, i.e., M.A. No. 720

of 2002 is hereby dismissed and the appeal filed by the claimants, i.e., M.A. No. 739 of 2002 is partly allowed to the extent that the appellants-claimants will get a total compensation of Rs. 12,80,000 (rupees twelve lakh eighty thousand). The amount shall carry an interest at the rate of 8 per cent per annum from the date of filing of the claim application before the Claims Tribunal up to the date of realization. The respondents will be liable for the payment of compensation jointly and separately. Out of the aforesaid amount, Rs. 4,00,000 (rupees four lakh) each be kept in a fixed deposit in a nationalised bank in the name of the appellant Nos. 2 and 3, son and daughter, for a period of three years. No order as to costs.