

(2013) 12 AHC CK 0202
In the Allahabad High Court
Case No : F.A.F.O. No. 3319 of 2013

National Insurance Co. Ltd.	Vs	APPELLANT
Smt. Urmila Singh and Others		RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) 1 ADJ 596 : (2014) 3 ALJ 91 : (2014) 102 ALR 435 : (2014) 1 AnWR 485 : (2014) 2 AWC 1219

Hon'ble Judges : Mushaffey Ahmad, J;D.P. Singh, J

Bench : Division Bench

Advocate : A.C. Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

Mushaffey Ahmad, J.—Heard learned Counsel for the appellant and perused the record. This first appeal from order is directed against award dated 12.8.2013 passed by the Motor Accident Claims Tribunal, Allahabad in Claim Petition No. 804 of 2011 awarding to the claimant wife and son a sum of Rs. 7,67,864/- apart from interest on the death.

2. Learned Counsel for the appellant has firstly urged that it was a head-on collision and, therefore, the Tribunal should have apportioned the negligence upon the deceased to the extent of 50%. This aspect has been considered by the Tribunal in detail. After going through the evidence on record, it found that the offending Qualis vehicle had come to its right and dashed against the motor cycle of the deceased which was on the left side of the road. The Tribunal also relied upon the site plan prepared by the police. In the opinion of the Court, the Tribunal was fully justified in relying upon the evidence on record and entering the finding that the deceased was not guilty of any negligence.

3. It is then urged that the wife of the deceased is drawing more family pension than the deceased and, therefore, there was no loss of earning and the Tribunal has erroneously awarded compensation under this head.

4. It is apparent from the record that the deceased was an ex-army man and had already retired and was aged 46 years 9 months when he met with the accident. The Apex Court has now settled the issue with regard to pecuniary advantage and has held that receipt of family pension would not be a pecuniary advantage under Motor Vehicles Act and cannot be deducted from compensation otherwise calculated. Thus, the Tribunal was within its jurisdiction to have awarded the compensation to the claimants.

5. Lastly, it is argued that the son was major and, therefore, he could not be said to be dependent on his father. No doubt the son is aged about 23 years, but the appellant did not lead any evidence to prove that the son was gainfully employed and was not dependent on the deceased.

6. No other point has been raised.

7. However, before parting with the case, the Court is constrained to record its anxiety to a dangerous trend which seems to have afflicted the Motor Accident Claims Tribunals across the State despite being cautioned by this and the Apex Court on several occasions.

8. As in this appeal as well as in the appeal No. 3310 of 2013, The New India Assurance Com. Ltd. v. Smt. Angoori and others, the Court has been coming across usual tendency of the Tribunals to leave out a large chunk of the awarded amount directly payable mostly in the name of widows. In the award under appeal the Tribunal granted Rs. 7,67,864/- and interest thereon. Out of this award, the widow was given Rs. 4,17,864/- and entire interest and only Rs. 2,00,00/- have been directed to be invested in a fixed deposit in the name of the widow. The remaining amount and interest totalling to about Rs. 3,24,000/- to be given through account payee cheque and Rs. 3,50,000/- given to the son which remain vulnerable. This is sufficient to satisfy champerty and incidental obligations. The Tribunals entertain the logic that such amount might be necessary for meeting immediate need of the widow to support herself as well as her children and some take refuge to occasional directions of Hon''ble Apex Court in a particular case to release a portion of the award to the claimants but such an assumption is in flagrant violation of Hon''ble Supreme Courts directions given in case of Jai Prakash Vs. National Insurance Co. Ltd. and Others, , High Courts circular letter No. 13/2010 Admin. G-II Dated : Allahabad 17.5.2010, and Rule 220B of U.P. Motor Vehicles Rules, 1998.

9. Even the Hon''ble Apex Court is well aware that champerty is in the air and a large portion of the award ranging from 25% to 50% or even more is frittered away by using questionable methods. The Hon''ble Apex Court in their superintending solicitude for the helpless widows, children villagers and other simpletons has been sounding a note of caution and issuing directions for investing amounts in fixed deposit in the name of the widow, minor children, yokels semi literate or literate villagers so that the award made for their sustenance is not nibbled away by the unscrupulous. It was in the case of Union

Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., , that the Hon''ble Court adopted the guidelines given by the Gujrat High Court in the case of Muljibhai Ajaram Bhai Harijan v. United India Insurance Company Ltd. (1982) 1 Guj LJ 756. The Hon''ble Court in their anxiety to enforce the compliance with those directions repeated them in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; Lilaben Udesing Gohel, Shyamala Shashidharan Nayyar and Others, Pramila Narendra Bhai Patel and Others, Ramabhai Shankarbhai Chavda, Lilaben and Others, Kantaben Anil Kumar Patel and Others, Motor Vahan Durghatna Sanghathan, Nadiad and Others and Shardaben Chandubhai Patel and Others Vs. Oriental Insurance Company Ltd. and Others, Hemraj Loduram Rajpur and Another, Nandubhai Ambalal Thakkar and Others, Ganibhai Ambabhai Vora and Another, Kaji Gulam Nabi Sheikh and Others, Gujarat State Road Transport Corpn. and Others, State of Gujarat and Others and Bachusha Dadusha and Others, . In the case of Jai Prakash Vs. National Insurance Co. Ltd. and Others, , the Hon''ble Apex Court addressed the grievance of helpless victims of the accident and issued directions to all the High Courts and also the police authorities to implement the provisions of section 158(6) the Motor Vehicles Act for moving accidental information reports to the Tribunal by the police authorities registering the accident case and the Tribunals to take cognizance of them u/s 166(4) of Motor Vehicles Act and decide them expeditiously with the assistance of the insurance companies.

Hon''ble Apex Court in the case of Jai Prakash Vs. National Insurance Co. Ltd. and Others, observes as follows:

9. The Legislature tried to reduce the period of pendency of claim cases and quicken the process of determination of compensation by making two significant changes in the Act, by Amendment Act 54 of 1994, making it mandatory for registration of a motor accident claim within one month of receipt of first information of the accident, without the claimants having to file a claim petition. Sub-section (6) of section 158 of the Act provides:

158. (6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer.

Sub-section (4) of section 166 of the Act reads thus:

166. (4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.

10. Rule 150 of Central Motor Vehicles Rules, 1989 prescribes the form (No. 54) of the Police Report required to be submitted u/s 158(6) of the Act.

11. This Court in General Insurance Council and Others Vs. State of Andhra Pradesh and Others, emphasised the need for implementing the aforesaid provisions. This Court directed: (SCC p. 358, para 10).

10. It is, therefore, directed that all the State Governments and the Union Territories shall instruct,...all police officers concerned about the need to comply with the requirement of section 158(6) keeping in view the requirement indicated in Rule 150 and in Form 54, Central Motor Vehicles Rules, 1989. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Road Transport and Highways shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the State Governments/Union Territories concerned so that necessary action can be taken against the officials concerned.

12. But unfortunately neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement these mandatory provisions of the Act. If these provisions are faithfully and effectively implemented, it will be possible for the victims of accident and/or their families to get compensation, in a span of few months. There is, therefore, an urgent need for the concerned police authorities and Tribunals to follow the mandate of these provisions.

10. The directions remain on paper and there is almost no compliance with the directions and the law in that respect by the police authorities.

It also directed the High Courts to take steps for the preservation of the award and in compliance with the directions, this Court issued circular letter No. 13/2010 directing the Tribunals to comply with the guidelines of the Hon'ble Apex Court as laid down in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , in the matter of fixing the award as well as dealing with the accidental information report guidelines. The circular letter has been made history, and hardly any Tribunal is complying with the directions given by the Hon'ble Supreme Court and impressed by the High Courts upon the Tribunals.

The Hon'ble Apex Court directed the Director General of Police of each State to instruct all police stations in his State to comply with the provisions of section 158(6) of the Act. If any authority so directed does not comply or fails to comply not only demeans his office but also makes himself liable to punishment under contempt of Courts Act. We also enter our regret over paccydermic demeanour of the State authorities for not complying with the mandate of law as enshrined in section 158(6) of Motor Vehicles Act and making such other facilities of prosecution for the bereaved at the cost of the State. We, therefore, direct the Director General of Police U.P. Shall ensure within two months compliance with

the aforesaid directions.

For the sake of convenience and emphasis, we repeat those directions as Under:

(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor be invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be liquidated.

These guidelines should be borne in mind by the Tribunals in the cases of compensation in accident cases.

The Hon''ble Apex Court in the case of Jai Prakash has observed:

This Court has time and again insisted upon measures to ensure that the compensation amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation. (See Union Carbide Corpn. v. Union of India and Kerala S.R.T.C. v. Susamma Thomas). But inspite of the directions in these cases, the position continues to be far from satisfactory and in many cases unscrupulous relatives, agents and touts are taking away a big chunk of compensation, by ingenious methods.

12. The U.P. State added by amendment Rule 220-B to the U.P. Motor Vehicles Rules, 1998 which is similar to the guidance as mentioned above. The Rule begins with the heading "220-B securing the interest of claimants". The Tribunals are not observing those guidelines despite the directions of Hon''ble Supreme Court, High Court and the rules framed in this regard by the State Government. The flagrant aberration puzzles us.

13. This is not to say that a widow may not require immediate succour and, therefore, a part of the award should be released to her, but keeping in mind that champerty is in the air, it should apply itself as to what part of the amount should be paid to her directly after giving reasons. Similarly, in the case of minors who may be faced with dire need of financial help to continue their studies etc., therefore, they may also be treated similarly. However, when the awarded amount can fetch interest matching the income of the deceased for a period of two years, if the money is locked in a fixed deposit of a Nationalised Bank or local post office, the Tribunal should strive to adopt this approach except in exceptional circumstances. Often the Tribunal is flooded with excuses for getting money to meet marriage expenses of his son or daughter or raising a roof etc. These excuses must be looked through. A bona fide need must be distinguished from a ruse to extract money. For the purchase of immovable property, money could be paid to the vendor through the Sub-register at the time of Registration of the sale-deed. Money can be released only to an agency that provides any vehicle or implement for earning more or to the sub register in the case of purchase of any property. A vigilant circumspect and conscientious Tribunal can meet the saturation students by fixing award in the name of the widow and minor children or illiterate or semi literate villagers in the account opened in a nationalised bank or post office nearest to their residence and all transactions for locking the amounts must be carried through that bank account of the claimant.

A column has been introduced in the annual assessment Forms of officers requiring information about his approach to M.A.C.T. Claim cases but no proper information is supplied.

14. A copy of this judgment may be provided by the Registrar General to each of the District Judges subordinate to the High Court for bringing it to the notice of each Judge dealing with the motor accident claims cases. It may also be made

available to all the Hon''ble Administrative Judges and another copy be sent to the Chief Secretary and the Principal Secretary (Home) U.P. Lucknow for compliance. Subject to the aforesaid directions, the appeal is dismissed.