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(1994) 11 AHC CK 0085

In the Allahabad High Court

Case No : F.A.F.O. No. 471 of 1994

National Insurance Co. Ltd., Gorakhpur — APPELLANT

Vs

Jangali Prasad Singh and others — RESPONDENT

Date of Decision : 23-11-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1995) 1 ACC 215 : AIR 1995 All 409

Hon'ble Judges : V.P. Goel, J;S.C. Mohapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. C. Mohapatka, J.—On 31-12-1992 at about 5 p.m. deceased aged about 48 years who was a Railway Khalasi getting salary of Rs. 2095/- met with an accident caused by a vehicle the registration of which is U.P.O. 6705. He left behind his widow, one adult son, one minor son and a minor daughter. The widow, two sons and a minor daughter filed application claiming compensation on account of death of their bread-earner in the accident, attributing the negligent driving of the vehicle.

2. Tribunal has held that there was negligent in driving of the vehicle and accordingly, the owner is responsible to pay compensation and insurer having received the premium and having issued the policy is to indemnify the owner, as a result of which it can be made liable and be directed to pay the compensation.

3. On perusal of the material on record, we are satisfied that these findings cannot be assailed which are reasonable and appropriate.

4. Coming to the question of quantum, Sri A. K. Gaur, learned counsel for appellant submitted that mathematical calculation of the loss of future salary of an employee has been deprecated by Supreme Court in a, decision reported in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, where it has been held that proper mode of

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calculation of the loss of dependency is by adopting appropriate multiple which should not be more than 16 times the annual loss. In the said decision, Supreme Court has also given discretion to Court to deviate from adopting the principle of multiple in appropriate cases. Taking future uncertainty and benefit of lump sum payment Court can make deduction to determine the amount of just compensation which would be adequate to compensation the loss perpetually.

5. In the present case, deceased was a Khalasi getting salary of Rs. 2095/-. There is no evidence, if any deductions were being made from this amount. Tribunal has taken into consideration number of family members and held that deceased would be having 1 /3rd of it as expenses for himself and thus 2/3rd of the salary was taken to be the loss of dependency per month. Tribunal calculated the total salary receivable and deducting 1/3rd held that the balance is to be compensated. Though the approach by Tribunal does not appear to be correct, we find that the same would be the result by finding the loss of annual dependency and adopting the multiple. Tribunal has taken 10 years five months for which deceased would have remained in employment to be the loss of period of dependency. It did not keep in mind that the widow and the daughter until marriage would be the dependents of the deceased which would continue during life time of the deceased which would be for another ten years as the average longevity of an Indian male is 70 years. Thus, loss of dependency for them would be for about 20 years. In such circumstances, the multiple of slightly more than 10 which is less than 11 cannot be said to be improper or unreasonable.

6. It is submitted by Sri Gaur that on account of lump sum of payment and future uncertainty, some amount should have been deducted. Deduction for payment the compensation in-lump sum is not statutory. Adjudicating Authority has discretion in appropriate situation not to deduct any amount where nature of dependency is such that any deduction is likely to put the dependents in want depending upon anticipated contingencies. In the present case widow is to maintain her minor children. They would require education. Minor daughter on attaining majority would marry. Expenses would be necessary to meet all these contingencies. Therefore in facts and circumstances of the present case, no deduction should be made from the amount of Rs. 1,86,000/- determined as just compensation. We confirm the quantum of compensation awarded by Tribunal. Rate of interest on the compensation is also reasonable which is confirmed.

7. Tribunal has distributed the awarded amount amongst different dependents. When mother and children jointly make a claim and do not want allotment compensation separately, entire compensation ought to be awarded jointly giving liberty to claimants to get their share in the compensation divided in future. This would have the effect of maintaining the family tie which is one of the basic structure in Indian Society. As apart of social justice, Courts and Tribunals awarding compensation for loss of dependency or injury to person should take steps for arranging payment in such manner that the amount awarded can be best utilised for benefit of the persons getting compensation. These adjudicating

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authorities should take care that deficiency on account of becoming destitutes or invalid, is not taken advantage of by others, in colour of rendering assistance or by getting lump sum amount claimants do not waste-fully spend the same''. It should also be kept in mind that from the date of accident till payment they might have incurred liabilities which are to be discharged. Some amount should be provided for their maintenance in the immediate future. Considering same, in absence of better materials, we direct the Rs. 50,000/ -shall be paid to the claimants which appears to be sufficient to discharge liabilities and meet immediate future expenses. Balance amount shall be invested in fixed deposit in a nationalised bank of rural bank of the choice of the claimants till the last minor attains majority or for these years which ever is later which in circumstance shall be permitted to be incumberred. Annual interest shall be available to the widow on behalf of the claimants for their maintenance. In case of some urgent necessity, widow on behalf of the claimants can apply to the Tribunal to pass an order releasing a portion of the fixed deposit after considering the nature of necessity and amount required on basis of which bank shall pay that sum from out of the fixed deposit. As per interim order of this Court, some amount has been deposited by the insurer with the Tribunal. The same shall be adjusted. Sri Gaur, learned counsel assures is that within three months from today the payments shall be made and insurer shall assist the Tribunal to make the deposits as directed by us.

8. In result, there is no merit in this appeal which is dismissed. There shall be no order as to costs in this appeal.

9. Appeal dismissed.

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