

(1987) 02 OHC CK 0016

In the Orissa High Court

Case No : Miscellaneous Appeal No. 345 of 1982

National Insurance Company Limited

APPELLANT

Vs

Bhramar Rout and Others

RESPONDENT

Date of Decision : 12-02-1987

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A
Motor Vehicles Act, 1939 — Section 110A

Citation : (1987) 2 ACC 517 : (1987) 63 CLT 496 : (1987) 62 CompCas 602

Hon'ble Judges : H.L. Agrawal, C.J

Bench : Single Bench

Advocate : P. Roy, for the Appellant; Pradeep Mohanty, respondent Nos. 1 to 4, for the Respondent

Final Decision : Partly Allowed

Judgement

Agrawal, C. J.

1. In this miscellaneous appeal arising under the provisions of the Motor Vehicles Act, the question is what should be the proper criterion for determining the compensation for the parents of a victim in a motor accident.

2. On September 19, 1979, the earning son of respondents Nos. 1 and 2 met with an accident caused by a jeep bearing registration No. OSC 5718, resulting in his death. The application for claim was filed by the father, mother and two major brothers of the deceased. At the time of the claim application, the father declared his age as fifty-three years and the mother as forty-seven. Since the scope of appeal at the instance of the insurance company is limited, I need not enter into all the facts.

3. The Claims Tribunal on appreciation of the evidence came to the conclusion that the dependency of the dependants was Rs. 100 per month, i.e., Rs. 1,200 per year. On that basis, it has awarded a total compensation of Rs. 44,200 to all the claimants together with interest @ 6% per annum for a period of three

months and thereafter at the rate of 9%.

4. Mr. P. Roy, learned advocate for the insurance company, has raised a legal question that the major brothers being not dependants of the deceased, the Tribunal committed an error of law in taking them as dependants on him. It would be useful to refer to Section 110A(1)(b) of Motor Vehicles Act which reads as follows :

" 110A. Application for compensation,--(1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made--".

(b) where death has resulted from the accident, by all or any of the legal representatives, of the deceased; or....."

5. Under this provision, the expression is "legal representative". Section 1A of the Fatal Accidents Act entitles filing of a suit for compensation by the family of a person for loss occasioned to it by his death by actionable wrong for the benefit of the "wife, husband, parent and child" of a person whose death has been so caused.

6. It is well-settled that the expression " legal representative " in the Motor Vehicles Act will bear the same meaning as given in the CPC and for that reason, I will not detain myself unnecessarily to hold and conclude that the brothers of the deceased are not legal representatives in the lifetime of his mother and father. I find support for this proposition from a Bench decision of the Allahabad High Court in Motilal Vishwakarma Vs. Guru Bachan Singh and Others, . The learned judge who delivered the judgment for the Bench, on comparing the relevant provisions of both the Acts mentioned above, came to the same conclusion. I would, therefore, hold that the Tribunal was not right in awarding compensation in favour of the brothers of the deceased, namely, respondents Nos. 3 and 4.

7. Coming to the case of the father and mother, Mr. Roy has submitted that in such a case the life expectancy of the dependants and not of the deceased should be the real and correct criterion. He accordingly submitted that the father of the deceased was aged about 53 years and the mother 47 at the time of the claim. The life expectancy, as observed in several decisions of different High Courts, being nearly sixty-five years, compensation should have been computed keeping in view the expected span of life of these two dependants. I find substance in this submission also and as such accept the same as correct. But at the same time I do not agree that the total life span should be fixed at sixty-five years only. In a large number of reported cases, that period has been taken as the earning span of life. Inasmuch as a person is expected to be alive even thereafter for some years (after he loses his earning capacity), I would fix the total life expectancy of the parents of the deceased at 70 years in view of the changed and improved economic condition in the country.

8. This conclusion raises another interesting question regarding the position of the mother on the apprehended death of the father, inasmuch as the calculation, as per the suggestion of Mr. Roy and on the principles discussed above, has to be made at the rate of Rs. 600 per year for the mother. I am of the view that on the apprehended death of the father on reaching the age of seventy years, the amount of Rs. 600 being the share of the father would fall to the share of the widow-mother. In other words, after the death of the father, the mother would have been entitled to the entire yearly savings and contributions by the deceased of Rs. 1,200. Therefore, although the calculation should be made at the rate of Rs. 600 for each of the parents of the deceased, taking their life span as seventy years, for the mother it should be at the rate of Rs. 1,200 for the rest of the 6 years on the death of the father, being the difference between their ages. Calculating the compensation this way, it comes down to this amount:--

Rs.

Rs.

(1)

Father

17 years X 600

= 10,200

(2)

Mother

23 years X 600

= 13,800

(3)

Add for the mother for 6 years at Rs. 600 on father's death.

3,600

27,600

9. Let us now come to the cross-objection. Two points have been raised by the claimants in the cross-objection. First is regarding the income of the deceased who was running a betel shop. The evidence as to his income is so unsatisfactory that I do not find any reason to interfere with the finding of the Tribunal in this regard. The other question raised is regarding the rate of interest on the compensation awarded. No doubt, these days the rate of interest awarded is on a little higher side. In the year 1980, 9% interest appeared to be not so unreasonable. I am not inclined to interfere with it in appeal, particularly in view of the fact that Rs. 20,000, the major portion of the compensation as determined now, has since been received by the claimants.

10. In the result, the appeal is allowed in part and the award of the Tribunal is modified as above. However, there would be no order as to costs of this appeal.