

(2018) 12 CAL CK 0092

In the Calcutta High Court

Case No : C. Appeal From Order No. 1909 Of 2015, Civil Application No. 6564 Of 2017

National Insurance Company Limited

APPELLANT

Vs

Shakti Bhatta And Ors

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A
Code of Civil Procedure, 1908 — Order 41 Rule 22

Citation : (2018) 12 CAL CK 0092

Hon'ble Judges : Subhasis Dasgupta, J; Harish Tandon, J

Bench : Division Bench

Advocate : M.P. Chakraborty, Krishanu Banik

Final Decision : Dismissed

Judgement

Subhasis Dasgupta, J.

This appeal emerges out of the judgment and order dated 30th September, 2013, passed by Motor Accidents Claims Tribunal, Midnapore awarding compensation to the tune of Rs.3,0,2000/- along with interest at the rate of 9% per annum from the date of filing of claim petition till realisation of entire awarded sum.

Tribunal Judge elaborately dealt with factual circumstances in details while granting the award, however, for the sake of decision in this appeal some crucial facts may be adhered to. A Kolkata bound Ambassador car due to its rash and negligent driving snatched away the life of a 15 years old boy pursuing study in class seven of a school causing a road traffic accident on 27.05.10 at about 1.30 PM on NH-6 when victim boy was coming towards Medinapore from Debra side along left side of NH-6 being accompanied by some of his family members. Deceased victim suffered injuries at the lower portion of his body for which he was first taken to Debra Hospital to secure medical attention and ultimately sent to Medinapore Medical College and Hospital and on the way he suffered death.

The award granted is the subject matter of challenge in this case what was alleged to be erroneous by the appellant/insurance company for the wrong selection of suitable multiplier, which was solitarily stressed only. This seems to be the one and only ground of challenge simplicitor.

The claimants/respondents without filing any cross-objection under Order 41 Rule 22 CPC however, contended that the award would have been much more than that of the amount originally awarded, as the learned Tribunal Judge did not ascertain the just compensation on other conventional grounds like loss of estate, funeral expenses etc. available to claimants/parents/respondents.

Admittedly there was no challenge at the behest of the insurance company that claim application was not maintainable and further the offending vehicle had no coverage of insurance at the date and time of accident.

Presumably the respondents/claimants accepted the quantum of award in the absence of cross-objection being filed.

It is evident in this case that claimants/respondents examined two witnesses, out of which PW1 is the mother of the deceased son, and PW 2 is a eye witness to the incident.

The appellant/insurance company on the contrary examined no witnesses for the evasive denial having taken in its written statement.

On a carefully analysis of the evidence adduced by the claimants the involvement of the offending vehicle leading to the death of the deceased was successfully established, which received further support from the FIR, Exbt-1, Charge-sheet, Exbt-2. The standard of proof required for proving a claim application is not that of beyond reasonable doubt, but the Court should follow the principles of preponderance of probability. Upon applying the same principle, the Tribunal rightly held the offending vehicle to be involved in the accident causing the death of a boy due it its rash and negligent driving.

Each of the circumstances relied on by the Tribunal pertaining to the determination of the issues framed in this case is germane to the ultimate conclusion that the deceased victim, a minor, suffered death receiving fatal injuries on his person in consequence of road traffic accident, caused by the offending vehicle, due to its rash and negligent driving. There left no evidence to believe that a false and fabricated case was set up for the desired purpose of claimants fabricating some police papers. Admittedly a criminal prosecution was lodged over the accident now under consideration, which ended in charge-sheet under Section 279/304A IPC after due police investigation, and the same went uncontroverted by the insurance company before the Tribunal.

Relying upon the decisions of Apex Court, Tribunal proceeded to determine the income, age and the loss of dependency of claimants and awarded the sum upon selection of a multiplier considering the age of the mother of the deceased victim.

Learned advocate for the appellant/insurance company submitted that there had been erroneous application of multiplier in ascertaining the legitimate compensation.

In reply to such stand, learned advocate for the respondents submitted that the award would have been much more, had the Tribunal duly considered different factors/components for ascertaining of just compensation.

To decide the point at rest, we are of the considered view that we make take shelter of a decision of Apex Court delivered in *Sarla Verma (Smt) and others Vs. Delhi Transport Corporation* and another, reported in (2009) 6 SCC 121, in such a case, the Hon'ble Apex Court streamlined different methodology applied by different Tribunals as to the selection of suitable multiplier by setting out a table, appended to para 40 thereto upon due consideration of three earlier decisions of Apex Court, which are mostly followed in selecting suitable multiplier by different Tribunals functioning all over the country. The ratio of judgments delivered in *Kerala SRTC v. Susamma Thomas*, reported in (1994)2 SCC 176: 1994 SCC (Cri) 335; delivered in *U.P.SRTC v . Trilok Chandra*, reported in (1996) 4 SCC 362; delivered in *New India Assurance Co. Ltd. v. Charlie*, reported in (2005) 10 SCC 720: 2005 SCC (Cri) 1657 were noticed by the Apex Court and duly considered in the case of *Sarala Verma & Ors (supra)*.

After due consideration of the ratio delivered in such cases pertaining to the filed of application of suitable multiplier in claim cases, the Apex Court held in the case of *Sarala Verma & Ors. (supra)* that the multiplier to be used should be as mentioned in Column (4) of the table mentioned therein (prepared by applying *Susamma Thomas*, *Trilok Chandra* and *Charlie*) which started with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

After the decision of *Sarala Verma & Ors. (supra)* different methodology adopted by different Tribunals for deciding the award with due application of suitable multiplier reached finality, and the same should be regarded as judgment of the land on this issue. Since victim suffered death within the age group of 15 years, the proper multiplier would be 15 without any controversy by reason of the ratio of the judgment delivered in *Sarala Verma & Ors. (supra)*. Though the Tribunal applied 15 to be the multiplier in deciding the award, but it was based on different approach, not covered by the aspects considered in the case of *Sarala Verma & Ors. (supra)*. Consequentially the awarded sum will remain unchanged. The other points taken by the appellants not having agitated in course of hearing of this appeal, the same could be safely construed to be not pressed being without any merits.

The appeal, is thus, devoid of merit. The reason offered by the Tribunal in

granting the award cannot be said to be perverse and perfunctory. It was based on due appreciation of the evidence adduced by the parties together with the documents produced by the claimants, marked exhibits already.

The appeal and connected applications are dismissed accordingly.

Since the awarded sum was already deposited with Registrar General of this Court as per order of this Court together with statutory deposit of Rs.25,000/- by the appellant which was lying invested in an interest earning scheme of the bank. The respondents are at liberty to approach the Registrar General for withdrawal of the sum together with interest accrued thereon, and if any approach is made, the Registrar General shall take steps for realising the sum within two weeks from the date of approach. The shortfall amount on interest component, however be deposited by appellant /insurer at the rate prescribed by the Tribunal, to Registrar General within the date stipulated above for the period from the date of such deposit of sum already made till disbursement of all dues, if necessary, after doing necessary adjustment with the statutory deposit Rs.25000/-. The residual amount, if any left after adjustment, upon due satisfaction of such amount on interest component, however, be permitted to be released in favour of the appellant/insurance company.

Urgent certified copy of this order if applied for, be made available to the parties upon compliance with requisite formalities.

I agree.