
(2019) 02 OHC CK 0011

In the Orissa High Court

Case No : MACA No. 955 Of 2016 & Motor Accident Appeal No. 955 Of 2016

National Insurance Company Ltd

APPELLANT

Vs

Emerenciana Soy & Others

RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 02 OHC CK 0011

Hon'ble Judges : Dr. A.K.Rath, J

Bench : Single Bench

Advocate : Gautam Misra, B. Singh

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J

1. Aggrieved by and dissatisfied with the award dated 22.03.2016 passed by the learned M.A.C.T-I, Balasore in MAC Case No.233 of 2014, the insurer has filed this appeal.

2. Claimants-respondents 1 to 3, unfortunate parents and sister of the deceased Ajay Kumar Lugun, filed an application for compensation under Sec.166 of the Motor Vehicles Act before the Claims Tribunal for compensation. The case of the claimants was that Ajay Kumar Lugun was travelling in a car bearing registration number OD-02C-0002 with his friends and opposite party no.1-respondent no.4-owner of the vehicle on 29.01.2014. At about 9.30 P.M near Bhatachhatra Chhak on N.H.49 due to rash and negligent driving of the driver of the car, he lost control over the vehicle and dashed against a tree, as a result of which, he succumbed to the injuries on the spot.

3. Opposite party no.1-respondent no.4, owner of the vehicle, filed a written statement admitting the accident. It was stated that the offending vehicle was validly insured with opposite party no.2-insurance company. Opposite party no.2-insurance company entered contest and filed a written statement denying the

assertions made in the claim petition. The specific case of the opposite party no.2 was that the driver of the offending vehicle did not have a valid driving licence. The accident occurred due to negligence of the deceased as a result of which, the insurer is exonerated from its liability.

4. Stemming on the pleadings of the parties, learned Tribunal framed four issues. To substantiate the case, the claimants had examined three witnesses and on their behalf, nineteen documents had been exhibited. No evidence was adduced by the opposite parties. On an anatomy of pleadings and evidence on record, learned Tribunal came to hold that the deceased was twenty three years at the time of accident. He was working as a Junior Clerk in the Bank of India. His monthly salary was Rs.20,000/-. It deducted 50% of the income towards personal expenses, applied 18 multiplier, awarded an amount of Rs.26,12,000/- and directed the insurer to pay the same with interest @ 7.5% p.a from the date of application i.e. 21.7.2014 till payment.

5. Heard Mr.Gautam Misra, learned counsel for the appellant and Mr. B.Singh, learned counsel for the respondents 1 to 3.

6. Mr. Misra, learned counsel for the appellant argued with vehemence that the deceased was a bachelor. The parents and sister of the deceased are claimants. Learned Tribunal fell into patent error in not taking into account the age of the parents while applying the multiplier. Elaborating the submission, Mr. Misra submitted that when a bachelor died in a motor vehicle accident, the age of the parents should be taken into account instead of age of the deceased. To buttress the submission, he placed reliance on the decisions in the case of National Insurance Company Limited v. Shyam Singh and others, (2011) 7 SCC 65, The New India Assurance Co. Ltd. v. A. Singara Vadivela and four others, 2003 (II) OLR 432, The Divisional Manager, Oriental Insurance Co. Ltd., Bhubaneswar v. Sri Kalandi Charan Jena and 7 others, 2006 (II) OLR 500 and United India Insurance Company Ltd. v. Sobha Amarsingh Rajput, III (2016) ACC 407 (Bom.).

7. Per contra, Mr. Singh, learned counsel for the respondents 1 to 3 submitted that the deceased was a bachelor. He was working as a Junior Clerk in the Nationalized Bank. The appropriate multiplier would be the age of the deceased. There is no infirmity in the impugned award. He placed reliance on the decision of the apex Court in the case of Shri Nagar Mal and others v. Oriental Insurance Company Ltd. and others, AIR 2018 SC 568.

8. There are divergent views of the apex Court as well as different High Courts with regard to application of multiplier in a case where the deceased was a bachelor and died in a motor vehicle accident. The same has been set at rest by the Constitution Bench of the apex Court in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680. The apex Court held:

"59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with para 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

xxx xxx xxx

(Emphasis laid)

9. An identical matter came up for consideration before the apex Court in the case of Nagar Mal. In the said case, the deceased was a bachelor. A contention was raised by the counsel appearing on behalf of the appellants that the multiplier to be adopted should have been based on the age of the deceased and not on the age of the parents. The contention was repelled. Taking a cue from Pranay Sethi, the apex Court held:

"7. However, we find merit in the submission which has been urged on behalf of the appellants that the Tribunal failed to apply the correct multiplier and erred in not granting the benefit of future prospects in computing the income of the deceased and the loss of dependency. Having due regard to the judgment delivered by the Constitution Bench of this Court in National Insurance Company Limited v Pranay Sethi, (2017) 13 Scale 12 : 2017 (4) TAC 673 and in Sarla Verma v Delhi Transport Corporation, (2009) 6 SCC 121 : 2009 (2) TAC 677, the correct multiplier should be 17 having regard to the age of the deceased.

xxx xxx xxx

(Emphasis laid)

10. The decision in Shyam Singh was rendered prior to the Constitution Bench decision in Pranay Sethi and is not a binding precedent.

11. The decisions of this Court in the case of A. Singara Vadivela and Kalandi Charan Jena, wherein the age of the parents had been taken into account while applying the multiplier, is no longer good law in view of the decision in Pranay Sethi.

12. The decision of Bombay High in the case of Sobha Amarsingh Rajput is distinguishable inasmuch as the decision in the case of Pranay Sethi was not referred to in the said case. The same is not a binding precedent.

13. In view of the authoritative pronouncement of the apex Court in the case of Pranay Sethi and Nagar Mal, the irresistible conclusion is that when a bachelor died in a motor vehicle accident, his age shall be taken into account while applying multiplier.

14. In the wake of the aforesaid, the appeal, sans merit, deserves dismissal. Accordingly, the same is dismissed. There shall be no order as to costs.