(2008) 05 DEL CK 0080

In the Delhi High Court

Case No : MAC Appeal No. 278 of 2008

National Insurance Company Ltd. APPELLANT

Vs

Smt. Manju Bala and Others RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 110, 168(1), 173, 92A

Citation : (2009) ACJ 1665 : AIR 2009 Delhi 19 : (2008) 150 CLT 597 : (2008) 103 DRJ 412 : (2008) 119 FLR 181

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as the "Act") has been filed by National Insurance Company Ltd. against the award dated 11.02.08, passed by Ms. Deepa Sharma, Judge, Motor Accident Claims Tribunal (for short as "Tribunal"), Patiala House, Delhi.

2. Facts in brief necessary for disposal of the present appeal are that on 06.12.04, the deceased, Sh. Kamal Jeet Singh along with his friend, Sh. Anchul was coming as pillion rider from Banhukami to Nakopdar on a two wheeler scooter bearing no. PB-08K-9406 and when they reached Aalu Godown, Malsian Road, Nakodar, Distt. Jalandhar, Punjab, a Truck bearing Regn. No. RJ-37-G-1075 came from the side of Nakodar at a fast speed and hit the scooter from the wrong side. Due to the said accident Kamal Jeet died. Respondent No. 6 who is owner of the Truck was driving the same.

3. A petition seeking compensation was filed by the widow, minor children and parents of the deceased against the driver/owner, Respondent no. 6 herein and the insurer, Appellant herein, of the offending vehicle.

4. The Tribunal based on the materials placed and the evidence on record found

that death was caused due to rash and negligent driving of the driver and Therefore, vide impugned judgment, awarded compensation of Rs. 19,40,000/- by adopting multiplier of 16 along with interest @ 7% per annum from the date of filing of the petition till its realization in favor of Respondents 1 to 5 and against the appellant and Respondents no. 6.

5. It has been contended by learned Counsel for the Appellant that the Tribunal has not considered that at the time of the demise of the deceased, his wife was a house-wife and on his demise, his employer has given job to her on the compassionate ground and after getting the employment, she is getting a salary of Rs. 4,400/-plus allowances. Therefore, this amount has to be deducted from amount of compensation granted to the claimants under the head of "loss of income". The dependant claimants have got triple benefits, firstly the compensation which they are legally entitled for, due to untimely accidental death of the deceased, secondly the compensation for future loss of income and thirdly, the income from compassionate employment.

6. Ld. Counsel placed reliance on Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, in support of its contentions, contending that in this case Apex Court has held that compensation would not include that which the claimant receives on account of other forms of death. Thus, such pecuniary advantage would have correlation to the accidental death for which compensation is computed. It has been laid down that.:

The Compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words "pecuniary advantage" from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the "pecuniary advantage" resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meager liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself u/s 110 is, as the section states:

...for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to,....

33. Thus, it would not include that which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, would not be construed to be the "pecuniary advantage", liable for deduction.

7. Thus, the principal question that arises for determination in this appeal is as to "if the wife had got employment on the compassionate ground then that has to be taken or not into account while fixing the compensation?"

8. In Helen C. Rebello (Mrs.) and others (supra), the Apex Court has observed;

As we have observed, the whole scheme of the Act, in relation to the payment of compensation to the claimant, is a beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal Accidents Act, 1855 and what is brought u/s 110-B of 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides that where the death or permanent disablement of any person has resulted from an accident in spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation u/s 92-A is in addition to any other right to claim compensation in respect whereof (sic thereof) under any other provision of this Act or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit on the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute, then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have given of this statute, evidenced by two distinct sets of decisions of the various high courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount, should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these considerations, we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intends of the legislature under various provisions of the Motor Vehicles Act, 1939.

9. From the above decision it is clear that just because the wife had got employment on the compassionate ground, compensation is not liable to be reduced. Compassionate employment is given by the employer and the quantum of compensation has nothing to do with the same and it is altogether on a different ground the said thing is given. It has also to be remembered that even if husband dies a natural death, the wife would be entitled to employment under the compassionate scheme, if the scheme so provides or at the wish of employer.

10. In United India Insurance Co. Ltd. Vs. Bindu and Others, it was held by the Kerala High Court that:

Merely because wife had got employment under the compassionate scheme, compensation is not liable to be reduced.

11. A Division Bench of the Andhra Pradesh High Court in Andhra Pradesh State Road Transport Corporation Vs. G. Jana Bai and Others, , held;

The mere fact of the wife of deceased gainfully employed on compassionate grounds cannot be a ground for awarding less compensation though the claimants are entitled for more compensation.

12. Similarly, a Division Bench of Gauhati High Court in Kanika Hazarika and Others Vs. Sreeam Barthakur and Others, , held that;

Deduction on account of the salary received by the widow on an employment given by the bank where the deceased was working should not be taken into consideration for fixing the amount.

13. Thus under these circumstances and in view of various decisions of other High Court, where a wife gets employment under compassionate scheme, the compensation payable is not liable to be reduced, so, no error can be found with the view taken by the Tribunal.

14. The present appeal is, thus, devoid of any merits and same is, hereby, dismissed.

15. No order as to costs.

