
(2013) 02 PAT CK 0040
In the Patna High Court
Case No : Misc. Appeal No. 107 of 2012

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Narindur Kaur and Others

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Motor Vehicles Act, 1988 — Section 161, 163A, 166, 173
Penal Code, 1860 (IPC) — Section 279, 304, 304A, 338

Citation : (2013) 3 PLJR 349

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Shyam Sunder Pandey, for the Appellant; Taj Narayan Singh and Narendra Kumar, for the Respondent

Judgement

Rakesh Kumar, J.—The present appeal has been preferred u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"). This appeal has got a chequered history. In an accident, which had occurred long back on 10.9.1991 one Dalbir Singh, who was at the relevant time a Field Officer of the Indian Bank and was attached to Janoriya Branch on deputation to look after the affairs of another Branch of Indian Bank at Dhanauti, as the Branch Manager of the said Branch had died. While he was moving to attend his duty on his motorcycle, a Maxi Taxi (hereinafter referred to as the "offending vehicle") bearing Registration No. BPI 4308 coming from opposite direction in a high and uncontrollable speed due to rash and negligent driving of the driver dashed the motorcycle of Dalbir Singh. Even in the accident, he was dragged alongwith motorcycle for a considerable distance, as a result of which Dalbir Singh sustained severe injuries and he died on the spot itself. Since it was a vehicular accident, the parents of the deceased alongwith minor child of the deceased preferred an application under the Act claiming compensation to the tune of Rs. 12,43,400/- alongwith interest @ 18% per annum. Finally, the 5th Addl. District Judge-cum-Addl. Motor Vehicles Claim Tribunal, Aurangabad (hereinafter referred to as the "Claim

Tribunal") allowed the Claim Case No. 7 of 1992/52 of 2003 by Judgment dated 13.3.2004 and Award dated 27th March, 2004 directing the appellant i.e. the National Insurance Company Ltd. (insurer of the offending vehicle) to pay the compensation amount of Rs. 6,15,600/- and the said amount was directed to be paid after deducting Rs. 25,000/-, which was paid as interim compensation. The Claim Tribunal further directed the insurer to pay interest on the compensation amount @ 9% per annum from the date of filing of the claim case. Aggrieved with the Judgment and Award, the appellant preferred an appeal, which was numbered as M.A. No. 190 of 2004 u/s 173 of the Act. After filing of the appeal, defect was pointed out by the office regarding maintainability of the same. However, by order dated 15.7.2004, a Bench of this Court observed that the defect be considered at the time of hearing under Order 41, Rule 11 of the Code of Civil Procedure. Subsequently, an Interlocutory Application vide I.A. No. 642 of 2007 was filed for stay of further proceeding of Certificate Case No. 2/2005-06 pending before the Certificate Officer, Aurangabad. Since after the Judgment and Award, the compensation amount was not paid by the appellant, a Certificate Proceeding was initiated. This Court on 20.2.2007 directed for staying the further proceeding of Certificate Case No. 2/2005-06 till the hearing of Miscellaneous Appeal under Order 41, Rule 11 of the Code of Civil Procedure. On 25.4.2007, while the matter was taken up for hearing under Order 41 Rule 11 of the Code of Civil Procedure, learned counsel for the appellant accepted the defect pointed out by the office and prayed for granting permission to convert Miscellaneous Appeal into a Civil Revision, which was allowed on the same day. Subsequently, M.A. No. 190 of 2004 was converted as Civil Revision No. 1007 of 2007 in the month of May, 2007 itself. Subsequently, during the pendency of Civil Revision, Respondent No. 2/Opp. Party No. 2 (father of the deceased) died and as such, his name was expunged from the record. Since other legal heirs of the deceased i.e. mother/Respondent No. 1/Opp. Party No. 1 and his son/Respondent No. 3 (Opp. Party No. 2) were already on record, on 15.12.2011 Civil Revision was heard and order was reserved. However, before the order could be pronounced, in view of recent Judgment of the Apex Court in the case of United India Insurance Company Ltd. Vs. Shila Datta and Others, , learned counsel for both parties jointly submitted that in view of the Judgment of the Apex Court instead of revision application, an appeal would be maintainable against the impugned order and a prayer was made for recalling/modification of the order dated 25.4.2007, by which M.A. No. 190 of 2004 was allowed to be converted into the Civil Revision application and thereafter on 30.1.2012 with the consent of learned counsel for the Opp. Parties, learned counsel for the petitioner/appellant was permitted to convert the revision application into a Miscellaneous Appeal and the Civil Revision No. 1007/2007 was converted to the Miscellaneous Appeal and thereafter it was numbered as M.A. No. 107 of 2012. The present Miscellaneous Appeal was heard and order was reserved on 23.8.2012.

2. Short fact of the case is that on 10.9.1991, son of appellant No. 1, namely, Dalbir Singh, aged about 33 years who was father of Respondent No. 3 (minor

son) died in a vehicular accident, in which the Maxi Taxi, bearing Registration No. B.P.I. 4308 was involved and accident had occurred due to rash and negligent driving of the offending vehicle. The deceased at the time of accident was moving on a motorcycle, which was dashed by the Maxi Taxi, which was coming from opposite side. The monthly income of the deceased Dalbir Singh was Rs. 5130/-. He was an officer of the Indian Bank. Since it was death in a vehicular accident, a claim petition was filed before the Claim Tribunal claiming total compensation of Rs. 12,43,400/- alongwith interest @ 18% per annum. Before the Claim Tribunal, besides three witnesses, in support of the claim, number of documents were got exhibited, particularly F.I.R., which was marked as Ext. 2, fardbeyan marked as Ext. 3 and Post-mortem Examination Report as Ext. 4. After the accident, a police case vide Obra P.S. Case No. 71 of 1991 was registered for the offence under Sections 279, 338 and 304A of the Indian Penal Code since accident had taken place on Gaya-Aurangabad Road at a distance of 4? Kilometer from Obra Police Station. In the claim petition, owner of the offending vehicle appeared and besides disputing the claim, it was pleaded that the appellant/National Insurance Company Ltd. bears the risk of the offending vehicle. It was also pleaded that the driver of the offending vehicle was having valid driving licence. Before the Claim Tribunal, the appellant/insurer of the offending vehicle also appeared and filed written statement. The appellant had taken a plea that the motorcycle of the deceased was not dashed with the alleged Maxi Taxi (offending vehicle), rather the deceased was driving the motorcycle in a very high and uncontrollable speed and dashed with a tree. The learned Claim Tribunal had framed about eight issues and finally, the claim petition was allowed by the impugned Judgment and Award and direction was given to pay total compensation amount of Rs. 6,15,600/-, which was to (sic-- interim?) be paid after deducting Rs. 25,000/- as compensation amount. The compensation amount was also directed to be paid alongwith interest @ 9% per annum from the date of filing of the case. Aggrieved with the Judgment and Award, the appeal was preferred by the appellant before this Court.

3. Sri Ashok Kumar Sinha, learned counsel for the appellant firstly argued that since the claimants had failed to prove that accident had occurred due to rash and negligent driving of the offending vehicle, the Claim Tribunal was required to reject the claim case, but even in absence of any evidence on this point, the Claim Tribunal has allowed the claim case, which requires to be interfered with. He submits that in absence of any proof of rash and negligent driving, the Apex Court in a case reported in *Surender Kumar Arora and another Vs. Dr. Manoj Bisla and Others*, , has disapproved grant of compensation in the manner, in which the present claim petition was allowed. Sri Sinha has argued that it was a case of hit and run and, as such, the compensation would have been granted u/s 161 of the Act. He further submits that since in the Motor Vehicles Act, Schedule-II was incorporated vide Notification issued on 14.11.1994 and accident in the case had occurred on 10.9.1991, the claimants were not entitled to get compensation in view of Section 163A, Schedule-II of the Act. It was further

argued that the learned Claim Tribunal has committed serious error in taking into account the age of the deceased for calculation instead of calculating compensation on the basis of age of the parents of the deceased. In support of his argument for consideration of the age of parents of the deceased instead of age of the deceased for the purposes of calculation of compensation, learned counsel for the appellant has relied on a Judgment reported in New India Assurance Co. Ltd. Vs. Charlie and Another, . He has specifically referred to paragraph No. 14 of the said Judgment, which is quoted hereinbelow:--

14. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

4. It was submitted by learned counsel for the appellant that the claim petition filed u/s 166 of the M.V. Act in the present case was not required to be entertained, but it was a case u/s 161 of the Act. On the aforesaid ground, it has been prayed to set aside the Judgment and Award.

5. Sri Narendra Kumar, learned counsel appearing on behalf of the claimants/ Respondents has argued that right from the very beginning, the appellant had taken unsustainable ground only with a view to delay the payment of compensation amount. He submits that though in the said accident, F.I.R. was lodged against the driver of the offending vehicle i.e. Maxi Taxi, which was under the insurance cover of the appellant and after investigation, charge-sheet was submitted against the driver of the said vehicle for rash and negligent driving, the appellant had come out with an unsustainable plea that the deceased himself had dashed his motorcycle with a tree and in the accident, Maxi Taxi was not involved. He has further submitted that before the Claim Tribunal, the F.I.R. i.e. Ext. 2 was itself sufficient to prove that the death had occurred due to rash and negligent driving of the driver of the Maxi Taxi (offending vehicle) and, as such, unrealistic approach of the appellant is itself evident. He further submits that though the learned Claim Tribunal, while granting compensation, had calculated the compensation on the basis of age of the deceased, it cannot be specifically said that the compensation amount has been paid exactly as per Schedule-II of the Act. Learned counsel for the claimants has submitted that the compensation amount is just and proper. Moreover, according to learned counsel for the claimants, though accident had occurred in the year 1991, the claim was kept pending for a long time and after expiry of several years, the appellant may not be allowed to take such unsustainable ground. He submits that due to dilatory tactics adopted by the appellant, till date the claimants have not received the

compensation amount and even during the pendency of the appeal, father of the deceased, who was appellant No. 2, has already died and the claimants, Respondent No. 3, who was a minor at the time of death of his father, has now attained majority. According to the learned counsel for the claimants, the appeal is fit to be rejected.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. At the very outset, it would be appropriate to notice that while pressing the present appeal, it has been emphatically argued that the claimants had failed to establish the case before the Claim Tribunal that death had occurred due to rash and negligent driving of the offending vehicle, whereas in paragraphs of the present appeal, the appellant itself has stated that in police case i.e. Obra P.S. Case No. 71 of 1991 registered under Sections 279, 338, 304 of the Indian Penal Code after investigation, charge-sheet was submitted against the driver and he was put on trial. During trial, the driver was held guilty and convicted. Once the fact regarding conviction of the driver of the offending vehicle for the aforesaid offences has already been admitted by the appellant in its memo of appeal, the Court is of the opinion that the learned counsel for the appellant should have restrained himself from making such submission regarding non-establishment of the case of rash and negligent driving by the driver of Maxi Taxi (offending vehicle) and, as such, Surendra Kumar Arora's case (supra) has got no application in the fact and circumstances of the present case. So far as consideration of age of the deceased for calculation of compensation amount is concerned, it is evident that the deceased at the time of accident was married and his minor son has also claimed for compensation, who is Respondent No. 3 in the present appeal and, as such, the deceased being married, his age has rightly been considered for calculating the compensation amount. In a case, reported in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , proposition for considering the age of the parent in the case of death of a bachelor was treated as valid. It would be appropriate to quote paragraph-18 of the said Judgment, which is as follows:--

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffers from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs. 3000. The total should be $3000 \times 15 = 45,000$ but the same is worked out at Rs. 60,000. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9000; the total should have been Rs. 1,44,000 but is shown to be Rs. 1,71,000. To put it briefly, the table abounds in such mistakes. Neither the tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasize is that the multiplier cannot exceed

18 years" purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as courts and tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies Case.

7. Similarly, recently the Apex Court in a case reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , has virtually reiterated the same. It would be evident from paragraph 26 of the said Judgment, which is as follows:--

26. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardise the deductions to be made under the head of personal and living expenses of the deceased. This led to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction got statutory recognition under the Second Schedule to the Act, in respect of claims u/s 163-A of the Motor Vehicles Act, 1988 ("the MV Act", for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline.

8. Since in the present case, the deceased was married one, the learned Claim Tribunal in view of settled law has rightly taken into account the age of the deceased for calculation of the compensation amount. The Claim Tribunal has elaborately discussed each and every issue and finally decided to direct the appellant to pay compensation amount since the offending vehicle was under the insurance cover of the appellant at the time of accident. I do not find any ground for interference with the Judgment and Award. Accordingly, the appeal stands dismissed. The appellant is directed to pay the compensation amount in view of Judgment and Award with interest from the date of filing of the claim case, which is to be calculated till the date of payment. Only modification in the Judgment and Award is done to the extent that the compensation amount is to be distributed equally among the Respondents i.e. Respondent No. 1 (mother of the deceased) and Respondent No. 3 (son of the deceased). The compensation amount, as indicated above, must be paid within a period of two months from the date of receipt/production of a copy of this order.