
(2001) 11 PAT CK 0007
In the Patna High Court
Case No : Misc. Appeal No. 281 of 1997

National Insurance Company Ltd.

APPELLANT

Vs

Sudha Devi and Others

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Citation : (2002) 1 PLJR 162

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; Vivekanand Vivek and Debesh Kumar Poddar, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—This miscellaneous appeal is directed against the judgment dated 17.4.97 passed by the Motor Vehicles Accident Claims Tribunal (1st Additional District Judge, Bhagalpur), in claim case No. 75/93. The Appellant before this Court is the National Insurance Company, who was opposite party No. 6 of the claim case.

2. It was submitted by the Appellant's lawyer that the deceased was travelling in a Govt. Jeep which was occupied by some officers of the concerned department, in which the deceased was serving. There was contributory negligence of the Jeep driver as well, but the Tribunal fixed the liability of payment upon the Insurance Company of the Mini Bus which collided with the jeep, in question causing the death of the deceased, whose wife, sons and daughters filed the aforesaid claim case. The Appellant should not have been fastened with the sole liability of paying compensation amount. Moreover, the Tribunal used the multiplier of 15 as provided by schedule II of the Motor Vehicles Act, 1994. This Act was not made retrospective and, therefore, the Tribunal should not have used the multiplier provided under the Act, since the accident took place in the year 1993 to which M.V. Act, 1988 shall be applicable.

3. However, I find that besides the claimants A.W. 3 and 4 were examined in the lower court. A.W. 4 was the driver of the concerned Jeep and A.W. 3 was another occupant of the jeep. Both the witnesses said that the jeep, in question, was stopped at the speed-breaker near the P.O. which was a bridge. The mini bus came from the opposite direction and dashed against the jeep causing injuries to some occupants of the vehicle and death of Niwaran Tiwary. The Tribunal, therefore, held that there was no contributory negligence on the part of the jeep driver and the accident occurred mainly on account of the negligence on the part of the bus driver. The owner and driver of none of the vehicles contested the case. The Appellant (Insurance Company) had admitted the insurance of the concerned mini bus. It was not established that the bus driver was driving the vehicle without valid licence. In the aforesaid circumstance, the Tribunal fixed liability of paying compensation amount upon the Appellant.

4. In the facts and circumstances of the case and in view of the findings arrived at by the Tribunal on facts on record, I do not think the Appellant can be absolved from its liability to pay the compensation amount. Now, the question is what amount has to be paid to the claimants. In this connection, it was submitted by the Appellant's lawyer that the Tribunal besides applying the multiplier system and using the multiplier as provided in schedule II of the M.V. Act, 1994, granted penal interest at the rate of 18% if the amount of compensation was not paid within two months of the date of the order of the court. There was no provision for penal interest in the M.V. Act. Appellant's lawyer further submitted that interest at the rate of 12% should not also have been granted because now the interest rate fixed by the Reserve Bank of India has been reduced from 12 to 9%.

5. A cross objection has also been filed in this appeal by the claimants and it was pleaded by the claimants' lawyer that the age of the deceased fixed by the Tribunal was wrong because as per the salary chart in which the age of the deceased was also mentioned (Ext. A). The deceased's date of birth was mentioned as 7.8.58 and the post mortem report mentions the age of the deceased at 45 years, which the court accepted and disbelieved the age as mentioned in the service book of the deceased and as authenticated by Ext. A. Moreover, the multiplier should have been 16 as per the schedule II of M.V. Act, 1994 and hence using this multiplier the compensation amount shall be enhanced.

6. I find that the Tribunal assessed the total amount of compensation at Rs. 2,25,000/- including the amount of funeral expenses and loss of consortium and loss of love and affection to the family members of the deceased.

7. So far the multiplier used by the Tribunal is concerned, I am of the opinion that though M.V. Act, 1994, is not retrospective, but still the tribunal may use the principle laid down by this Act in determining the compensation amount because on the date of decision the Act had already come in to force. Of course, under the old Act all the liabilities to be incurred by the concerned persons or the

concerned entities shall be governed by M.V. Act, 1988. But the court while determining the compensation amount is not debarred from using the principle laid down under the changed law which is applicable at the time of the decision. The court is also not, however, bound to apply the multiplier as supplied by schedule II of the M.V. Act strictly in its technical terms. The court is to fix just a proper compensation amount under the circumstances of this case. So, the court shall adopt a reasonable approach in using particular multiplier. In the instant case, the age of the deceased given by the claimants was 39 and the doctor in the post mortem report gave the age as 45 years. The Tribunal used the multiplier of 15, but as per the schedule II of the M.V. Act the multiplier should also, of course, have been 16. However, the court adopted a reasonable approach by using the multiplier because under the M.V. Act, 1988, no multiplier was supplied. So, I am not in favour of changing the multiplier either to 16 or reducing it to any lower level. Now the question is whether the compensation amount should have been enhanced taking into consideration the prospect of future promotion of the deceased in his service. In this connection, there was no evidence whether the peon had any educational qualification which will entitle him to any promotion from the IVth grade employee to any higher grade. There was no evidence either that the deceased was entitled to any further increment of the salary and that he had not reached the final scale of pay. In such a circumstance, there was no scope for taking into consideration the future earning of higher income of the deceased. Further there was no question taking into consideration any future enhancement of the salary of the deceased or his promotional avenue. Already the Tribunal assessed the claim of funeral expenses, loss of love and affection and loss of estate and added all these losses to the compensation amount fixed on the basis of salary and multiplied by figure 15. So, I am of the opinion that there was no necessity to enhance the amount of compensation fixed by the Tribunal.

8. So far the grant of penal interest, I am of the opinion that the Tribunal, of course, committed an illegality. However, the interest granted by the Tribunal was 12% per annum till realisation. Of course, now the rate of interest has been reduced. Now the question is whether this rate of interest may be reduced. In this connection, I am of the opinion that the amount of compensation to the victim of motor vehicle accident is by way of compensatory benefit to the dependants of the deceased. It is a discretion of the court to fix the rate of interest under the M.V. Act. So, it is not necessary that the court must reduce the rate of interest. In the facts and circumstances of this case, I am not inclined to reduce the rate of interest, specially in view of the fact that the heirs of the deceased were claiming enhancement of the compensation amount.

9. In the result, this appeal is dismissed with the modification regarding the grant of penal interest. Other observations and directions made in the operative part of the impugned judgment of the Tribunal shall remain intact. The cross objection is also dismissed accordingly.