
(2002) 07 JH CK 0057
In the Jharkhand High Court
Case No : L.P.A. No. 105 of 1998 (R)

New India Assurance Co. Ltd.

APPELLANT

Vs

(Most.) Sundia Devi and Others

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2003) ACJ 1986

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : D.C. Ghose, for the Appellant; Jai Prakash and Arshad Hussain, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This appeal has been preferred by the appellant-New India Assurance Co. Ltd, (Company for short) against the judgment dated 18th February, 1998 passed by the learned single Judge in Misc. Appeal No. 81 of 1994 (R).

2. The applicants Most. Sundia Devi and others filed claim for compensation of Rs. 4 lacs before the Motor Vehicles Accident Claims Tribunal, Bokaro at Chas on the death of her husband Sudan Teli. Her case was that the (deceased) Sudan Teli while coming on his Hero Honda Motor Cycle on 9th July, 1991 at about 6.15 p.m. and reached near the Gate of I.O.L. at Village Salagadih, a Maruti Van bearing No. DNJ-2640 being run rashly coming from Dhanbad side dashed the Motor Cycle due to which the Motor Cycle was damaged. Sudan Teli was thrown on the road and succumbed to serious injury while taken to the Hospital.

The case was registered as Title (M.V.) Suit No. 105/91. In the said case, the learned Additional District Judge, Bokaro taking into consideration the status of the deceased Sudhan Teli that he was a Khalasi in B.S.L. and aged about 30 years, assessed the total compensation, including consortium, for Rs. 7 lacs to

be paid by the Insurer-Company, vide Judgment dated 21st February, 1994/ award dated 4th March. 1994.

The Insurer-Company being not satisfied preferred Misc. Appeal No. 81 of 1994 (R). It was pleaded that the Tribunal committed error of law in applying the multiplier of 28. A recent judgment of Supreme Court was referred to suggest that the multiplier method should be a maximum of 18 years.

The learned Single Judge vide impugned judgment dated 18th February, 1998 on appreciation of all facts, evidences and submissions of the parties himself calculated the compensation and held that 16 should be the proper multiplier. On such calculation, adding the consortium of the widow, shock etc., brought down the compensation from Rs. 7 lacs to Rs. 5,50,000/-as "just" compensation in favour of the claimants.

3. In the present appeal, the counsel for the appellant Insurer-Company raised only question as to whether the Tribunal or the learned Single Judge had jurisdiction to allow more compensation than the compensation claimed for by the claimants?

4. The counsel for the appellant relied on this Court's decision in *Most. Suga Bibi v. Sardar Nirmal Singh*, reported in 2001 (1) JLJR 161 : 2001 (1) JCR 304 (Jhr) In the said case, the learned Single Judge referring on Sections 166 and 168 of Motor Vehicles Act, 1988, held that it was not open to the Claims Tribunal to award the amount of compensation higher than the amount claimed by the claimants. Where the claimant feels that he is entitled to more compensation than that claimed in the petition, it is always open to him to amend the claim petition and the Tribunal should allow amendment if the same is in consonance with equity, justice and good conscience.

5. In another case, the *New India Assurance Co. Ltd. v. Smt. Sairan Biwi*, reported in 2001 (1) JLJR 200 : 2001 (1) JCR 228 (Jhr) a Single Judge of this Court given the similar finding that the Claims Tribunal cannot award the amount of compensation higher than the amount claimed by the claimants in the claim petition.

6. Though the aforesaid finding given by the learned Single Judge in the case of *Most. Suga Bibi (supra)* and *New India Assurance Co. Ltd. (supra)*, but no ground or reasoning given to come to such conclusion.

Reference of Supreme Court's decision in the case of *Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another*, . given but in the said case, the Supreme Court has not determined the issue in question. That was a case related to determination of compensation in the case of fatal accident and the Apex Court, taking into consideration the annual income of the deceased etc. and multiplier of 18 years, determined as to what the claimants would get towards to compensation. Since the claim was limited to Rs. 1 lac, it was allowed, but no ratio laid down therein. The aforesaid decision of the

Supreme Court in Adikanda Sethi (supra) thus is a judgment in personem.

7. An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 can be made as per Section 166 of the Motor Vehicles Act, 1988. On receipt of such application for compensation made u/s 166 how it will be determined by the Claims Tribunal and award to be passed, is stipulated u/s 168 of the said Act. An award determining the amount of compensation which appears to the Claim Tribunal "to be just" and specifies person(s) to whom compensation is to be paid, shall be paid by the Insurer or owner or driver, as the case may be.

Similar was the provision made u/s 110-B of the Motor Vehicles Act, 1939.

The words "which appears to it (Tribunal) to be just, fell for consideration before the Supreme Court in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, In the said case, the Supreme Court observed and held, as follows :

"....We find that the language of Section 110- B of the 1939 Enactment is different that what is u/s 1 -A of the 1855 Act. Section 1-A of 1855 Act provides that whenever death occurs on account of wrongful act or neglect, entitles the party injured to maintain a suit to recover damages from the party, who caused the injury or the death. This entitles the party to recover damages, whenever death is occasioned by the wrongful act, negligence or default, which would have entitled to party injured (if death had not resulted) to maintain an action to recover damages in respect thereof. This provision was interpreted within the limitation of the words used therein and in the absence of any guiding words therein. The Courts rightly drew the general principle of common law of loss and gain. But Section 110-B of 1939 Act empowers the Tribunal to determine the compensation which appears to it to be just. The words used in Section 110-B are : "which appears to it to be just". Use of these words, widen the scope of determination of compensation which is neither under the Indian Fatal Accidents Act, 1855 nor under the English Fatal Accidents Act, 1846,....".

"Flemming has also expressed that the deduction or set off of the life insurance could not be justifiable. When . he uses the words "not be justifiable" he refers to one's conscience, fairness and contrary to what is just. In this context, the use of the word "just", which was neither in the English 1846 Act nor in the Indian 1855 Act, now brought in under 1939 Act, gains importance. This shows that the word "just" was deliberately brought in Section 110-B of the 1939 Act to enlarge the consideration in computing the compensation which, of course, would include the question of deductibility, if any. This leads us to an irresistible conclusion that principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decision, were restrictive in nature in the absence of any guiding words therein, hence the Courts applied the general principle at the common law of loss and gain but that would not apply to the considerations u/s 110-B of 1939

Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see that is just.....The word "just, as its nomenclature, denotes equitability, fairness and reasonableness having peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provisions of this Act or any other provisions having force of law,....."

8. From the aforesaid decision, it is evident that the word "just" denotes equitability, fairness and reasonableness, which is not arbitrary and is restricted by the conscience which is fair, reasonable and equitable. Contrary to the word "just" is that is "not justifiable", "not reasonable", "arbitrary" and "pinch the conscience".

9. In the aforesaid case of Helen C. Rebello (supra), the Supreme Court traced out the difference of language of Section 110-B of the Motor Vehicles Act, 1939 and Section 1 of the Fatal Accidents Act, 1855. In 1855 Act, as the claimant was entitled to maintain a suit for "recovery, of damages", whereas under 1939 Act (also under 1988 Act), it is the Tribunal to determine the "compensation", which appears to it to be just, to be payable to the claimant.

10. The intention of the Legislature to provide just and proper compensation is not only since the enactment of the Motor Vehicles Act, 1939, the recent insertion of new provision of sub- section (4) to Section 166 of the Motor Vehicles Act, 1988 makes it clear that the Tribunal may grant just and proper compensation even in a case where a Police Officer has filed only a copy of report regarding an accident to Claims Tribunal.

11. From the decision of the Supreme Court aforesaid and provisions of the Act, it will be evident that the Claims Tribunal is bound to assess compensation which appears to it to be "just" and such assessment has no nexus with the claim made by one or other claimant. The only thing to be seen is that the assessment of compensation is based on evidence, properly calculated, in accordance with law, and is not arbitrary.

12. If the stand taken by the appellant is accepted that no amount more than the claim made by the claimant(s) can be allowed by Claims Tribunal then it will render the present Sub-section (4) to Section 166 redundant, as in a suo motu case on the basis of a report of Police Officer, no claim amount is made or shown in the report, but compensation is paid as per assessment of Claims Tribunal, which appears to it just and proper.

13. In view of the aforesaid decision of Supreme Court in Helen C. Rebello (supra), the provisions of law and discussions made above, I am of the opinion that a Claims Tribunal has jurisdiction to allow compensation more than the claim made/ shown by the claimants, if the assessment is just and proper,

14. The decisions rendered by the learned Single Judge in the case of Most. Suga Bibi v. Sardar Nirmal Singh "(supra), and New India Assurance Co. Ltd. v. Smt. Sairan Biwi (supra), has not laid down the correct proposition of law.

15. I find no merit in the appeal. It is, accordingly, dismissed. There shall, however, be no order, as to costs.